

memories of a father

by

Professor T. V. Eachara Varier

translated from Malayalam by Neelan

Asian Human Rights Commission | Jananeethi

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MEMORIES OF A FATHER *by*

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About the author

Professor T. V. Eachara Varier was born the son of Mr. Chirangarayil Krishna Varier and Mrs. Thiruvullakkavu Warriath Kochukutty Warasiar in Chepu, of Trichur district, Kerala, India, on October 28, 1921. He was active in the independence struggle as a member of the Cochin Prajamandalam political party, and later became affiliated with the Communist Party. He is a retired language professor at St. Thomas' College, Ernakulam Maharaja's College and Chittor Government College, Trichur. Since his son Rajan died in police custody, Professor Varier has become a vocal human rights advocate.

Professor Varier survives his son Rajan and wife, Radha Warasiar, together with his two daughters, Rama and Chandni.

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Foreword

This small book contributes far more to the literature on human rights than the tons of academic writings that unfortunately crowd our libraries. Most of those books are produced in countries quite unlike India, where this story is set. As such, they are relevant to countries where police officers generally observe discipline, where most criminal investigations are competently managed, where the judiciary as a whole is uncorrupted, and where politicians are not publicly perceived as sheer frauds.

From the tears of a father's pen, Professor Eachara Varier tells of another reality. His son's disappearance draws from him this eloquent, moving and remarkable statement on cruelty, courage, and enduring hope. His story is from India, but it is the story of millions throughout Asia, and in many other parts of the world.

The global human rights community must hear this story. Unfortunately, at this moment in history much of that community tries to avoid getting too close to the daily realities faced by the overwhelming majority of people in the world, preferring instead to dwell in academic works on human rights, which also conveniently avoid reality.

Professor Varier describes his desperate and ultimately unsuccessful attempts to get his son out of the temporary police camp where he is taken one morning for no reason. Camps such as this exist in many countries even now. These are places where the rules of life and death are very different to the rest of the world. They are places where relatively low-

ranked officers have absolute power to decide who to arrest, how to arrest them, how to torture them, when to kill them, and how to dispose of their dead bodies. Above them are other persons—senior police officers, politicians and bureaucrats—who must hide the truth from the families of victims and wider society. A bond of complicity thereby forms between the actual perpetrators and other authorities, a bond so strong that in this story it did not break even in cases where the father knew many of the government officials personally.

This is not a story of some event from history; it is a story of today's India, today's Asia. Across the region, huge numbers of innocent people suffer the cruelest forms of torture and death in custody, and thousands are forcibly disappeared. Most victims do not have a father as educated and vocal as the boy remembered in this book. His story is also the story of the thousands of others whose pain and suffering have never been made public.

In India, human rights abuses by the police are set to increase dramatically. A body known as the Malimath Committee has recently suggested reforms to the criminal justice system that will create conditions even worse than those described in this book. These reforms, if realised, will remove the basic legal defences available to an accused person. They will permit torture, custodial death and disappearance to occur anywhere, anytime. Proper redress will no longer be available through the courts, which will themselves become places merely for bargaining, rife with corruption.

This is a story for our times. It should be read carefully by anyone concerned about the real meaning of human rights. It should be on the reading list of every human rights and democracy education programme. This father deserves to be heard. We will all be better off if we learn something from his bitter and deeply moving experiences.

*Basil Fernando,
Hong Kong,
April 2004*



A plantain leaf and a bowl of rice kept waiting



“Please give this to our son Rajan. I trust only you.”

She didn't utter a word after that. Cold death had already touched her.

The next day after her death, I had a nap on the couch. The weight of that packet of coins, which she entrusted to me, was still in my hands.

March 10, 1976, Manmohan Palace at Trivandrum was quiet. The atmosphere of the Emergency even lay upon that historical building, the residence of the State Home Minister, but there were no khaki-clad men around.

We were not made to wait long to enter the room of Mr. K. Karunakaran, the State Home Minister. It was one of the last doors I was knocking at. I was at the residence of Mr. Karunakaran in search of my son, who had been taken by the police from the front yard of the Calicut Regional Engineering College hostel. There were two others with me: Surendran, one of my former students, and his friend, a professor from Vennala, Ernakulam. This professor was a close friend of Mr. Karunakaran.

Surendran and I had started early from Calicut and reached Ernakulam before dawn the next morning. We spent the rest of the time at Ernakulam North railway station, on a cement bench, fighting the mosquitoes and the chilly wind, waiting for light. I was burning inside. There at Ernakulam, some three to four kilometers away, my son's mother and his sisters were still asleep in our house, ignorant of everything that was happening.

When the day dawned, we reached the professor's house at Vennala and told him of my problems. He immediately came along with us. He too seemed to be worried about my son Rajan's disappearance. He was so close to Mr. Karunakaran that he had access to even the inner rooms of the Minister's house. Mr. Karunakaran's wife, Mrs. Kallianikutty Amma, was also close to him. When we reached Trivandrum, the professor went straight to the residence of Mr. Karunakaran and arranged an appointment.

Mr. Karunakaran greeted us with a broad smile, but as he saw me did that smile fade a little? Foolish thoughts, I consoled myself.

He hugged me. “Why didn’t you tell me all this earlier? I would have taken care of it then and there,” he said. A hope flashed in my mind.

“This name Rajan seems to be familiar to me. He seems to have got into some serious trouble,” he continued.

I pressed my hands in respect. I was unsteady with an unknown emotion.

“No, he is not capable of doing things like that. When the extremists attacked the police station at Kayanna (near Calicut) he was participating in the youth festival at Farooke College. He was the Arts Club Secretary at the Engineering College where he studied,” I said.

Karunakaran touched my shoulders. His voice was very soft. “I will enquire and let you know. I will do whatever I can. That’s the relationship we have, isn’t it?”

I paid respect to him once more with folded hands. My eyes were blurred in the sun at the front yard of Manmohan Palace. Was that fading too, the last island of hope?



It was on February 26, 1976 that I last met my son Rajan. He was then a final year student of the Chathamangalam Regional Engineering College, 13 kilometers away from Calicut. I was a professor at the Hindi department of the Government Arts and Science College at Calicut. I was staying in Kerala Bhavan Lodge, just opposite to the General Hospital near Muthalakkulam. Rajan used to come there often to meet

me. He last came for some money. I met him in my room on February 26. I asked him to come home during the vacation. He nodded yes.

I was born at the Thiruvullakkavu Varriam at Cherpu, in Trichur District. After partition of the ancestral property I left that home, moved to Ernakulam, and built a house in Parambithara road. We named the house 'Sauhrida Nilayam' ['house of friendship']. I was living there with my wife and three children, my sister, Kochammini Varasyar, and her husband, Mr. Achutha Varier. He was my wife Radha's brother. He worked with the Railways.

On March 1, 1976, when I reached my college as usual, I came to know that the police had taken my son into custody. One of Rajan's friends, Mr. Karmachandran, informed the college authorities of this by telephone. It was 10am. With the permission of the principal, I rushed to Chathamangalam.

The premises of the Engineering College were as quiet as a cemetery. Rajan had been arrested on the morning of February 29. He was coming out of the college bus in the front yard of the Engineering College, after returning from the youth festival at Farooke College. The police were waiting for him. According to the information then available, he was first taken to Calicut and then to Kakkayam Camp, a police camp established to investigate the attack on Kayanna police station. Many people told me that no purpose would be served by going to the Kakkayam Camp. But I went.

The camp at Kakkayam was established at the asbestos-roofed building of the State Electricity Board. There was a pond in front of the camp. Access was through a temporary wooden bridge, guarded by a police sentry with a rifle. I spoke

to him. He was very serious, but didn't utter a single indecent word to me. He went into the camp, and came back to tell me that I would not be permitted inside. He told me that my son Rajan was inside, and was well. My emotion cooled a little, but I told him, "I just want to meet my son." He was standing in front of me like a mountain.

I felt so lonely that I shouted out; I shouted loudly.

"I can do nothing," He replied. Then his face darkened.

"Then allow me to meet Mr. Jayaram Padikkal at least," I was adamant. Mr. Jayaram Padikkal was the camp 'monarch', and a Deputy Inspector General of the Crime Branch.

My childlike adamancy echoed back from the watery surface of that pond. I stood still in front of that guard. His upright rifle wavered sometimes to the sides. He tried not to listen, or care for me.

Waiting alone there a sob got trapped in my throat. I felt, as though I heard a cry calling me, "Oh, father..." from somewhere through the walls of the detention room of the camp.

I felt tired and started walking back. Once more I turned back to look at the camp. The policeman was there still staring at me. When he saw me looking at him he turned his eyes to the nearby hills.



After the meeting with Mr. Karunakaran, a reporter of the *Mathrubhoomi* daily called Mr. Sadirikkoya telephoned me. He was one of the dear disciples of Mr. Karunakaran. I had

met him three times to find out the details of my son. “I am at it” was the only reply I got. But this time he gave me a very different version of things. He told me that Rajan had escaped from custody while being taken to an extremist’s secret den.

I asked him as to where he got this information.

“From reliable sources,” was the reply. The source, I knew, was Mr. Karunakaran himself. Mr. Sadirikkoya’s revelation gave me some hope. It also brought black clouds of anxieties. I continued the search.

The principal of the Engineering College, Professor Vahabudeen, had visited the police camp at Kakkayam together with another professor. Mr. Jayaram Padikkal’s behaviour was very rude with these loving teachers. The students in custody peeped through the windows to see their principal. Rajan was not among them.

I steadfastly believed that Rajan would come back. I always asked my wife to keep apart a bowl of rice and a plantain leaf for him. He may step in any time. He may be hungry. There should be rice ready at home for him. Yes, he will come back. Sure he will...

At night when the dogs barked and made noise for no reason, I woke up and waited at the doorstep... waiting for a call of “father”. Keeping the door open, I went back and fell tired into the bed. A sob, “Oh my little child”, got choked in my throat. But I shouldn’t cry. I shouldn’t allow even a teardrop to roll down my eyes, for there was his mother, Radha, ignorant of all this...



The burden that the mother entrusted



People used to ask me whether my wife became mentally ill after Rajan's tragedy. Actually, she had started showing signs of illness fifteen months after the birth of our first daughter. She recovered with a course of electrotherapy. She had to be treated seven times. Later, when she was pregnant for the third time, she again started showing signs of mental ailment, but doctors told us that since she was pregnant she could not be subjected to treatment. So we resorted to Ayurvedic medicine, and she got better. After the delivery we resumed allopathic treatment, but it was useless. "She has become shock proof," said the doctor. Still we continued the treatment.

She was not aware of Rajan's tragedy. Whenever I came to Ernakulam from Calicut she used to ask for Rajan. I told her lie after lie. It made her uncomfortable. She started losing faith in me, and behaving oddly with her loved ones.

Of our three children, she was closest to Rajan. One of the reasons, I thought, was that Rajan could sing well, as could she. Whenever Rajan came back from college, he used to sing for her, and she enjoyed that. He used to sing only when his mother demanded. On holidays they used to have concerts till midnight. She always took care to get ready with new songs for Rajan. That Rajan was our only son was also a reason for her to be more loving to him.

Rajan's continued absence troubled her, and I had to suffer as a result. She expected Rajan to be with me whenever I came from Calicut, and anxiously awaited him. When she knew that Rajan was not with me a colour of disappointment would spread over her face. The depth and darkness of distress on her face went on increasing. She stopped talking to others, and went into a world of silence. Sometimes she accused me of not loving Rajan. She confided to relatives and friends that this was the reason I was not bringing Rajan along when I came. She murmured in secret that I never loved her or Rajan.

Meanwhile, many of Rajan's friends got married. One day when I reached Ernakulam she asked me, "All of Rajan's friends have got married. Are you not a father too? Are you not worried that he is yet to get married?" "Oh, our son is dead," I felt like telling her then. The sentence got choked in my throat. At that moment I felt vengeance against her and the world. Regaining the balance of my thoughts, I would

say, "I am trying to find a suitable girl for Rajan. But it's not that easy, you know?" Her response used to be a lone empty stare of disbelief.

Whenever Rajan's friends came, she used to ask for Rajan. Unable to face her, they stopped coming to see her. Whenever I came to Ernakulam, she used to ask for money, but just ten rupees. Then she bought biscuits for Rajan, and kept them safe. Only when the biscuits got rotten did she give them to other children, who used to throw them away without her seeing.

She also kept small coins safe in a box, which she hated others opening. She had no more faith in anyone.

I kept Rajan's disappearance a secret from my family for forty days. Whenever I went to meet Mr. Karunakaran I avoided them on my return.

On March 3, 2000, Rajan's mother left me forever. A week earlier I had been to see her. As I bid farewell, she held my hands, still lying on the bed. There was a painful request in her eyes, "Will you bring Rajan along when you come next time?" I couldn't look at her face. The guilt of telling her lie after lie had haunted me for years. Five days later I went to her again. Death was playing hide and seek somewhere near her, but she remembered everything.

She called me, "Will you do one thing for me?"

"Sure," I answered.

She gave a small packet of coins to me. Those were the coins she saved in that box.



Mr. Achutha Menon



Now I am going to write about Mr. C. Achutha Menon and his role in this tragedy. The reputedly high respect held for Mr. Menon among Malayalis should not be shattered by what I am going to say. That's not my intention at all. Especially as he is no longer alive, my utterances shouldn't exaggerate, even by a word. But I cannot hide what he did along the way, in my quest to find out why my son died. Only if I record his role can I be truthful to these notes. So I request all admirers and dear ones of Mr. Menon to pardon the sour memoirs of this old man.

The famous Thiruvullakkavu temple is situated 10 kilometres away from Trichur, on the way to Irinjalakuda. My ancestral home was in front of this temple. On the eastern side of the temple was the house of my brother, Soolapani

Varier. He was a well-known Gandhian. I used to sleep in the upper verandah of my ancestral house. Mr. Achutha Menon was very familiar with these places.

One night in March 1949 somebody woke me up at midnight. When I opened my eyes there was Mr. Achutha Menon, tired, and in shabby clothes. He looked baffled. I thought somebody else would be there with him. Those were the days of The Ranadive Thesis in the Indian Communist Party, and the party was vibrant with the rhythm and movements of the period. Mr. Menon, like many other comrades, was in hiding. According to the underground rules, he shouldn't travel without an escort.

"I am coming from Anthikkadu, running away from the police. They are after me. Somehow you must find me shelter," he said.

I was surprised and scared to see the usually stubborn Achutha Menon looking baffled. If he was caught, I was sure, the policemen would kill him. Manhunts by the police were shocking the whole village those days. I thought of what could be done in the circumstances. I was close to the communist movement, and decided not to let Mr. Menon be caught by the police.

My younger brother, Madhavan Varier, and my nephew, K. V. Raman Varier, were there at home. They were preparing for the Secondary School final exam, and there used to be light in their room till very late at night. I called the boys and told them about the seriousness of the situation, then sent Mr. Menon with them to the village of Palazhi, near Pudukkad. That village was far away from Thiruvullakavu. To reach there they had to cross Vallachira village, which was

under police surveillance. There were police jeeps going here and there around the village at night. There were policemen in every nook and corner.

I couldn't sleep until the boys returned after taking Mr. Menon to the shelter at Palazhi. I was burning, thinking of the consequences if the police caught Mr. Menon and the boys...

Madhavan and Raman became close associates of Mr. Menon after that incident. Madhavan even became a messenger for Mr. Menon's wife, Ammini Amma, who was staying at Kodungallor, near Trichur. We gave shelter to Mr. Menon at the house of my elder brother. Him being a Gandhian, nobody suspected him of giving shelter to the underground communists.



I informed my family of Rajan's disappearance after forty days. Until then, I was not bold enough to face the emotional explosion that the news would create within the family. Moreover, I hoped that Rajan would come back, though this hope defied reality.

After meeting Mr. Karunakaran at Trivandrum, I came back to Calicut and remained disappointed and disillusioned. I was living through these days in memories and dreams, not feeling time wash away. Whenever I felt like meeting my wife I went to Ernakulam, but I was not bold enough to tell her

the truth. I secretly called up my younger brother Madhavan, and told him all that had happened. Together we thought of what could be done next.

Mr. R. V. Ramankutty Variar, a cousin of ours, was a prominent Communist Party leader. He was the brother-in-law of our elder brother. My brothers together went to meet him. "I will give you a letter for Mr. Achutha Menon. Please hand the letter to him," he suggested. Madhavan got angry and replied that they didn't need a recommendation letter from him to meet Mr. Menon, and came back very disappointed.

Meanwhile, a close associate of Mr. Achutha Menon, Mr. Veliath Balan (better known as V. B. Menon) came back to Oorakam, near Trichur, after a long time in Mumbai. My brother Madhavan met him, and he came to me to find out the details of Rajan's case before going to meet Mr. Achutha Menon. They left for Trivandrum the same day, and met Mr. Achutha Menon at the Assembly hall there. That was the first meeting my people had with Mr. Menon on this matter. "Rajan is in hiding" was the reply they got from Mr. Menon, the humane communist. Madhavan tried to argue with him, but he stood firm in his opinion. After returning, when Madhavan met me there were tears in his eyes. This treatment by someone whom he had considered an idealist pained him.

I became convinced that the search would never end, sure that a father's journey in search of his son is more tiring than the journey of a son in search of his father. Many friends stood wholeheartedly by me, but I was getting lonelier day after day. I walked up the empty inner rooms of my memory,

calling for Rajan. I entered into an eternal search, suffocating though it was. With hands pressed together I went to Mr. Achutha Menon, the Chief Minister, so many times thereafter.



The odyssey continues



After my brother working in the railways was transferred from Tamil Nadu to Ernakulam I was free from domestic worries and could go on in search of Rajan. My brother and his wife had no children; my children were theirs, then and now.

I continued my search with the help of Mr. M. S. Master. The Master family was a well-known communist family in Trichur district. Mr. M. S. Master was the retired headmaster of Cherpu high school and a great help to all the locals. He knew Mr. Achutha Menon well. He came to my home for the next trip to Trivandrum to meet Mr. Menon. My sister Kochammini had great faith in Mr. Menon and she always expressed it through her words and deeds. She hoped that we would get some information about Rajan, especially because Mr. M. S. Master was with us. When we left for

Trivandrum, she handed a small packet to him, saying, "This is an offering from the Hanuman temple at Ernakulam. Give it to Rajan. Tell him his aunt has given it for him."

We met Mr. Achutha Menon at Cantonment House, the official residence of the Chief Minister at Trivandrum. He knew the purpose our visit, and promised to do whatever possible. Then he told us of the problems he was facing as Chief Minister and about the pressure tactics of the Central Government. He looked unhappy. He asked us to come again next week. Before we left I humbly requested him to get the facts about Rajan from Mr. Jayaram Padikkal. I was sure that he alone would be able to give the details.

"No, I will not enquire with Mr. Padikkal. I will speak to the Inspector General, Mr. Rajan," was his reply. Everyone in Kerala knew that Inspector General Rajan's role in the Emergency playground was superficial. Mr. Jayaram Padikkal was the one abusing the state system of law and order in those days. Mr. Menon's reply irritated me. I could not think of a Chief Minister like Mr. Menon saying that he could not get some information from a lower officer. It was not distaste but pain that I felt within me.

The next week we went to Trivandrum again. We knew that Mr. C. Janardanan, Member of Parliament, was staying at the Trivandrum Hotel, near the secretariat. This information made us happy, because Mr. Janardanan was a close friend of mine and like others, I had faith in him.

During the election campaign in 1951 Mr. Jawaharlal Nehru, then Prime Minister of India, had come to Trichur and addressed a public meeting at Thekkikadu Maidan. The next day, Mr. Janardanan addressed the public in a meeting

held at the same ground, as a reply to Mr. Nehru. That speech was electrifying to many, including me. I remember it even now. After that I had gone eagerly to hear Mr. Janardanan speak. But his beautiful voice got distorted due to police atrocities committed on him. Few communists in Trichur district suffered from police atrocities like him. Sadly, his life was shortened by many years as a result.

When we met Mr. Janardanan and informed him about Rajan he told us that he was unaware of the case. He asked us to wait for a while and went to meet Mr. Achutha Menon. He came back around 1pm, and gave us a telephone number through which to contact Mr. Menon the next day.

I called up Mr. Menon with great expectation, but he repeated his old stand: "I will not speak to Mr. Jayaram Padikkal."

I requested him to enquire with Mr. Karunakaran.

"I will not speak to him either. He will simply bluff," was his reply. Then he asked Mr. M. S. Master to bring Mr. K. K. Master together to Trivandrum. Our next trip to Trivandrum was with Mr. K. K. Master.

Days were passing by. Winter gave way to monsoon. The situation at home was getting worse. My wife had become a mental wreck. My sister and her husband, Mr. Achutha Varier, took care of her. Achutha put his hands on my shoulders and anticipating our meeting with Mr. Achutha Menon said, "Eachara, you have to face him; he will take it." There were tears in his eyes.

We were silent on the train. His voice reverberated in my ears with the echoing sound of the wheels. It was months since I began this journey in search of my son. I became weak

inside. My thoughts started going wild, but I still had hope in Mr. Menon. That face in the darkness of the night, with long hair and beard, was still clear in my mind. During those days of police atrocities in our village, the flame of mercy in those eyes had given a lot of strength to struggling and suffering people. I dreamed that the little fire in his heart kindled by the poorest of the poor in Kerala would never go out, despite all sorts of political arrangements.

We reached Trivandrum in the early morning and called Mr. Menon on the telephone with the number that Mr. Janardanan gave us. Nobody attended to the phone for a while. I waited for Mr. Menon's voice. Finally he came on line, and Mr. M. S. Master talked to him.

"As you asked us last time we have brought Mr. K. K. Master along with us. Shall we come to you now?" he asked.

"I don't want to see K. K. or any damn ****!" was his reply. I never learnt what words he used exactly.

He got angry. "Do you expect me to wander around the police stations in the state in search of your son?" was his further response.

I felt angered and wanted to cry, but without fumbling I took the phone and said, "I never understood that a Chief Minister had only such limited power as to be unable to find out something from the bureaucrats lower down the order. If I had known this I would never have come to you."

We returned from Trivandrum with pain. I found the change that power had brought into the character of a communist leader strange and incomprehensible. The Mr. Menon who had moved around the state to build up the

Communist Party was dear to me. Nobody today would be able to fathom the faith our generation entrusted in people like him. Mr. Menon was in the hearts of ordinary ignorant people by having strayed into their huts at night, with shabby dress and a tired face. These poor people protected him from police atrocities at risk to their own lives.

When I told all that had happened to a friend from the Communist Party, he replied sarcastically that if Mr. Menon had left the chair of the Chief Minister he would not have reached home safely. "The poor people of Kerala took him safely home for many years," I replied to him.

The Mr. Achutha Menon I was familiar with would have had no need for someone who would only misinform him. Yet now we all felt sorry for that bold communist, virtually a servant of a lesser person like Mr. Karunakaran. Mr. Menon's response to Rajan's case pained me much more than that of Mr. Karunakaran. I expected nothing more from Mr. Karunakaran, but never expected anything like it from Mr. Achutha Menon, not even in my wildest dreams.

I know this note on Mr. Menon will pain a lot of people, but the pain I underwent was much more. Please excuse me, and understand that I am just trying to do justice to history.



Kakkayam Camp



Recently Mr. Karunakaran made a tall claim that there are no more extremist movements in Kerala because of his governing tactics. I feel that the Kayanna police station attack by the Maoist extremists, and the resultant police action, was what made Mr. Karunakaran make such a claim.

On February 28, 1976, a group of people attacked the police station at Kayanna and took away a gun. The authorities simply assumed that this was a Maoist-Naxalite action. To enquire into this police station attack, the police set up the camp at Kakkayam, in that shed on the hill by the pond. After the police station attack, from February 29, police started hunting youngsters from nearby places like Kayanna, Koorachundu and Kakkayam. They were taken to the camp and brutally tortured. Police brought people in vans to the camp day in and day out over many days.

Mr. Jayaram Padikkal was in charge of the enquiry, and the camp. This Deputy Inspector General of the crime branch police had had training at Scotland Yard in England, but the mode of enquiry used at Kakkayam never involved any modern or scientific methods for detecting crimes. Torture was the only method the police there knew, and they used it freely.

On March 1 the police went to the Chathamangalam Engineering College to arrest the so-called culprits. The 'D Zone' youth festival of the Calicut University had been held at Farooke College. Rajan was an active participant at that youth festival, and was in Farooke College all through the night on February 28, when the Kayanna police station attack had occurred. He came back to the Engineering College hostel early the next morning, and was immediately nabbed by the police.

The police could easily have checked Rajan's whereabouts on February 28 by enquiring at Farooke College. All the students and teachers who came back from Farooke College were witnesses to this. But the police didn't ask any one of them. They were not truly interested in finding out who was behind the police station attack and how many had participated. Without complying with any legal formalities they simply took Rajan first to Calicut and then to Kakkayam.

I don't know whether I will be strong enough to describe the torture that my son underwent at the Kakkayam camp. Like the torture at Hitler's concentration camps, what went on at Kakkayam was an experiment, undemocratic and heartless, to find out whether the intellectual honesty and sense of justice of a generation could be destroyed by the

power of an iron fist. How much Mr. Jayaram Padikkal succeeded in this experiment is something for history to evaluate.

My words might get caught in a storm of emotions and sweep on the reader. I remember Rajan as the kid who held my fingers and toddled, innocently calling “father, father”. He still is a kid to me. Hence my evaluation of what happened to him might sound partial. Please do not take it as the impropriety of a father who lost his son. I see generations lowering their heads in shame when they hear of Kakkayam camp. I believe that forever there will be a flower born of tears in the highflying flag of democratic Kerala. Though I have spoken of it often, I cannot but go on talking about Kakkayam camp till my last breath. Even when I go senile in old age I will still be talking about it.



When the law of the land is sacrificed



I want to deal with the judicial system of India as I go on talking about my son. The sane old dictum of the Indian judiciary is that even if thousands of culprits escape, not even a single innocent person should be punished. The fathers of our judicial system were that particular that no innocent person should be punished wrongly. But today our enquiry officers never care a damn whether the real culprits or the innocent are the ones punished.

What is it that we call punishment? Is it imprisonment? Is it being tortured in police camps like Kakkayam? Although nobody has thought aloud about this, it has disturbed me for some time now. Lock-up torture cannot be compared to imprisonment, whether simple or rigorous. We are by now used to news of deaths due to lock-up torture, and continue to hear of such deaths, yet they are not called 'punishment'.

Meanwhile, the real culprits often escape punishment. When things are looked at from this angle, it is not difficult to conclude that the sublime dictum of the Indian judiciary, not to punish the innocent, is being violated blatantly.

So it was in Rajan's case. There was never even an attempt to find out if he was a real culprit or not. They just took him, tortured him and killed him. That was all that happened. Somebody gave the police a list and they picked up people from that list. Whether somebody was a culprit or not was irrelevant to those police. None among these police officers were anxious about the future of a young man in their custody.

Although trained to use scientific methods in finding real culprits, none of the police employed them. They found it easier to torture the accused. With such an easy way, why resort to scientific methods? This is why I believe that the police are only instruments of torture for the state.

When after four days the principal of the Engineering College, Professor Vahabudeen, had no information about the arrested students, he went to the camp at Kakkayam together with a Professor George. Going to the police camp run by Mr. Jayaram Padikkal in those days was like going to a lion's den. But they decided to go because they loved their students. I don't know what words of praise can express my gratitude to these saintly souls. When Mr. Padikkal was informed of their arrival, he arrogantly instructed that, "I will meet the principal, but not the other professor." Rajan was dear to the teachers and other students at the Engineering College, and was a favorite student of Professor Vahabudeen.

He took keen interest in his case throughout, and still continues to do so.

Throughout his college days, Rajan was staying with Professor Mohan Kumar and family. He was a professor of mechanical engineering and the brother-in-law of Rajan's uncle. During my wanderings in search of Rajan, I had stayed in his house for two or three days. One afternoon, Crime Branch Circle Inspector Mr. Sreedharan, along with two other policemen, came there asking for me. They behaved very nicely, expressing sorrow over the disappearance of my son. They gave me a lot of advice too, among which I found one thing particularly interesting. They advised me to read a book by the extremist leader Mr. K. Venu. Actually, I had already read the book, but as I was not interested in discussing it with a police officer I pretended ignorance. Only later did I come to know that everybody in the house, except me of course, were ice cold, scared of the police presence. The first thing I did the next morning was to pack up and move over to a lodge.

Another incident involving a friend of mine, Professor Viswambharan, head of the Department of Hindi in the Government Arts and Science College, exposed another side of the police culture. He was staying with his wife near the college. I also stayed with this couple for a few days. The next week Circle Inspector Sreedharan met them one night and shouted, "Where is your friend, that professor?" He threatened them in typical police style. The police were trying to prove that I too was an extremist. Unfamiliar with such situations, Professor Viswambharan and his wife panicked.

They didn't sleep that night, thinking that a great calamity awaited me. When I came to know of this I tried to console them. The police behaviour was unpredictable.

I tried to contact Circle Inspector Sreedharan, but failed. I realised later that Mr. Sreedharan came to meet me knowing that Rajan was dead. I shudder to think what sadistic pleasure these people had by treating a feeble old man in that way.



A letter from Mr. A. K. Gopalan



Apart from my experiences with political leaders and police officers, I had another very different experience. When I was staying in Kerala Lodge, after my return from Chathamangalam to Calicut, an invitation came to me from an unexpected corner. It was from Mr. K. P. Kesava Menon, Chief Editor of the *Mathrubhoomi* daily. I had never approached him regarding Rajan's case, but somehow he was aware of the problems I was entangled in. When I met him, I came to know that he had a clear and strong stand against the atrocities committed during the Emergency.

I gave him copies of memoranda I had submitted to different authorities. Due to fading eyesight he didn't care to read them, but said he would go through them later. He asked me the details of what was happening at Kakkayam

and Kayanna. When I told him how Mr. Jayaram Padikkal treated Professor Vahabudeen his face darkened. He was clearly sad about the country's moral degradation. He promised to do whatever possible, and I arranged to meet him again the following week.

This experience with him, different from others, made me happy. When I met him later, he had no new information to give to me, but his words were consoling. The simple interest he took in my case was more than enough for a father like me. "Let me try once more; give me another chance," he said, as if it was a request. I agreed and went to him after another week. He looked very sad. He had failed to do anything in spite of his best efforts, and was disappointed. "Stop enquiring around the place like this. Go back to Ernakulam and take a rest. If fortunate, we will meet again," he said.

Mr. K. P. Kesava Menon couldn't help with Rajan's case, but the interest he showed consoled me. Two to three days later there appeared an editorial written by him in the *Mathrubhoomi* daily. Defying the censorship that prevailed during the Emergency, he revealed a lot about things going on during those days. I felt that he wrote the editorial based on my experiences. I still remember the last sentence: "During these days of Emergency many people are suffering a lot, but none dare to complain to the authorities. Only a few, left with little alternative, are bold enough to do that." Indeed, by this time I had gained the inner strength to petition everyone from the President of India to the lowest police officer.

I concluded my enquiries at Chathamangalam and Calicut, returned to Ernakulam, and stayed at my house. The atmosphere of deep woe at home was horrible. They all still had a faint hope that I would come back with Rajan, but that hope too vanished with my return. I was scared to go back without him.

In India, the police pick up people, and some die from torture while in the lock-up. This is common in our country, so it is reasonable to ask why Rajan's case was special. In all other cases during the Emergency, information about the concerned person was made available to his or her parents. In my son's case no one, from the Chief Minister to the Circle Inspector at Kayanna, was ready to give me any information about Rajan. Only when a court later ordered the government to present Rajan before it did the truth come out.

Only those who have gone through such misery understand the agony of parents who must drag themselves through life without getting information about a missing child. For me it was like a pin being constantly inserted into my body. If I thought of my son while eating I found it difficult to continue. When I slept memories of him would surround me. My inner self was always writhing, as if on a red-hot tin sheet. All my dear ones blamed me for not finding Rajan, and our home became a disturbing place in his absence. Whereas students had used to visit, after Rajan's disappearance a sullen silence always surrounded that house.

Outside home, people started to avoid me. For them I was the father of an extremist. I was scared to talk to people. The fear of what they would think was always there. I often

felt that I was a character in a story by the great Indian writer Premchand. I imagined myself as the freedom fighter in his short story, "The Examination", because people had started to reject me so much.

It was then that I received a letter from comrade A. K. Gopalan. It was like moonlight breaking the darkness in my home. He informed me that he had forwarded my memorandum to the Prime Minister Mrs. Indira Gandhi, and had strongly demanded steps to trace Rajan. I had sent petitions to many, but none cared to respond. That Mr. A. K. Gopalan, then the leader of the opposition, had taken up the case was a solace to me. All the family felt happy. Mr. A. K. Gopalan dedicated his life to suffering people. Sadly, he couldn't help me much because he passed away after a while. That I couldn't meet and thank Mr. A. K. Gopalan before he died still pains me.



Mr. Viswanatha Menon and “the matter”



One of my friends came one day to tell me that Mr. Viswanatha Menon, then a Member of Parliament in the Rajya Sabha [Lower House], wanted to meet me. Then and there I went to his home to meet him, although I had not known him before. I learnt that after receiving a petition from me he had presented Rajan’s case in the Rajya Sabha and had strongly demanded an enquiry into his disappearance. He received a reply that Rajan was not in police custody. He then raised this issue in the Lok Sabha [Upper House] through Mr. Samar Mukharjee, and received the same reply. Mr. Viswanatha Menon gave me a concise version of the discussion held in both Houses of Parliament. After this meeting I constantly kept in touch with him.

I had copies of petitions that I had submitted to the President, Vice President, Prime Minister, and all Members of Parliament, but except for Mr. A. K. Gopalan, Mr. Patyam Rajan, and Mr. Viswanatha Menon none responded. Others said that they didn't receive copies, as if the postal department was more considerate towards Mr. Gopalan, Mr. Rajan and Mr. Menon. Some of these 'representatives of the people' were my close friends, including Mr. Janarardhanan and Mr. Vayalar Ravi from Trichur. But many were not even ready to admit that they received copies of my petitions. Readers can decide for themselves how suited these persons were to be people's representatives.

Mr. Viswanatha Menon went to Delhi several times on this matter alone. He sent copies of my petitions to the Home Minister Karunakaran, but received no response. Once he happened to be on the same flight as Mr. Karunakaran, and told him, "Are we not the representatives of the people? We should get replies to whatever issues we bring to your notice."

"I always reply to all letters I receive," claimed Mr. Karunakaran.

Then Mr. Menon reminded him of my petitions. "I don't remember having received one like that," was his reply.

Later Mr. Menon sent one of my petitions to Mr. Karunakaran, with a covering letter: "Received the letter from Mr. Eachara Varier informing of his son being missing after the police took him into custody, and requesting for details about his whereabouts. Is the matter being considered?"

This letter and its content caused a furore when my habeas corpus petition was heard, especially the words “the matter”. There was great argument in the court as to what “the matter” meant. In the Supreme Court, Advocate Ram Kumar interpreted these words for the judges, and there was great argument there also.



An inhuman police officer



Many police officers have questioned me on the petitions I sent to the President and Prime Minister. During this time, Mr. Balakrisna Pillai, an Ernakulam district Police Superintendent, summoned me. I went to meet him with my younger brother, Mr. Krishnankutty Varier, who was working in the Attorney General's office. We introduced ourselves, then he asked my brother to leave us alone.

Mr. Pillai continued, "I will get your son released. But what's your future plan for him?" This question confused me. I could not understand his real intention in asking it.

"I want him to complete his studies," I said, embarrassed.

"No, don't do that," was his reply, which embarrassed me more. I was totally confused as to what he meant.

Then he said quite dramatically, “Let Rajan continue to be in the Naxalite [armed communist] movement. Let him be an informer for us.” What he meant was that Rajan should work as a police agent. I got terribly baffled. At that moment, the urge to see Rajan grew strong in me. I was entangled in a lot of disturbing memories, but I regained my control. I was sure that Rajan would be much safer in police custody than free under such a condition. The lack of ethics in this proposal also disturbed me.

“Let Rajan stay in your custody. I don’t want him released under this condition,” I said.

At this point the officer changed his stance: “You may now go please. I will get Rajan freed within fifteen days.” I was relieved to hear this, not because I believed that Rajan would be released as the officer said, but because his words gave me an assurance that Rajan was alive. That was a relief for me.

This police officer knew that Rajan was not an extremist. The police had nothing to connect him with the extremists, it was just the style and method of their enquiries. This is the experience I had from a top-level enquiring officer. If I had agreed to his condition for Rajan’s release, what would he have done? From where would he have got Rajan released? In fact, this officer had only one document with him with which he started his enquiry, and that was my petition to the President. If this was the way an enquiry was done as per the instructions of the President of India, what would be the nature of other lesser enquiries? Could it be believed that this top-level police officer was ignorant of the fact that Rajan was not alive? Why did he try to play tricks like this? That still

remains an enigma to me, and one of many. I met this officer many times in Ernakulam after that. He always ignored me. He never had the courage to face me.

I had to contact so many police officers from top to bottom after Rajan's arrest, and can state truthfully that not a single one wanted to be honest regarding his enquiry.

I was destined to continue the search for my son, but as it went on it became more painful and sour. Still I hoped that my son would be alive in police custody, despite my belief otherwise. But cutting across these hopes, Rajan's absence remained a painful truth. I dreamed of him many a night. I remembered his childhood and youthful days more than ever. I found solace in these memories whenever I felt disturbed. Rajan's mother had become a total mental wreck by this time. His sisters were almost always in tears. I had some cassettes of his songs, and I listened to them with the help of a cheap cassette player. He communicated with me through these sad songs. Very often my tearful prayer to God was to not take this voice away from me.



The Emergency lifted



The Emergency deeply affected social life in Kerala. Even those who supported the Emergency strongly felt the absence of freedom. There was censorship not only of the newspapers but also limits on freedom of expression among the people, who were scared to meet and talk among themselves, scared to criticize either Mrs. Indira Gandhi or Mr. Karunakaran. Some heartless Congressmen found sadistic pleasure in getting leftists and their own personal enemies tortured by the police. Even officials were scared.

The Emergency was lifted on February 22, 1977. My attempts to find out about Rajan had slowed down by then. But the lifting of the Emergency made a lot of difference to social movements in Kerala. The cool breeze of freedom started sweeping through the land again. Those who had

suffered torture and humiliation at the hands of the autocracy heaved a sigh of relief. There were celebrations and processions proclaiming liberation.

Political and constitutional changes made me active again. I consulted Advocate Ram Kumar and Mr. Viswanatha Menon on a future plan of action. Mr. Ram Kumar thought that I should approach the High Court with a habeas corpus petition. He was very particular that it should be the first writ after the Emergency was lifted. Without pondering much we approached Advocate Mr. Eeswara Iyer, one of the most eminent advocates of all time in Kerala. When we went to him, he behaved as if expecting us. Without wasting time we got into preparation of the writ. According to the rules, the affidavits of a number of witnesses also had to be submitted. I was entrusted with getting these affidavits.

The witnesses helpful to us were available only at the Engineering College and in surrounding regions. As per the instructions of Mr. Eeswara Iyer I went to Calicut and met Mr. Keluvettan, district committee secretary of the Communist Party of India (Marxist). He was waiting for me, and did his best to help when I approached him with my anxieties. He sent me to the secretary of a cooperative society at Chathamangalam. I went with him to the Engineering College, and there found some ten students who were witnesses to Rajan's arrest, and some others who were with Rajan at the Kakkayam camp. I contacted the principal, Mr. Vahabudeen, and he also agreed to send an affidavit to Mr. Eeswara Iyer expressing his willingness to be a witness in the case.

Then I contacted Mr. Chathamangalam Rajan, who was arrested along with Rajan and brutally tortured at the Kakkayam camp. I took him and the ten students to Advocate Kunjirama Poduval at Calicut, as per the instruction of Advocate Ram Kumar. He was waiting for us there. His first job was to record the statements of these eleven witnesses and prepare an affidavit. It was 10pm when we finished that work. After that all the documents had to be typed, and the witnesses sign them. It was early morning when we finished. I started for Ernakulam on the first train. Mr. Ram Kumar and Mr. Eeswara Iyer were worried until I reached them, because they knew that if Mr. Karunakaran or any police officer were aware that we were getting ready with the affidavits they would surely try to stop us by all means. Anyway, nothing happened. I handed over the affidavits to Mr. Eeswara Iyer.



The habeas corpus writ



So the first writ filed at the High Court after the Emergency was lifted was *Professor Eachara Varier v. the Government of Kerala*. Advocate Ram Kumar played the major role. It was filed on February 25, 1977. The next day all the major newspapers in Kerala, and also outside the state, carried details of the writ. The news spread through Kerala like wild fire. There was such a huge crowd in the High Court on the day the writ was considered. Because of this crowd, the case was shifted to the most spacious hall in the High Court. Rajan's case was being felt among the people.

The Kerala State Assembly was boiling over after the heat of the Emergency. On February 26, one member raised Rajan's case in the Assembly. Mr. Karunakaran jumped up from his seat and declared that Rajan had not even been arrested. Marxist leader Mr. T. K. Ramakrishnan passed this information to Mr. Eeswara Iyer then and there. He in turn

sent for Mr. Ram Kumar and me, and suggested that we must include Mr. Karunakaran in the list of the accused. Accordingly Mr. Eeswara Iyer and Mr. Ram Kumar redrafted the writ, and submitted it to the court the next day.

Up to then I had managed the case virtually on my own. Knowing this, some of my friends joined together to form the Rajan Case Aid Committee, with Professor Manmadhan as president, Mr. Ramachandran Potty of the Gandhi Peace Foundation as convener, and Mr. P. C. Abraham, the industrialist, as treasurer. Senior advocates and political personalities were among the members.

Mr. P. C. Abraham issued a press statement requesting financial help from the general public. Money orders started flooding into his house as if it was an historical event. This was the only request made by the treasurer to the public. Nobody approached anyone personally for any financial help. After the case, a lot of money was left over. The committee decided to utilize it to help victims of torture from the Emergency suffering the aftereffects. The treasurer issued a press statement to that effect, requesting such persons to contact the committee.

We received a lot of applications, and deserving people were given aid. Most approaching the committee came from areas like Chathamangalam, Kayanna and Karachundu. When we learnt of their suffering, the horrible scenario of the Emergency became clearer. Many of them, including Mr. Koru from the Engineering College hostel, were still suffering. Mr. Chathamangalam Rajan, a teacher in a typewriting institute, became so sick that he couldn't work anymore. All this scared me more and more.



Moves against the case



As Rajan's case continued, it was discussed widely, becoming a focal point for those struggling after the Emergency. As the case progressed, those who had supported the Emergency became more and more scared. The case was going against their expectations, so they started making moves against it. The *Malayala Manorama* newspaper supported them.

Four days after the case was filed, *Malayala Manorama* published a slanderous editorial against Rajan. It pained me so much that I wrote a reply, but it was not published. I decided that I had to put the record straight, and the next day another newspaper, *Desabhimani*, carried my reply.

Those persons embarrassed by Rajan's case went on to plan other ways to scuttle it. I am sorry to say that their methods were unethical and immoral. All the more so, given that the masterminds were prominent political and social personalities in the state.

There was a satirical magazine titled *Asadhu* published in Ernakulam those days. Mr. Jesudas, one of the foremost cartoonists in Kerala, was its editor, and the day after news of the habeas corpus writ broke, he wrote an article praising me and criticising those who tortured Rajan. But after another two days he wrote a slanderous article to the effect that Rajan hated me because of some alleged immoral activities. This article pained me deeply, and I took it to Advocate Eeswara Iyer. He too had read it, and was waiting for me, sure that I would reach him once I saw the article. I cried in front of him, and asked him to take this case also to the court. He said it would not serve any purpose to do so. Unconvinced and disappointed I went to Advocate Ram Kumar. He agreed with Mr. Eeswara Iyer, and consoled me. I left him silently.

Two newspapers of the time owned by two prominent political parties—the Congress mouthpiece *Veekshanam* and Communist Party of India's *Janayugam*—reprinted the article on their editorial pages. I never thought that prominent newspapers could lower their moral standards to that extent.

What surprised me most was Mr. Jesudas' attitude. I never thought him to be the spokesperson of any political party; nor did I think he could discredit himself so much. The way he changed his attitude within two days was amazing. I have no complaint about him not revealing the source of

his information, but he should have revealed his partiality. He would have lost nothing by it, and in fact would have helped to clean the dirty political environment in the state.

As the trial progressed, some wellwishers suggested that Advocate Ram Kumar and myself keep away from Ernakulam for a few days. We did so for two days. Many witnesses appearing in court received threatening letters, but none took them seriously.



I fought eight cases in different courts over Rajan's disappearance. Though I was not familiar with the courts and their proceedings, there were no flaws in the conduct of these cases. It was not because of my efficiency, but due to my lawyers and the inherent honesty of the case itself that all of them succeeded. I entrusted everything to Advocates Eeswara Iyer and Ram Kumar. I trusted their efficiency and honesty. I don't know how to thank them for this.

I have described how I found the witnesses for the case, and also how the habeas corpus writ was filed. Till then I was under the impression that the High Court or upper courts would not summon the witnesses and that their affidavits would be accepted as proof. So I had assured these witnesses that they wouldn't have to appear before the court. But at the beginning of the hearing, Mr. Eeswara Iyer declared that we were ready to present all our witnesses in court and that they could be cross-examined. This statement surprised the other advocates. Such a thing had not happened before in

the history of the High Court. But Mr. Eeswara Iyer argued that this had happened in other courts in the country and also in the Privy Council in England. The pleader for the Government of Kerala, Advocate General Mr. T. C. N. Menon, had no counter arguments, so the two Divisional Bench judges hearing the case, Justice Potty and Justice Khalid, agreed and ordered accordingly.

Everybody was happy about the court order, but it embarrassed me a bit as I had not told the witnesses that they would have to come all the way to Ernakulam and appear before the High Court. I was worried about their reactions, as I would have to request them to appear. But my fear was unfounded. Everyone expressed readiness to come. The same day I sent my brother Madhavan and his friend Mr. Rama Varier to Calicut to get the witnesses. It was then that I came to know of secret movements by the police against the case. I informed my friends in Calicut, and they remained alert. I was worried until my brother and his friend returned with the witnesses, but things moved so well that all the witnesses, including the principal of the Engineering College, Mr. Vahabudeen, appeared before the court in time.

The respondents to the case consisted of Home Minister Mr. Karunakaran, Home Secretary Mr. Narayana Swamy, Inspector General of Police Mr. V. N. Rajan, Deputy Inspector General of Police Mr. Jayaram Padikkal, and Calicut Superintendent of Police Mr. Lakshmana. All of them submitted separate affidavits arguing that Rajan was never arrested and that they had never even seen him.

The court gave its verdict on April 13. The judges concluded that Rajan was arrested by the police and tortured at Kakkayam camp. They ordered the authorities to produce Rajan by May 22. The verdict created a furore. The respondents got scared, and filed an appeal in the Supreme Court.

A Division Bench consisting of Justice P. K. Goswamy and Justice V. C. Tulsapulkar heard the case in the Supreme Court. Mr. Niren Dey, who was the Advocate General during the Emergency, and Advocate Ram Kumar appeared for me. The Supreme Court upheld the High Court verdict. I had also submitted a petition to the Supreme Court arguing that the accused had submitted false affidavits in the High Court. The Supreme Court found the affidavits of the accused false and likewise directed the police and government to produce Rajan in court. By that time Mr. Karunakaran was Chief Minister of Kerala. After the Supreme Court verdict he was forced to resign, sending ripples through national politics. Rajan's case became a topic of discussion across the country.

The Government of Kerala ordered an enquiry on the finding of the High Court that Rajan was arrested and tortured at Kakkayam camp. It submitted before the Supreme Court that this enquiry had found that Rajan was arrested and tortured at Kakkayam camp. The High Court then ordered that the accused police be prosecuted, and action taken against all accused for submitting false affidavits.

Thus there arose two cases. One was the prosecution case against the accused police. The other was the case against all accused for submitting false affidavits. Because these were criminal cases, the Government Pleader was to conduct them.

As I was sure that the Government Pleader conducting the cases would not obtain justice, I submitted a petition to then Chief Minister Mr. A. K. Antony seeking permission to conduct the cases with advocates of my choice. I also informed the Chief Minister that I would meet all expenses in conducting the cases. But he refused me permission, thereby proving that my fear was not baseless.



The trial at Coimbatore



Another case was registered at Coimbatore District Court against the arrest, torture and killing of Rajan. It had been transferred there on the request of the accused. There was no role for me or for my advocates in the conduct of this case either. An army of prominent lawyers came to argue the case for the accused, including Mr. Ratna Singh, now the Advocate General of Kerala, for Mr. Jayaram Padikkal. Advocate K. P. Achutha Menon from Calicut was arguing my case for the prosecution. He was eighty years old and obviously weak.

All the important newspapers in the country had deputed their best correspondents to report the proceedings. The reports of Mr. Appukkuttan Vallikkunnu created ripples through out the state.

Justice M. Fakir Mohamed heard the case in the Coimbatore Session's Court. There were almost a hundred witnesses, among them, almost eighty victims of torture at Kakkayam camp.

The remarkable thing about the prosecution witnesses was that all of them turned hostile. They withdrew the statements they gave to the enquiry officers and deposed before the court that their earlier statements were made under torture, and were not true. No other witness behaved like this.

I was examined for almost two days continuously by prosecutor Mr. Achutha Menon, as well as by the advocates for the accused. I had to be in the witness box for examination by these ten people for almost ten hours, but none of their convoluted questions could weaken me. I thought I would be very scared, but what happened was the other way round. I felt bold somehow. The reason for that might have been that all I was telling was the truth and nothing but the truth. Some advocates tried to confuse me, but they failed. I still remember one thing. I was about to answer a question, and as I was answering, one of the advocates angrily interrupted and told me, as if it was a command, that I must answer in a single word. I told him "no" emphatically and without any embarrassment, leading to some arguments between us. Finally the judge intervened to allow me to say whatever I wanted.

If the defense lawyers tried to examine me like this, the strange method of the prosecutor Mr. Achutha Menon was different. On the last day of cross-examination he asked me just a single question. Even this question had nothing to do

with the case: “Did you not come along with your lawyer Mr. Ram Kumar, from Ernakulam to Coimbatore, to be the witness in this case?” I got embarrassed as to what this question had to do with the case. Whether I came with Mr. X or Y had nothing to do with the case. Such an irrelevant question from a famous lawyer in the court made me wonder. “Yes,” I answered, and waited for more questions. But with that question his examination was over. The motive of the authorities in appointing this advocate as prosecutor for such an important case can be assessed by all, but the accumulated shortcomings in the conduct of the case pointed to a conspiracy behind it.

The enquiries against Rajan were conducted fully by the Crime Branch, but the majority of the accused belonged to the local police. The court concluded that only the Crime Branch police were responsible for the crime, namely, Mr. Jayaram Padikkal, Mr. Murali Krishna Das and Mr. Kunji Raman Nambiar. Observing that the charge that the accused persons were responsible for torturing and killing Rajan was not proved beyond doubt, the court exempted them from the charge of murder. They were sentenced to just one year’s simple imprisonment for some minor crime. All three appealed to the Madras High Court. The Advocate General of Madras, Mr. Rajamanikkam, represented them in court. One advocate, Mr. Sankaran, represented my case. Because it was an appeal case, no retrial was necessary. After the arguments and counter-arguments, the High Court acquitted all three.



Now I have something to say about Mr. Niren Dey, who was Advocate General during the Emergency. There was a story behind his becoming the Advocate General, which is the highest legal advisor to the Government of India, responsible for all the legal actions of the government. Usually advocates take a firm stand on legal issues with the government while Advocate General, but during the Emergency the situation was very different. The government led by Mrs. Indira Gandhi was involved in naked human rights violations, and being Advocate General meant justifying all these. So no senior advocate in the country worth his name was ready to take up the position at that time. Mr. Niren Dey himself firmly rejected the offer made by Mrs. Indira Gandhi to be appointed to the post, but there was heavy pressure on him. His wife was Swedish, and in Sweden. Mrs. Indira Gandhi threatened him that if he refused to take up the post, his wife would be denied permission to enter India. She informed him that if he wanted to spend his old age with his wife, he should accept the post. So with great pain and reluctance he accepted.

Once Mr. Niren Dey made a statement in the Supreme Court, in front of all judges and senior advocates. He said that, "Every single policeman has the right to shoot and kill anyone on the road today. Nobody has the right to question." Though he made such a statement, it weighed on his mind like a sin. The common person in the country expressed deep anger against this statement, but his real intention was to tell the world how horrible the situation was for the common person in India during the Emergency. Mr. Niren Dey wished to wash the stains of the Emergency from his personality once it was over.

One day Advocate Eeswara Iyer called me over the phone. Mr. Karunakaran's appeal was ready for hearing in the Supreme Court. Mr. Eeswara Iyer told me that Mr. Niren Dey had volunteered to argue my case in the Supreme Court free of charge. I was shocked. The Niren Dey of the Emergency was still fresh in my mind. But Mr. Eeswara Iyer knew the real Niren Dey, so I decided to entrust the case to him.



The only way out for me after the Coimbatore and High Court verdicts was to approach the Supreme Court with an appeal. But in my situation it was impossible. I decided not to do anything further and sat back helplessly. It was then that Mr. Mukundan Menon, a human rights activist, approached me. He informed me that one of the senior-most advocates in the Supreme Court, Mr. Tharkunde, had studied my case very carefully and felt that the case had a chance for appeal at the Supreme Court. He said Mr. Tharkunde would appear for me free of charge and that with just Rs. 20,000 the case could be conducted. I informed Mr. Eeswara Iyer and Mr. Ram Kumar about this. Both agreed that had to try, with the help of Mr. Tharkunde. But Rs. 20,000 was a big problem for me. Advocate Eeswara Iyer advised me to approach the Communist Party Of India (Marxist) for financial help. The only leader whom I knew in the party was Mr. Viswanatha Menon. I approached him, and through him the party agreed to help me.

I contacted Mr. Tharkunde. He introduced me to another advocate, Mr. Pareekh. I entrusted the case with Mr. Pareekh, as Advocate on Record. Mr. Tharkunde's daughter was practicing with Mr. Pareekh, and actually she was the one who looked after the case. Meanwhile she got married and left Delhi, and with that the case came to a standstill.



The case for compensation



I filed a civil case demanding compensation for the death of my son. The accused consisted of the Government of Kerala, Mr. Jayaram Padikkal, Mr. Lakshmana, Mr. Kunjiraman Nambiar and Mr. Pulikkodan Narayanan. The case was first filed at the court at Vadakara and later transferred to Calicut as demanded by the accused.

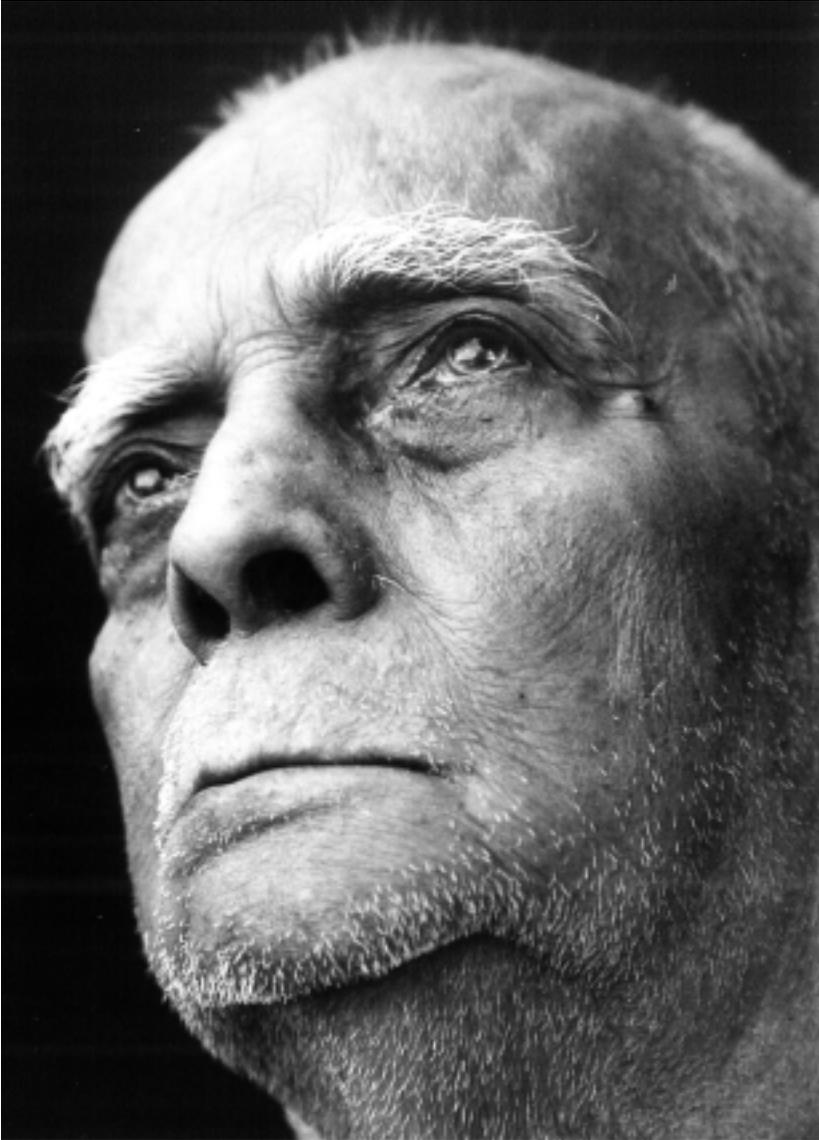
I had to pay the court a huge amount of money as court fees for this case. Since I couldn't afford to pay the amount, I filed a petition to the court submitting that I am a pauper, hence I might be exempted from paying the court fees. For the court to accept this petition I had to prove that I was very poor financially. But the accused, including the Government of Kerala, argued that I was financially well off and that I had the capacity to pay the court fees. They tried to find out where and how much wealth I had.

The case at the Coimbatore Sessions court was a criminal case. But the case for compensation was a civil case and I was personally responsible for conducting the case. At this time Advocate Eeswara Iyer passed away. So Mr. Ram Kumar alone was looking after the case, and to help him, an advocate from Calicut named Mr. Sreedharan Pillai. The accused had an army of very prominent and efficient lawyers arguing the case for them. The fact that Advocate Ram Kumar argued the case successfully against these prominent lawyers was itself wonderful. The public prosecutor Mr. Achutha Menon appointed by the then Chief Minister Mr. A. K. Antony had argued my case in the criminal trial at Coimbatore. All readers now know the shabby way in which he conducted the case. When these two cases are compared, the discordance in the judicial system is embarrassing to those who wish to see justice done. Nowadays, the practice of changing prosecutors by changing governments, even monthly, is also increasing. When the prosecutor for the notorious Soorya Nelli case was appointed, I wondered what the fate of that case would be... sorry, I am straying away from the topic.

There were almost sixty witnesses in the compensation case. At its conclusion, the court ordered the accused to pay me Rs. 600,000 compensation individually or collectively.

The day after the court verdict, the Government of Kerala started proceedings against me to confiscate my house, for not paying the court fees for the case. The newspapers reported this with great importance. The surprising factor was that never had the government moved so fast and never was its machinery so efficient as in this instance. The bureaucracy was attempting to tarnish the image of the left

front government then lead by Mr. Nayanar, state leader of the Communist Party of India (Marxist). But the Chief Minister could figure out what was going on, and as soon as the news reached him, Mr. Nayanar issued an order to the District Collector in Ernakulam to pay the full amount of compensation due to me. The Collector came to me that afternoon with a draft for the amount, which I cashed, paid what was owed to the government, and saved myself.



Professor T. V. Eachara Varier

Rajan's mother, the late P. Radha



Rajan and his two sisters,
Ramadevi (elder) on right;
Chandni (younger) on left

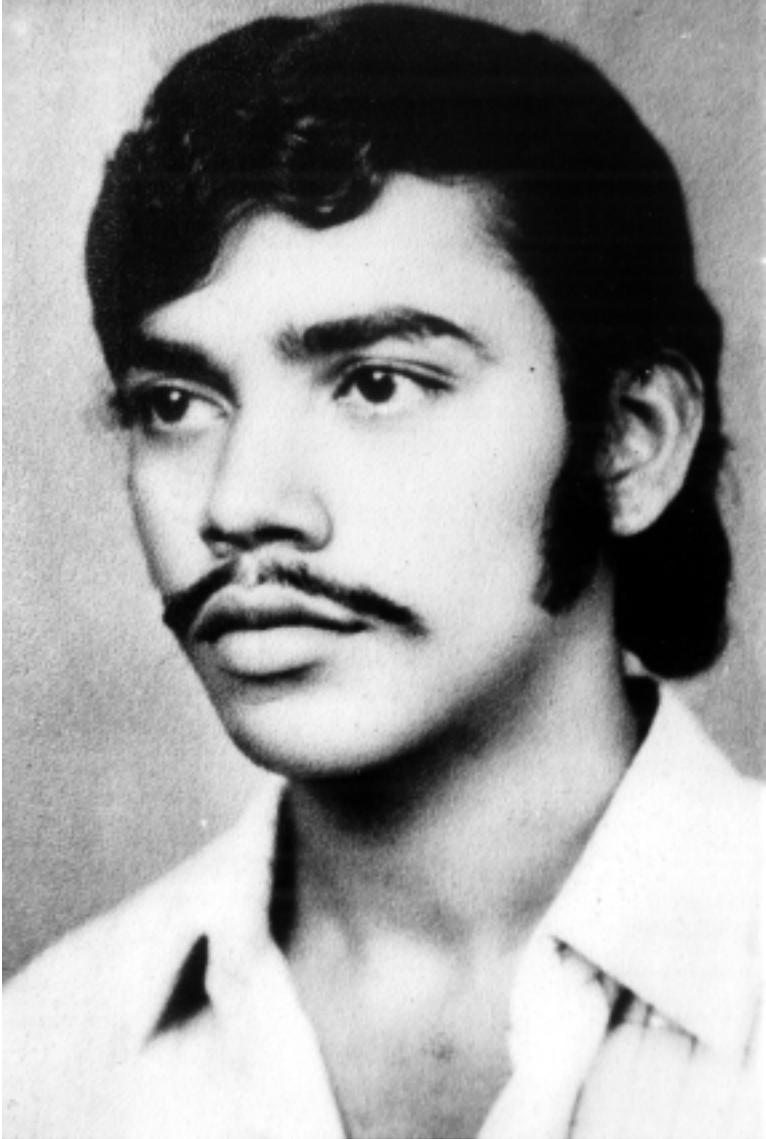




Professor Varier (left), with his sister Kochammini Varasyar, her late husband, Mr. Achutha Varier, Rajan and his two sisters



Rajan giving a speech



Rajan



The Rajan Memorial



When the verdict of the compensation case was reported in the major newspapers, there were unexpected reactions from very different corners. The most emotional reaction was that of my elder brother, Mr. Ramankutty Varier. After seeing the news he came to me, rather embarrassed, and asked angrily, "So you need money out of selling the blood of Rajan for a living?" This pained me so much. I never expected such a reaction from my brother who had stood with me and helped me during all these cases. "Your disillusionment and disturbance will disappear once you know how this money is to be used," I replied, with tears in my eyes. He cooled down, though half-heartedly.

Many people, including Mr. Eeswara Iyer and Mr. Ram Kumar, had pressured me to go for a case for compensation. That was why I filed the case; otherwise, I too would have thought like my brother.

There were enquiries as to what I was going to do with the money. I had to keep my word to my brother, so I declared my intentions in a press conference. After hearing the news, my brother again came running—this time to congratulate me.

Of the Rs. 600,000 granted, I had to pay almost Rs. 100,000 in court fees. I spent almost Rs. 50,000 instituting some endowments in the name of Rajan at Calicut University and Engineering College, and for the youth festival.

I started work on the Rajan memorial with Rs. 400,000. My aim was to build a ward in the general hospital at Ernakulam. This was what I announced in my press conference. I approached District Hospital Superintendent Mr. Bhaskara Varier. He suggested that instead of going for a general ward, I should consider building a special ward for a special purpose—for the common person. He also told me that in the general wards beds often remained empty. I accepted this suggestion, for he knew these things better than I, and don't regret that decision even today. Accordingly a "critical care ward" was built. This is still the only ward in the general hospital where the beds are not empty; it is always crowded with patients.

Mr. Nayanar the Chief Minister was generous enough to allot me a plot of land in the hospital compound. The Health Minister, Mr. Shanmughadas, took special interest in giving me permission to build the ward. An engineer named

Mr. Karmachandran, who happened to be a classmate of Rajan from sixth standard in school till his death, was in charge of construction from start to finish, so I did not have to worry about anything during the construction work.

The only concern was when construction was half done there was an attempt to demolish it and build a bus stand at the same place. As far as I know this suggestion came from the District Collector. When it became aware of this plan, the hospital development council immediately informed me. It wanted the ward to be built there. So we filed a petition in the High Court, which stopped the move.

Halfway through the construction I ran out of money and was worried. If I had made a public appeal for funds I would have received help, but I was reluctant to do that. It was then that Mr. Karmachandran informed me that the Dubai chapter of the old student's association of the Engineering College was ready to extend financial help to complete the construction, and so that problem also was solved.



Remembering the Emergency



In the history of India, the days from June 22, 1975 to March 21, 1977 were the black days of the Emergency. Many in the country are unaware of what the Emergency meant, and how it affected the lives of common people. A State of Emergency is declared under special circumstances. Emergencies have been in force in different countries to face foreign aggression, or deal with internal violence. When a State of Emergency is declared, it affects the whole populace of a country.

In India, the Emergency was declared not to protect the country from danger, but to protect the personal interests of a single leader, Mrs. Indira Gandhi, the then Prime Minister. She had been defeated in elections. She then filed an election petition, which she lost, and she appealed to the

High Court and the Supreme Court. She lost her case everywhere. After that, to safeguard her own political position she declared the Emergency, thereby concentrating all powers in herself. Most of the country was in deep sleep when the Emergency was declared. India awoke in darkness. All sorts of human rights were taken away mercilessly.

The Universal Declaration of Human Rights was declared in 1948. It encompasses the rights of people anywhere and everywhere in the world. To make sure that these rights are fully enjoyed by the common person, the Supreme Court of India had made certain suggestions. Justice V. R. Krishna Iyer compiled these into law. Of these, the most important ones are the right to life and the right to know. If these two rights are protected, all others will get protected along with them. The clause dealing with the right to life makes clear the rules applicable during arrest, and details of the rights of the person arrested. It clearly instructs that the person arrested should be brought before the court within 24 hours of arrest, and subjected to medical examination at least once within 48 hours of arrest. If the authorities had obeyed these rules, Rajan's case and others like it would never have happened. The most inhuman aspect of the Emergency was that the two major human rights, the right to life and the right to know, were totally denied. The tragedy of my son was typical of this denial of rights.

The Emergency was lifted over 25 years ago. The general public has forgotten those days almost completely. This is dangerous. The dark powers of the Emergency are still there. Like venomous snakes they are hiding in their holes. Given a chance, they will raise their heads again, so people need to

be constantly alert. There should be strong defenses built to face these dark forces, I feel. Even at the beginning of Rajan's case, I declared that such an incident should never be allowed to happen in the country again. All my work since has been aimed at this. This book also is a part of that work.

To alert people against the powers of the Emergency we toured the state in a procession. All the people who were tortured during those days were represented. All political parties not in power during the Emergency cooperated with us. Left wing youth organizations like the Students Federation of India and Democratic Youth Federation of India were the organizers. Mr. Kodyeri Balakrishnan and Mr. P. P. Dasan represented those two groups respectively. Mr. Gopi Kottamurikkal representing the Communist Party Of India (Marxist) and Mr. Ettumanoor Radhakrishnan representing the Bharatheeya Janatha Party were also in the procession. I was its captain. All throughout Kerala people gave the procession a rousing reception. Thousands came to greet us.

A woman from Malappuram district carrying a small baby in her arms also participated. Her husband was a village officer who had been arrested after being branded as an extremist. He died in police custody. The reason for his death is still unknown. The police claim he died when the police jeep in which he was being taken caught fire. The procession's aim was to meet and submit a memorandum to the Chief Minister, Mr. A. K. Antony, and request him to get the village officer's wife a job in the government service, to redress the death of her husband. The Chief Minister could have saved that family, but he didn't react positively.

History doesn't pardon a lack of reaction and laziness often. I fought a lonely battle for my lost son. Though tired, I am still carrying on.



With malice against none



I am nearing the end of my struggle, like a *kalam* painter who has portrayed life with the colours of pain, tears and alarm. Something always remains behind, even when trying to console oneself that all that has happened is inevitable destiny. Among the dark colours and lighted lamps, this artist becomes lonelier by the second. I have aged, and need somebody else's help to walk. Every outstretched hand showers kindness on me.

It was raining heavily last night. Lightning peeped through my window in silver flashes. It might have been late; the rhythm of deep sleep was around me. I was at my daughter's house, where the window opens onto a pond. The water was shining in the lightning. Rajan comes into my memory now. He comes into my memory as shadows, moonlight and rain. One friend asked me, which is denser—the pain of the father at the death of his son or the pain of

the son at the death of his father? I have no answer. My world has become empty. My sun has set. My stars have gone. Any father can cry out for his son, getting wet in radiant memories.

At some point I start believing in the existence of the soul after death. A burned soul is crying out, from which mysterious wilderness I don't know. He would have been here if this soul had sight to know the way. Here was a mother whom he loved and who walked away into the eternal darkness remembering him, and me, a father, left behind. This weak father can't move about without another's help, but these hands are still shivering. These hands, which lifted him up and hugged him close to the chest, are still shivering. Why are you not coming, my little child?

The feeling that the rain aroused in me during my childhood, that rain lashing over the roof late at night in my sleep, has faded away. That rain, falling on the slanting roof, had music. Now I feel that the rain is telling me unheard stories; I go back to sleep, deep in the rhythm of pain.

In my childhood, the communists reached my native place of Cherpu drenched in these rains, shivering in the cold wind of the month of Karkidakam. Behind every burning torch that appeared at night on the other side of the vast paddy fields, there was the heartthrob of a communist and his sympathiser. The thoughts and feelings of these communists were very bright, even on those rainy nights, against the symphony of frogs and crickets. I still remember the shining light I saw in their eyes those days. Mr. Achutha Menon was one of them. That Mr. Menon with tired eyes and unshaven face woke me up from sleep at midnight, his eyes raining intense and fascinating compassion. But later...

The heavy rain never stopped. Seasons came and went. Those who learned about the country, its people and soil, later forgot the rain and those wet green fields. The cries of the frogs and crickets, and the heat and light of the burning torches, became strange to them. Mr. Achutha Menon was one of those too. He became a stranger to me. Those who loved and adored him might have been able to recognize and follow him. Let them pardon the distorted vision of this old man, but I cannot say thanks.

I don't feel malice towards anyone. Let me hold close to my heart those tired eyes and that unshaven face, which rained stars of compassion. My memories are faded, but I can't forget many things of the past. This life trained me to go down deep into the whirlpools of human existence. I saw cruelty, and the helplessness of losing everything. I saw the high peaks of love, too. As if after a short dream, Rajan's disappearance awoke me from the natural indolence of a Hindi teacher. It was an odyssey from then on, begging for the alms of human awareness and compassion.



Koru, Benhar and Chathamangalam Rajan told me about Kakkayam camp, shivering while narrating stories of bloodclotting torture, as if trying hard to forget. I never asked; I never wished to know. Still they told me all.

Mr. Jayaram Padikkal would sit on a chair and pass orders, while police jeeps rushed in and out and youngsters were dragged forth. They were beaten, and then tied to a wooden

bench with their hands and legs down. A heavy wooden roller would be rolled over their thighs; many could not stand the pain, and fell unconscious. To prevent them from crying out, the police pushed cloth into their mouths. Afterwards, they would be bought before Mr. Jayaram Padikkal. While questioning them, he would roll a sharpened pencil in his hands; suddenly he would stab the pencil into the muscles worked loose from the bones on the thighs of the tortured. Koru said that at that moment you thought it would be better to die. The cries from being stabbed with that pencil could be heard outside the camp.

Why torture so much? They were shivering while describing all this. When one gets over the pain of the body, more wounds are born in the mind.

My son Rajan was tortured first. They asked him where the rifle was that had been stolen during the attack on the Kayanna police station. He had never been beaten even once in his short life, so with the first round of torture he became weary. Then he was tied to the wooden bench and rolled. He cried out for his mother; they stuffed cloth into his mouth. At the end of the torture, to get away from it he told them that he would find the rifle. Then he was taken to Mr. Jayaram Padikkal, who told the policemen to take Rajan to a jeep and go in search of the rifle. Then he cried again. He told them that he was not aware of the rifle at all, and had said that to escape further torture. Mr. Pulikkodan Narayanan began kicking him in his stomach with his heavy police boots. With a loud cry he fell back and writhed on the floor, then became quiet and motionless.

The policemen started to worry when they were sure that Rajan was dead. Other youngsters overheard some of the duty guards murmuring that one had been killed during the day. They packed Rajan's body into a sack and took it away in a jeep. They burned it in the midst of some forest with sugar, to ensure that not even the bones would be left behind, so it was said.

These are all stories told by the children who got out of the camp alive. When they showed me the never-fading scars of torture on their bodies, saliva filled my mouth and darkness, my eyes. A whistle echoed in my ears. For a moment I remembered the son who would have come back with an engineering degree, the son of my expectations.

The light went away. No, it didn't go away; it was beaten away. Somebody said that Rajan was begging for his life before Pulikkodan Narayan kicked him to death. Enough children, enough—enough of these stories of my son begging for his life. His tender face comes into my mind, begging for life with hands pressed together. Oh my son, please pardon this helpless father, I cry out.

The world of stories is going away. In every piece of knowledge there is the echo of truth. The hunters are continuing the hunt. The victims are begging for life with pressed hands.



I went around Kakkayam camp with Advocate Ram Kumar and Mr. Appukuttan Vallikkunnu, a journalist. The waves of the Emergency had receded. The building where the camp was run had been deserted. It was in a remote place. I felt sure that its remoteness was the reason that Mr. Jayaram Padikkal selected it from which to run the camp. Maybe he decided that the cries from the camp should not even reach the clouds.

Mr. Appukuttan Vallikkunnu brought out the inside story of Rajan's case through a series titled "Kakkayam Camp Kadhaparayunnu" ("Kakkayam Camp Narratives"). The war he waged through the Communist Party mouthpiece *Desabhimani* is a model for the struggle for democracy and human rights. He had been deputed to report the Coimbatore hearing, and he was very precise in informing me of the details. He correctly predicted beforehand that the witnesses would change sides. His ability to study and observe the details and to analyze issues struck me with wonder. Within a short time there developed a strong emotional bond between us. He treated me like his father.

I felt emotional as we went around Kakkayam camp. When we entered the room where Mr. Jayaram Padikkal used to sit, I imagined him in that chair, rolling a sharp pencil in his hands. It was in this room that my son bid farewell to this good earth. It was in this room that he writhed with pain after cruel torture. What might have been in his mind during the last moments? He might have cursed; he might have cursed all the green freshness of this world before death... no, it could never have been like that. How could he remember his mother who waited for him every day, his father

who held him as he walked around, and all his dear ones, with a wounded mind? My eyes started getting moist in memories.

Both Mr. Appukuttan and Mr. Ram Kumar kept quiet. When they talked, they took care to talk only about the case. The crickets and other tiny insects were still crying out from the silence outside the camp. I have read of great men who have talked of life, and struggles from the other end of death. It is sure that death will never be a burden to those who have crossed those great worlds of ideas and ideals. But I don't believe that Rajan had imbibed those fresh winds of faith blowing through the country after the Naxalbari uprising. When I asked a Naxalite friend of mine whether Rajan was one of them, he replied that he was only a sympathiser. That would have been the truth. It would have been beyond Rajan to attack a police station and snatch away a rifle. He was so weak in mind that he would not even have been able to think of that.

One story is that there was a Rajan among those who attacked the Kayanna police station, so the police picked up all youngsters with the name Rajan, brought them to the camp and tortured them. I could not reconcile this within my sense of justice. The rolling torture was done in front of other inmates, I was told. Going through the dark alleys of torture, they were also made to see and hear the writhing of the tortured, the loud helpless wailing and drained eyes. As one prey was writhing, the next was waiting for his turn.

I came to know that Rajan yielded himself silently to the torture. I have read about people being called to their deaths in Nazi camps. As an officer called out names, others were

queuing up, waiting for their turn. They even took care not to call a husband and wife together into death; Hitler knew that the pain of separation and getting lost was more intense than death.

Mr. Paul, the proprietor of the famous spare parts dealer, M/S Popular Automobiles, was an inmate at Kakkayam. His father contacted Mr. Karunakaran, and got him released because he came to know of it very early. Mr. Paul had Rs. 500 on him, and when leaving the camp he gave it to the other boys. After influencing someone, they bought food; up till then they were all starving. Rajan was not able to stand hunger; such a boy would have been burned in its forest fire. His mother could not even feed him a handful of rice before his death. Nor could I offer one to him in funeral rites after his death. That still weighs on me. When I hear him calling “father” in the heavy rain some nights it is the cry of hunger. Thinking that my child is hungry, I too never escape hunger, however much I eat.

“We must be able to face everything; must be able to face all that happened with a balanced mind. Only if you are able to do that will we be able to do our social duties,” Mr. Appukuttan Vallikkunnu consoled me. I understood that. The struggle against such brutalities had to begin with Kakkayam camp after the Emergency. I should not leave the new generation to that wooden bench and the rolling.

I fell silent. There were no signs of the police camp left in the building. The wounds that the thirteen-day-long camp inflicted on the bodies of those youths had not been posted on its walls. But those walls knew Rajan’s sighs and cries. They stood silent and detached, watching the young men writhing

with pain. There were cobwebs on those walls. There were termites in those closed windows. I opened one of them, and light entered the room. In which mysterious wilderness is my son's soul still wandering? I pressed my face against the iron bars. Oh, my son, here is your father...

The sunlight outside blurred my vision. If the soul has eyes, he will be seeing me, I thought. He will recognise my throbbing eyes. Is there a sound coming out of the dry leaves on the ground outside? Whose footsteps am I hearing? I set my ears to listen.

I had to face the question of whether or not I had vengeance towards those police officers responsible for Rajan's death. This question pulled me down into doubt. I grew up among Hindu beliefs. To one born in a house guarded by a temple, prayers, offerings and religious customs, the feeling of vengeance is quite unnatural. But whenever I saw Mr. Pulikkodan Narayanan on television, arguing heatedly with his curled-up moustache shivering vigorously, vengeance flashed through my mind. I remembered the helpless and painful moments my son faced. Unconsciously, I start thinking of settling the score. A previously unknown anger entered my mind. Whenever I think that I have forgotten everything, I remember it more clearly.



“You didn't care for him,” his mother said to me on her deathbed. Then, I had the face of a father who ran around the country like a horse, running through the days

meaninglessly. But as time withered day after day in Kakkayam camp, her comment about the helpless father who couldn't get his son might have been meaningful. I still have tears in my eyes to weep. This body still has weak throbs of life. So please, my dear ones, pardon this cursed father if I have pained you all.

Advocates Eeswara Iyer and Ram Kumar, Mr. Vahabudeen the principal, Mr. Appukuttan Vallikkunnu... there were so many who tried to cheer me up when I went down into darkness. With which birth will I repay them for their outstretched hands, among those unseen and unknown experiences? Thanks, friends, thanks.

My path is ending. The rain that lashed all over will thin out soon. I feel blessed that so many were drenched in that rain for me, and along with me. Let me hold this feeling close to my heart as an offering.

Rajan used to sing well. When I wrote that he sang only when his mother asked him, my daughters got angry. They said that Rajan used to sing for them too. He never sang for me. I had no time for his songs. So he might have decided that his father should hear his poorly recorded songs only after his death. Oh Rajan, how sad those songs were that you sang while alive, and which I never heard then. I see in them something that meditates for death. Did you hate life so much, my son?

I shall stop. The rain is still lashing out. I remember my son when this heavy rain drums my rooftop, as if someone is opening the locked gate and knocking at the front door. It is not right to write that a living soul has no communication with the soul of the dead.

I hear his songs from a cassette on this rainy night. I am trying to retrieve a lost wave with this tape recorder. The good earth is getting filled with songs till now unheard by me, this crude man. My son is standing outside, drenched in rain.

I still have no answer to the question of whether or not I feel vengeance. But I leave a question to the world: why are you making my innocent child stand in the rain even after his death?

I don't close the door. Let the rain lash inside and drench me. Let at least my invisible son know that his father never shut the door.

From the translator: It is raining

I am putting down these sentences after translating the last word of this book, *Memories of a Father*. The day has not dawned yet and it is raining. I rang up Mr. K. G. Sankarapillai, the friend, guide and teacher who entrusted me with this job, to say I have finished. I was crying like a baby. It was such a painful journey. I was in the woods as I travelled through this book word by word: a wilderness of cruelty, killing, tenderness, kindness and love—a wilderness where all sorts of animals make their homes; the wilderness we call our world.

Professor Eachara Varier, who wrote this book, is not only a teacher but a poet and a fighter too. He was a teacher of language who took young students into the clouds of poetry, and taught them not only to get immersed in the poetry of life but also to fight the darkness around them. Every fighter is a poet too, he reminded us. As Dylan Thomas has put it, one should not go gentle into that good night; one should rage, rage against the dying of the light. The rage is on since the Asian Human Rights Commission, Hong Kong, with the cooperation of Jananeethi, in Trichur, Kerala, decided to bring out this saga of struggle in English. For this we must be grateful to Mr. Basil Fernando and Dr. Philip Setunga of the Asian Human Rights Commission, as well as Professor K. G. Sankarapillai and Fr. George Pulikkuthiyil of Jananeethi.

I now know what a struggle it was to make man more than an animal, to retrieve all that is human in this species. But I also know now that this wilderness is controlled and ruled by animals: the carnivorous ones. Blood is in their

mouths; vengeance cannot tame them. Will this strange struggle of tolerance and forgiveness finally do it? I don't know; but the struggle should continue in some form or another. Every humane quality should be retrieved and preserved for generations to come, for purer water and cleaner air, a clearer sky, stars and moon, for our rain and rivers, for everything around us.

I was caught inbetween the father and the son, or rather, my father and my son. Did my father wait for me like this? Will my son go away like this? My father, the late Sri Premji, acted in the role of this father in the much-acclaimed film *Piravi*. In my journey through this book he was with me, telling me how painful it was to act out the role of a father who lost his son, but went on waiting for him. My dear father walked along with me into this wilderness, holding my hand. At the end of it, here I am looking back to see whether my son is still there or not. I now know that no sun sets. There is life even after death. Memories are the branches where the dead nest.

It is raining. I too am drenched. The rain cleanses everything, but scars of old wounds remain; they cannot be washed off that easily. Because of these scars, the struggle should continue, to recreate us as more beautiful people.

The day has not dawned yet. It is still raining.

*Neelan,
Trivandrum,
October 23, 2003*

Appendix: The High Court judgment

1977 K. L. T. 335

Subramonian Poti & Khalid JJ.

T. V. EACHARA VARIER

v.

SECRETARY TO THE MINISTRY OF HOME AFFAIRS & OTHERS

Constitution of India, Art. 226—Writ of Habeas Corpus—Dispute regarding the issue of the detention—Evidence if can be taken by the court.

So long as it is the duty of the court to protect freedom of a citizen and his immunity from illegal detention the court cannot decline to exercise its jurisdiction merely because a dispute has arisen on the issue of the detention. "It is wrong to think that in Habeas Corpus proceedings the court is prohibited from ordering an inquiry into a fact. All procedure is always open to a court which is not expressly prohibited and no rule of the court has laid down that evidence shall not be received if the court requires it."

1964 SC 1625; 1972 SC. 1140 *Relied on*

Constitution of India, Art. 226—Writ of Habeas Corpus—Respondents denying arrest and custody of person sought to be released—Court finding on evidence that the person has been arrested by Police Officers—Relief to be granted in such cases.

A writ of habeas corpus need not be equated with its counterpart in England, though analogy may be drawn from it. The High Court has power to mould reliefs to suit the requirements. In this case, having found that the petitioner's son was taken into police custody and has not yet been released or accounted for by the police we would be distressed at leaving the matter there merely because of the affirmation by the respondents that the boy is not with them under the custody of any police officer in the State. If in spite of the facts that have come to light in this case no consequences follow it may lead to continued use of unfettered powers by the executive and

especially the police which may ultimately erode the basic values on which the democratic way of life in this country is founded. If we are not satisfied about the answer by the respondents particularly because no explanation is even attempted as to how they have dealt with the son of the petitioner and where he is at present we should be able to deal with the matter. Personal freedom and liberty is the most cherished fundamental right of an individual and when we find as in this case that the authorities who have the backing of the police force of the State have infringed that freedom by taking a person into illegal custody we will not be satisfied unless it is shown that it is not possible for this Court to exercise its power to set the person at liberty. The very vehement plea by the Additional Advocate General that any direction would result in finding the respondents guilty of something for which they are not shown to be personally responsible and therefore we should desist from issuing any writ does not impress us at all. Our objective is not to impose any punitive actions for the improper conduct of any official but invoke and exercise the authority placed in this Court to protect the citizens' freedom solemnly remembering the obligation of the Higher Judiciary of the land to act as sentinels of human liberty whenever and wherever there is serious threat to it. The petitioner's grievance is genuine. As a distressed father he invoked the powers of the Court to command whoever is in custody to direct production of his son in this Court so that he may be released. Having positively found on the evidence that the son of the petitioner has been taken into police custody and on the presumption that unless it is shown that the custody came to an end it would have continued with the police, we cannot but grant relief in this case. But we shall not foreclose the opportunity of the State to make amends for what it should have done earlier. What we have in mind by way of direction to be issued in this case would, we hope, achieve this object. When the fact is that officers using police power of the State take persons into custody and deal with them as if such custody is required for the purpose of interrogation, it is not necessary that the petitioner should show which officer has the custody of the person at the moment. To say otherwise would be to unreasonably limit the doctrine of habeas corpus and deny the legitimate exercise of the function of this court. If the son of the petitioner came into police custody in whose custody he is at the moment is a matter which must be peculiarly within the knowledge of respondents in this case and in such a case the writ must issue against those persons who are in a position to give effective compliance to the writ.

1966 S.C. 81; 1892 A.C. 326

Relied on

S. Easwara Iyer & K. Ramakumar

For Petitioner

Addl. Advocate General (T. C. N. Menon)

For Respondents

JUDGMENT

Subramonian Poti, J: — The case before us is unique in several respects. The petitioner here is the father of one Sri P. Rajan who was a final year student in the Regional Engineering College, Calicut during the academic year 1975-76. The petitioner complains that his son Rajan was taken into police custody on 1-3-1976 when Rajan was staying in the College Hostel and so far the police had not made known his whereabouts. The Principal of the College informed the petitioner by registered letter sent on the same day that his son had been arrested by the police. This was at a time when the proclamation of emergency was in force. The petitioner has not seen his son thereafter nor has he been able to get any definite information about him. The only remedy available to him at the time was to make representations to the authorities which he did with no result.

2. The petitioner has been residing in Cochin after he retired as a Professor of Hindi in the Government Arts and Science College, Calicut. Rajan is said to have been a fairly bright student and he is said to have never indulged in any kind of political or objectionable activity. His only activity was said to be in the field of Music, Drama and other arts, He had been the Secretary of the Arts Association in his college in 1973-74.

3. The petitioner's case is that he did not know why his son was arrested, that he made enquiries to police officers, who, he felt, would be able to give him the details about his son's arrest and also about his whereabouts. It was then that the petitioner understood that Rajan was arrested under directions of the Deputy Inspector General of Police, Crime Branch, Trivandrum who is the 3rd respondent in the petition and was kept under custody of the Crime Branch of the State Police. The petitioner avers that he met the then Home Minister of the State Sri K. Karunakaran on 10-3-1976 and complained to him, whereupon Sri Karunakaran promised to look into the matter. But nothing turned out of it. He sent a petition to the Home Secretary to the Government of Kerala on 15-6-1976, another on 1-7-1976 and yet another on 6-8-1976. To all these, the petitioner avers, there was not even a reply or acknowledgment. The petitioner stated in the earliest petition, copy of which is filed as Ext. P1 that his son had been arrested on 1-3-1976 and ever since then the petitioner has been unable to know anything about the whereabouts of the boy. The prayer that he made was that at least the whereabouts of his son may be made known to him so that the sufferings of himself and his family, may be alleviated. It appears that the

petitioner continued his efforts at getting some information about his son but similar representations made to the President of India and Home Minister to the Government of India with copies to all the Members of Parliament from Kerala. The President of India informed the Petitioner that the matter had been referred to the Chief Secretary to the Government of Kerala. The petitioner avers that he made similar representations to the Prime Minister of India and others too all with no effect.

4. The Petitioner further avers in his affidavit that two of the Parliament Members from Kerala, late Sri A. K. Gopalan of the Lok Sabha and Sri V. Viswanatha Menon informed him of the intimation received by them from the Prime Minister and the Home Minister to the Government of India respectively that the matter was receiving their attention. Sri Viswanatha Menon M.P., also informed the petitioner that the matter was raised by him on the floor of the Rajya Sabha and by Mr. Samar Mukerji M.P. in the Lok Sabha.

5. The petitioner made his representation to the then Minister for Home Affairs in Kerala, Sri Karunakaran. In that letter it was pointed out that Rajan's mother had become insane by reason of these developments and she was hospitalized. Ultimately when pursuant to the notification ordering elections in the Lok Sabha most of the political prisoners were released the petitioner was hoping that his son Rajan would also be released. In the meanwhile Sri Viswanatha Menon supplied the petitioner with a copy of the intimation received by him from the Home Minister of Kerala that the release of Rajan was under consideration. It has turned out during the course of the proceedings that the reference is to the letter dated 10th December 1976 written by the Honourable Minister for Home Affairs Sri K. Karunakaran to Sri Viswanatha Menon. Therein he acknowledges the receipt of a letter written by Viswanatha Menon to him enclosing an application praying that Sri Rajan, son of Sri Eachara Varier should be released from detention. He informs Sri Viswanatha Menon that the said matter was under consideration. Ext. P3 is the copy of that intimation.

6. The petitioner further avers that on receiving the copy of Ext. P3 from Viswanatha Menon he met several police officers to ascertain the whereabouts of his son Rajan and coming to know that some of the students who had been similarly arrested were detenues in the Cannanore Central Jail the petitioner was vigorously searching in vain for his son in the three Central Jails of the State and also in the various other police camps and other places. He is said to have met the then Chief Minister Sri Achutha Menon several times and he further avers that Sri Achutha Menon had personal knowledge of the arrest of his son and

also of his detention. However, it is said that on the last occasion the petitioner met Sri Achutha Menon the latter expressed his helplessness in the matter and said that the matter was being dealt with by Sri Karunakaran, Minister for Home Affairs. The petitioner is seen to have thereafter appealed to the general public in Kerala by expressing his grievance in a pamphlet distributed to the public. He further avers in the petition that the Home Minister, who was a candidate in the recent elections, addressed several public meetings in Mala, Kalpetta and other constituencies of the State and in some of the meetings he is said to have made mention of the fact that the petitioner's son Rajan was involved as an accused in a murder case and that was why he was kept in detention. If that be the case, according to the petitioner his son should have been produced before a Magistrate under the provisions of the Code of Criminal Procedure, in spite of the fact that the rights under Articles 21 and 22 remained suspended during the period of proclamation of emergency.

7. It is therefore pleaded that the further detention of the petitioner's son in the police custody to which he was taken is without any authority and therefore the respondents must be called upon to produce his son in court and he be released. The 1st respondent is the Home Secretary to the Government of Kerala. The 2nd respondent is the Inspector General of Police. The petitioner moved for impleading the Honourable Minister of Home Affairs, Sri Karunakaran and the District Superintendent of Police, Calicut as additional respondents 4 and 5. After hearing parties they too have been impleaded as parties.

8. Respondents have filed counter affidavits individually. The 1st respondent, the Secretary to the Government Home Department admits receipt of two petitions, one dated 15-6-1976 and another dated 6-8-1976, by the Home Department. He also admits receipts of a number of petitions sent by the petitioner to the Home Minister, Government of India, and the President of India subsequently forwarded to the Government of Kerala for appropriate action. The receipt of a similar petition from the petitioner also with a letter from Sri Viswanatha Menon to the Home Minister for the Government of Kerala is also admitted. It is said that the copies of these petitions were forwarded to the Inspector General of Police for enquiry into the allegations made therein. It is further said that on 7-1-97 the Inspector General of Police sent a letter to the Government stating that an enquiry had been conducted into the allegations made in the petitions but it was revealed that the petitioner's son had not been taken into police custody at any time and that the principal wrote to the petitioner about the alleged arrest of the petitioner's son based upon some hearsay information. The Inspector General of Police is also said to have informed to

the Government that one Joseph Chali, a student of the Regional Engineering College, had been arrested and detained under the MISA on 8-3-1976 and from the said student the police got information about the involvement of one Muraleedharan a student of the Regional Engineering College and son of Sri K. M. Kannampilly, former Indian Ambassador to Jakarta, and the said Muraleedharan was arrested on 18-4-1976. It is further said that the Inspector General of Police informed the Government that when Muraleedharan was questioned by the police they got information that the petitioner's son Rajan was affording facilities and shelter to some of the extremists. But it is said that by the time that information was received the police could not locate him as, by that time he had made himself scarce. Based upon this report of the Inspector General of Police which is marked as Ext. X1 dated 7-1-1977 the Government of Kerala is said to have sent up a report to the Government of India on the matter. That in spite of several petitions to the Government by the petitioner he got no communication from the Government at any time is not denied in the counter affidavit of the first respondent.

9. The Inspector General of Police in a very short counter affidavit denies the arrest of Sri Rajan by the Police and the fact of custody by the police. He states that Sri Rajan has not been arrested by any police officer of the State. He further mentions that he made enquiries about this matter on the petition sent to Government of India and he submitted a report to the Government.

10. The 3rd respondent, the Deputy Inspector General of Police, Crime Branch, also avers that the allegation that the petitioner's son was arrested by the State Police was untrue. He would say that he had not given any direction to arrest the petitioner's son and the petitioner's son had not been arrested by the State Police.

11. Sri K. Karunakaran who was formerly the Minister for Home Affairs and now the Chief Minister of the State has filed a counter affidavit denying the averments in the affidavit of the petitioner that he told the petitioner on 30-3-1976 that his son Rajan had been arrested from his college for involvement in some serious cases and he would do his level best to look into the matter and help the petitioner. While averment was made by the petitioner in the affidavit filed by him to seek impleading of the 4th respondent, the Chief Minister avers that he never told the petitioner that his son was in police custody at any time and so far he had no knowledge that the said Rajan had been in police custody at any time. He admits that he wrote Ext. P3 letter to Sri Viswanatha Menon M.P. but according to him he never admitted that the question of release of

Rajan from custody was under examination. He also denies the averment that he spoke in public meetings about the petitioner's son being an accused in any murder case and kept in police custody for that reason.

12. The District Superintendent of Police, who was impleaded as 5th respondent in the original petition, denies having taken the petitioner's son into custody at any time. He would say that Sri Rajan was not wanted in any of the cases investigated by him and he had not been in the custody of any of the police officers. He refers to the two petitions sent by the petitioner and forwarded by the Government and the D.I.G. of Police, C.I.D. and Railways alleging that the petitioner's son had been in the custody of the police from March 1976 onwards and praying for his release. He is said to have made a detailed enquiry. During the course of his enquiry he questioned the Principal of the Regional Engineering College, Sri Bahauddin, the Chief Warden Mr. Srinivasan and some others. He would say that from such enquiry he found that there was no evidence to show that the petitioner's son had been arrested by police at any time. He would say that one Joseph Chali had been arrested in March 1976 by order dated 8-3-1976. According to him the Principal of the Regional Engineering College whom he contacted told him that the files kept in the college do not show that he had sent any such letter to the petitioner. But he told him that the Warden of the Hostel informed him that the petitioner's son had been arrested by the police. The Warden who was also questioned is said to have told him that he got the information from one Ramakrishnan who was not available for questioning as he was on leave. He would say that Sri Ramakrishnan was informed about the alleged arrest of the petitioner's son by some students, whose identify was not known.

13. The 5th respondent, the Superintendent of Police, further states that the petitioner's son was not arrested in connection with the investigation of Crime No.19 of 1976 of Kayanna Police Station. He himself was present at Kayanna investigation camp from 28-2-1976 to 12-3-1976 and so was in a position to state that Rajan had not been brought for investigation to the camp by any police officer. But he says that police knew that the said Rajan was involved in extremist activities from Sri Muraleedharan, a student of the College who was absconding from the college from 16-9-1975. The 5th respondent further stated in his affidavit that the result of his enquiries revealed that the petitioner's son had absconded from the college early in March 1976 probably apprehending police action against him when Joseph Chali, a student of the very same college was arrested. The report by him to the Deputy Inspector General of Police dated 28-12-1976 is marked as Ext. R1. In that he mentions that the police obtained information of the involvement of certain students of

the Regional Engineering College in the Naxalite activities leading to the attack on the police station on 29-2-1976 from a source. It is said that enquiries were made from 1-3-1976 onwards and one student Sri Joseph Chali was interrogated in detail on the same day. Sri Chali was said to have been subsequently detained under MISA on 8-3-1976. It is further said that it was revealed that Rajan afforded facilities to some of the important accused concerned in the Kayanna Police Station attack case to conduct their clandestine meetings and it is also understood that Rajan had arranged shelters to some of the accused who had absconded after the occurrence in the said case.

14. We are met with an unusual situation here. Cases that have come up before the courts seeking the issue of rule of habeas corpus are those where the courts had been called upon only to decide the legality or the validity of the order of detention by the police or others having the custody of the person who was the subject matter of the habeas corpus petition. We have not been referred to any authority nor have we been able to locate any case where the court had to undertake the task of finding out the truth or otherwise of the plea of the detention itself. But such a situation has arisen here. But so long as it is the duty of this court to protect freedom of a citizen and his immunity from illegal detention we cannot decline to exercise our jurisdiction merely because a dispute has arisen on the issue of the detention. The Supreme Court in *Mohd. Hussain v. State of U.P.* A.I.R. 1964 S.C. 1625 said that:

‘It is wrong to think that in Habeas Corpus proceedings the court is prohibited from ordering an inquiry into a fact. All procedure is always open to a court which is not expressly prohibited and no rule of the court has laid down that evidence shall not be received, if the court requires it. No such absolute rule was brought to our notice.’

15. It may be appropriate that we refer in this context to the decision of the Supreme Court reported in *Jage Ram v. Hans Raj* A.I.R. 1972 SC.1140. That was an appeal filed by two police officers before the Supreme Court of India for expunging certain remarks made as to their conduct in the order of the Punjab and Haryana High Court on a habeas corpus petition filed by one Hans Raj Midha for the production of his son Prem Prakash Midha who was said to have been detained illegally by the Central Investigation Agency (C.I.A) Staff Karnal. The complaint of the petitioner there was that his son Prem Prakash was taken from his house at about 5 P.M. on 5-5-1968 by police officers, that he was being tortured in the police station and that such brutal torture was continuing though there was no record of arrest. On the rule being issued by the High Court and a Reader of the Court being appointed to search the office of the C.I.A. Karnal. Prem Prakash was found in the room of the police

station lying on a gunny carpet spread on the floor with his feet swollen and with some injuries on his head. As directed by the court he was taken for medical examination and on 13-6-1968 produced in court. The evidence of Prem Prakash was taken in court and the affidavits of respondents to the writ were also in evidence. The court ultimately found on this evidence that the version of torture on Prem Prakash was true and also that the confinement of the detenu was illegal till 10th May 1968. But since on 10th May an order for keeping in judicial custody had been passed a writ of habeas corpus did not issue. But all the same the court found in its order on the habeas corpus petition that the affidavits sworn by the respondents by way of return to the habeas corpus petition did not represent the true state of affairs and that calculated falsehood had been imported in material particulars. It is this finding against respondents that was sought to be expunged in the appeal before the Supreme Court. But the Supreme Court found that the High Court had properly appreciated the evidence and some of the remarks to which exception was taken could be described as unwarranted, unnecessary, or irrelevant nor can they be characterised as generalisations or of a sweeping nature. Incidentally the court said at paragraph 7 of the judgment thus:

'In a Habeas Corpus Petition where allegations are made that a citizen of this country is in illegal custody it is the duty of the court to safeguard the freedom of the citizen which has been guaranteed to him by our Constitution and to immediately take such action as would ensure that no person however high or low acts in contravention of the law or in a high handed, arbitrary or illegal manner.'

We are referring to this decision only to indicate that practice of taking evidence in matters of habeas corpus had been noticed in that case by the Supreme Court and that was not disapproved.

16. We however need not go into this question further since learned Additional Advocate General Sri T. C. N. Menon submitted that he was not taking the stand that the court should not embark upon the examination of the materials in this case to find whether the plea of Sri Rajan being taken into police custody was true or not.

17. The three questions which we may have to consider in this case are:

- (a) Whether Sri Rajan was taken into police custody on 1-3-1976?
- (b) Whether Rajan is in police custody at the moment?
- (c) What relief the court should grant in the circumstances of the case and against whom?

18. On the question of Rajan being taken into police custody there is a fairly good amount of evidence in this case. The Original Petition was filed in this court on 26th March 1977 which was a Friday. It was moved on the next sitting on 28th March. The learned Advocate General took notice on behalf of the respondents in the petition and the case was posted for showing cause as to why the application should not be granted. This was so posted to 30-3-1977. On that day the petitioner moved an application for impleading the Honourable Chief Minister of the State Sri K. Karunakaran and the District Superintendent Additional Advocate General took notice on this petition and the petition was allowed on 30-3-1977. Counter affidavits by the respondents were filed on 4-4-1977 and the case was posted to 6-4-1977 for hearing. On 6-4-1977 the petitioner filed a reply affidavit. Along with it affidavits of 12 persons were also filed, evidently in support of the case of the petitioner that Sri Rajan was taken into police custody. The explanation offered by petitioner's counsel Sri Easwara Iyer for filing these affidavits only along with the reply affidavit and also for mentioning the fact that the petitioner met the then Home Minister Sri Karunakaran on 10-3-1976 only in the petition for impleading filed on 30-3-1977, is that at no time earlier was the petitioner told that his son Rajan was not in police custody and therefore when he came to this court he could not assume that this would be an issue in the case. Counsel states that the day after the petition was moved in this court Sri Karunakaran who is the present Chief Minister of Kerala, and was earlier the Home Minister, stated on the floor of the Assembly of the State that Sri Rajan had never been arrested and this is said to have been reported in all the papers. Evidently therefore the question whether Sri Rajan had been taken into police custody became an issue then only and it is said at the hearing that was the reason why the averment that the petitioner had met the Chief Minister on 10-3-1976 was made only in the petition dated 30th March, 1977. On 30-03-1977 another motion was made by the petitioner and that was for permission to examine the principal of the Regional Engineering College, Calicut as a witness and on that the court had directed the Principal to be examined as a witness to prove the arrest of Rajan, a matter in issue in the case. He was summoned to appear in this Court with all relevant records on 5th April 1977 and in the event the summons was not served on him by that time on 6th April 1977. When the case thus came up for hearing on 5th April the Principal of the College was not present as by that time summons to appear had not been served on him. Counsel for the petitioner offered the deponents of the 12 affidavits for cross examination on the next day, i.e. on 6-4-1977. When the case came up on 6-4-1977 Professor Bahauddin, the Principal of the Regional Engineering College was present pursuant to the summons.

He was examined. Nine of the deponents were offered by the petitioner for cross-examination. On the request of the Additional Advocate General for time their examination was adjourned on the specific understanding that if the case was not closed on the 7th of April, by which time the court would close for summer recess, the hearing would be continued on 11-4-1977. Ten of the deponents of the affidavits who were present on 7-4-1977 were offered for cross-examination by respondent's counsel on that day and they were cross-examined by him. They are PWs 2 to 11 in the case. The petitioner had sworn his affidavit was available for cross-examination and Sri Easwara Iyer offered him for cross-examination by the respondents' counsel on his affidavit. But the learned Additional Advocate General submitted that he did not want to cross-examine the petitioner on the affidavit filed by him. Though petitioner's counsel submitted that he was ready to cross-examine the respondents in case they offered themselves for such cross-examination, the learned Additional Advocate General submitted that the respondents were not being offered for such cross-examination. Under such circumstances the evidence was closed and the case was heard on 11-4-1977.

19. It appears from the counter affidavit filed by the District Superintendent of Police, Kozhikode that on information being received on 29-2-1976 about involvement of certain students of the Engineering College in the Naxallite activities, enquiries were made among the students of the college from 7-3-1976 onwards. That one Joseph Chali was interrogated on 1-3-1976 and subsequently detained under MISA on 8-3-1976 is an admitted fact. The case of the petitioner as disclosed from the evidence adduced here is that on the morning of 1-3-1976 at about 4-30 A.M. some police officers entered the hostel buildings of the Regional Engineering College, went about searching the various rooms for Joseph Chali as well as Rajan, that this created a commotion in the Hostel, that sometime at about 6 or 6-30 A.M. Joseph Chali was taken out from the Hostel in a van, that Rajan was also taken out from the Hostel in the same van, that Rajan was the inmate of D Hostel at that time, while Chali was an inmate of E Hostel, that they were so taken in the van to a nearby lodge situated near the poultry farm, that the two boys were taken inside the lodge, that cries were heard from within the lodge, the two boys were taken out of the lodge after sometime and subsequently Rajan was moved to some place in a van, that he was seen sitting in the van near the State Bank Branch, that he was subsequently seen at Chathamangalam in the van, that he was taken to Kakkayam Tourist Bangalow, extensively for interrogation and that he was seen lying there on a bench tortured by six policemen, including an Inspector of Police, wherefrom he was carried away unconscious. It is said that

the petitioner could not have moved this court then for production of Rajan's body on the ground of illegal detention on account of the Proclamation of Emergency and therefore he was desperately moving the State Government as well as the authorities of the Central Government to get some information about his son. But he got none. It is further attempted to be brought out in evidence that the petitioner had met the then Home Minister Sri Karunakaran on 10-3-1976 and complained to him about his plight and the Home Minister assured to him that he would look into the matter. But nothing happened. The petitioner is said to have repeatedly met the Chief Minister Sri Achutha Menon who ultimately expressed his helplessness as the matter was one in which the Home Minister alone was concerned. It is further said that when this became a matter of popular concern Sri Karunakaran realizing the situation had to explain this at the recent election meetings in his Constituency as also other Constituencies. This, in short, is the evidence attempted to be adduced in this case.

20. Professor Bahauddin, the Principal of the Regional Engineering College is examined to prove that it was reported to him on 7 A.M. on 1-3-1976 by the acting Chief Warden that Rajan and Joseph Chali had been arrested. A written report is also said to have been given to him at 9 P.M. that day. Consequent on this Sri Bahauddin sent registered letters on the same day to the parents of the two boys informing them of the arrest by the police officials that morning. Sri Bahauddin was summoned to produce the concerned papers. Accordingly he has produced the file. In the hearing the Additional Advocate General expressly stated that he is not asking the court to disbelieve Sri Bahauddin but on the other hand whatever was stated by him from his personal knowledge may be taken as true though what he has stated on hearsay information may not be accepted as true. That, of course, is fair enough. Professor Bahauddin speaks to the report having been made to him at 7 A.M. on 1-3-1976 about the visit of the police officers that morning and about taking Sri Rajan into police custody. He speaks to the report made to him. As to the actual arrest or taking into police custody he is not a witness nor would he be able to speak to it. He does not purport to do so. There is no case that Professor Bahauddin has any reason to depose against the respondents or in such a manner as to advance the case of the petitioner. Evidently he is an uninterested respectable witness. The student Rajan is said to have been taken from the College premises in the van by about 6-30 A.M. on 1-3-1976. The evidence of Sri Bahauddin established the fact that the acting Chief Warden reported the matter to him soon thereafter at 7 A.M. Since both the students were Hostel inmates the Principal is seen to have immediately contacted the Kunnamangalam Police Station. They informed

him that they had not arrested anybody and they did not know anything about it. Though he attempted to contact the Superintendent of Police, Calicut he could not get him on the telephone. When he went to the Hostel, groups of boys told him that the two boys were arrested and taken into police custody. He wrote to the guardians of the boys on the same day and dispatched these letters by registered post. By way of further enquiry about Rajan the Principal deputed one Sri Abdul Gaffer, at the moment out of India, to the police officers. A copy of the letters sent to Eachara Varier and Paul Chali contained in Ext. P1 file is Ext. P1 (a). The dispatch particulars of these letters are shown in the slip in the file marked Ext. P1 (b). In cross examination the witness concedes that apart from the report and what others told him about the arrest he had no personal knowledge about it. The attendance register of the college (final year class) for the 7th Semester of 1975-76 is marked as Ext. P2. It is seen from the attendance register that from 1-3-1976 Rajan had not attended the college.

21. It appears to us that for the appreciation of the evidence of the witness in the case a proper background is furnished by the evidence of PW 1. That is because it cannot be said that the story of the arrest of Sri. Rajan was an afterthought made up for some ulterior purpose. That Rajan, a student of the final year class, had not attended the class from 1-3-1976 and the father had been moving heaven and earth to get the whereabouts of the boy is more than evident in this case. Even according to the police some information was received by them about the involvement of the students of the Regional Engineering College, Calicut in the Naxalite activities on 29-2-1976. It is also said now in the report of the 5th respondent marked as Ext. R1 that Sri Rajan had given shelter to some persons suspected to be naxalites and in spite of their efforts they have not been able to find out Rajan. There is no case that Rajan was not present in the Hostel till 1-3-1976. The evidence is that just before Rajan was taken into custody he had returned to the Hostel after attending the University D Zone Arts Festival. That on 1-3-1976 the police came to the Regional Engineering College evidently for the purpose of interrogating at least another student Sri Joseph Chali is admitted. By about 7 A.M. the Principal gets the report of the arrest of Rajan from none other than Dr. Ramakrishnan the acting Chief Warden. It is difficult to believe that such a story about the arrest by the police of Sri Rajan was invented at that time and the groups of boys met the Principal on the same morning to inform him of such a concocted story.

22. None of the witnesses are examined in chief, for petitioner's counsel submitted that they having deposed to the facts in their affidavits such evidence may be accepted and if any examination was desired by the respondents that may be done. Therefore the witnesses were cross-examined on the averments

made by them in the affidavits. These witnesses speak to situations at different periods of time. PW 2 is a student in the final year class of the Regional Engineering College and was a student also at the relevant time. he was staying in the Hostel. PW 3 one Narayanan Nair, is the watchman who was on duty from 10 P.M. on 29-2-1976 to 6 A.M. on 1-3-1976. They are examined to speak to the fact that a group of police officers came to the Hostel and began making enquiries for Rajan. PW 2 speaks to their making enquiries for Rajan and Chali and PW 3 speaks to the enquiries made for P. Rajan who was in room No. 144 in the D Hostel. PW 3 further swears that he informed Prakash, the Secretary of the Hostel, about this, and met Dr. Ramakrishnan the acting Chief Warden to inform him about this. In the sequence of events we must next refer to PW 5. While he was going to the Hostel that morning for his duty he saw Rajan being taken to a police tempo van by a Circle Inspector and some constables. PW 4 is the part time sweeper of the college by name Balasubramoniam. He was on duty on 1-3-1976 and by about 6-30 A.M. when he reached the college he saw two vans standing in front of the D Hostel. Near one of them he found a Detective Inspector of the Crime Branch, Sri Sreedharan, a Police Constable, Raghavan Nair, and the driver of the vehicle of the Crime Branch. They were standing near the van. In one of the vans he is said to have seen both Rajan and Chali. The van with these two boys and policemen is said to have proceeded to a lodge nearabout and that it was stopped near the lodge. The two boys were taken into the lodge and it is said that cries were heard from inside the lodge. After about 15 minutes the boys are said to have been brought outside the lodge. Next the van is seen in front of the State Bank Branch inside the College premises. The van is seen parked. PW 6, the fulltime sweeper of the college, saw the van parked on the side of the lodge near the State Bank Branch. But at that time only Rajan was in the van flanked by policemen. PW 7, Koru the mess boy, also speaks to having seen the van parked in front of the Bank Branch in the College premises. Rajan alone was seen in the van at that time. PW 7, it maybe mentioned, was arrested from his house at about 9-30 P.M. by the police on 1-3-1976 in connection with Crime No. 19 of 1976, taken to Kunnamangalam Police Station, then to a police camp in Kakkayam, kept in the police camp for 12 days and then taken to Maloorkunnum in Chevayoor and was housed in the Cannanore Central Jail where he was a detenué till 24-3-1977. He speaks to having seen Joseph Chali at Kakkayam camp when he was there. The van seems to have proceeded further and PW 8, Surendran, saw that van at the place near Chathamangalam. He knew Rajan earlier. The van had been parked near a toddy shop. When he looked into the van he saw Rajan with policemen inside the van. We have the evidence of PW 9 to speak to what happened to Sri Rajan

thereafter. PW 9 is one Rajan running a Typewriting Institute. He was arrested by the Crime Branch even as early as on 28-2-1976, according to him under the wrong impression that he was associated with Naxalite activities. He was taken by the Crime Branch Police into their custody, was interrogated and next day taken to a room in Hotel Maharani, was kept there and on 2-3-1976 he was taken to Kakkayam Travellers Bungalow in a police jeep, dragged to a room in the said Bungalow and while he was there he saw Rajan being tortured by six policemen, one of whom he knew as Sub Inspector Pulikkodan Narayanan. After some time Rajan became unconscious and he was carried out of that place by the same individuals. He also speaks to the fact that at that time the District Superintendent of Police and some of the police officers were present at the Travellers Bungalow. This in short, we may say, is the evidence sought to be adduced by the affidavit filed by these witnesses. We are particularly mentioning this to show that this is not a case brought out in cross-examination.

23. PW 4, the part time sweeper in the College Hostel who spoke to having seen officers in mufti and who could identify them, was reluctant in cross-examination to disclose further about this, for he feared something may happen to him in the event he deposed against the police. He sought the protection of the court. The Additional Advocate General assured the court that nothing would happen to the witness deposing in the case. PW 4 was in a position to mention the names of the officers particularly because according to him he was a witness in a case investigated by the Crime Branch. He was a witness to recovery of a weapon. As such he had been summoned to court and he was taken in the police van to the court for deposing. Sub Inspector Sreedharan of the Crime Branch, Constable Raghavan Nair and the driver of the Crime Branch were known to him. The same Sub Inspector had come to investigate the case in which he was a witness and which was one in the locality of his house. No attempt was made to show that the statement of this witness was not true. We can find no reason why a witness such as PW 4 should perjure to promote the case of the petitioner, a retired Professor staying far away in Cochin. It has been suggested that by this time the matter had assumed the proportions of an emotional issue and therefore witnesses may speak even to matters which they have not seen. Of course we should exercise extreme care in assessing their evidence. But this is different from saying that the witnesses are strangers to the incidents spoken to by them. They are liable to commit mistakes in regard to the exact time the persons they saw and other details, particularly as they are deposing to a matter more than a year old. But we see no reason to disbelieve the witnesses in this case as nothing has been brought out to indicate that all or any of them have been speaking untruth for any ulterior purpose.

24. We may broadly indicate that what has been attempted by cross-examination of the witnesses is only to show that there is discrepancy as to time, discrepancy as to whether the policemen were in uniform or not and whether the two boys went in one van or two vans. On carefully going through the evidence we find no material discrepancy which would persuade us to reject their evidence. Going through the evidence of the witnesses we find their case is that the police in mufti searched the room for Rajan and Joseph Chali who were in two different Hostels. Some of the officers in uniform had also come there. But they had not engaged themselves in the search. At some point of time there were two police vans in front of the College. Though the two boys were taken together from the hostel after visiting the lodge nearby Rajan was taken by himself in one of the vans. That is the evidence attempted even in the affidavits filed by these witnesses along with the reply affidavit and these are not matters brought out by cross examination.

25. It is said by the learned Additional Advocate General that in the affidavit filed by PW 2 it is said that both Rajan and Chali were taken away in the van but some of the witnesses speak only to Rajan being taken into the van. Going through the affidavit of PW 2 marked as Ext. P5 along with the reply affidavit it is seen that what is stated there is not that both Rajan and Chali were taken simultaneously into the van. In fact they were in two different Hostels and it is unlikely that they would have been taken simultaneously. According to PW 2, though the persons who took the two boys from the hostel were people in mufti, officers in uniform had also come there and he assumed that those who took Rajan were police officers because the same set of officers had taken Chali also, and Chali was later reported to be arrested. He does not speak to the boys being taken to the van or having seen them getting into the van but speaks to both of them being taken from the hostel premises in the same van. Of course that is the case of the petitioner as reflected in the affidavits of the witnesses filed. The evidence of PW 3 is challenged on the ground that in his affidavit he mentions the group of police officers in plain clothes coming to the hostel and searching in the rooms asking for Rajan, but in cross examination mentioning that some persons had uniform. But in re-examination the witness speaks to the fact that it was the person in mufti who searched the rooms, which is the substance of the affidavit filed by him. He did not say in the affidavit that the officers in uniform were not there at any time. That they were also there is consistent with the other evidence in the case. PW 5 speaks to the moment of time when Sri Rajan was taken into the police tempo van and he only speaks to this fact. That there were police officers at that time is what other witnesses have also spoken to and if the witness saw the officers in uniform

actually putting Rajan into the van there is nothing wrong with that evidence. At that time there was only one van. After 10 minutes the van is said to have gone west. But he was not asked as to what happened in between that time. PW 4 Balasubramoniam evidently came to the scene at a time when both the boys Rajan and Chali had been put into the same van and the van thereafter proceeded to the lodge. At that time there were two vans. The existence of two vans is quite consistent with the petitioner's case, for, after the boys were taken to the lodge, according to the petitioner's case, Rajan was separated and he alone was in the van thereafter. That would mean that the other van must have been available for taking Chali. There is no reason to doubt the veracity of his evidence. By the time PW 6 sees the van in front of the State Bank there was only Rajan in the van and there were three or four policemen in the van, one or two of them being in uniform. He did not wait for the van to leave the premises of the State Bank. PW 7 also speaks to having seen the van in the same place with two or three men inside. It is significant that in spite of his statement that he had been arrested at 9-30 P.M. on 1-3-1976, taken to Kunnamangalam Police Station and later to the police camp at Kakkayam where he was detained for 12 days, no cross-examination was made about this by the respondents. Evidently his case about the detention by police must be true and it was at Kakkayam that he saw Chali as spoken to by him. There was no suggestion made to PW 8 as to why he was interested in deposing for the petitioner. The van had by that time proceeded from the State Bank premises further to the place known as Chathamangalam and it had been stopped in front of a toddy shop. We see no reason to disbelieve this witness also.

26. We have anxiously gone through the evidence of PW 9, for according to us his evidence goes a long way to substantiate the petitioner's case. He has categorically stated in his affidavit that he had been taken to the Kakkayam camp, was there for a number of days and at that time he saw Rajan there. There is not even a suggestion in his cross examination that he was not taken by the police on 28-2-1976 or that he was not in Kakkayam for the days he mentioned he was there. The only question that had been asked to him was whether he knew anyone of the 6 people at the Kakkayam T.B. and he said he did know one of them, Pulikkodan Narayanan. He was also asked whether he saw Rajan on that day, whether he saw Chali, and was also asked why he was arrested. The case of this witness that he had been taken to police custody even on 28-2-1976, that he saw Rajan at Kakkayam T.B. and that Rajan was tortured and was thereafter taken out in an unconscious condition is evidence which we see no reason to disbelieve. Nothing has been shown to us as to why we should consider the evidence of these witnesses as not reliable. The learned Additional

Advocate General, beyond pointing out certain discrepancies in the evidence of these witnesses, has not indicated that all these witnesses are clearly perjuring to matters they have never seen. No attempt has also been made in the cross examination of these witnesses to suggest such a case. Therefore an overall appreciation of the oral evidence leads us to the conclusion that Rajan was taken on the morning of 1-3-1976 from the Regional Engineering College by the police, was seen later under the police custody at Kakkayam T.B. being tortured by six policemen including Pulikkodan Narayanan and therefore it is established that till that point of time he was in police custody.

27. There is another point attempted to be proved by the petitioner. Sri Karunakaran was a candidate from the Mala constituency during the recent Assembly elections. The petitioner, Sri Eachara Varier, is said to have published a pamphlet appealing to the public about the cause of his son. It is said that to counter the popular appeal of this pamphlet and consequent adverse reaction on the election prospects, Sri Karunakaran had to advert to the matter during his election campaign. At the 'samapana rally' of the election campaign he is said to have admitted the detention of Sri Rajan, and explained it to be because he was a member of a banned organisation. PW 10 and PW 11 are two persons who are said to have heard the speech. Their cross-examination indicates that the answer to their evidence is that they are interested persons as they belong to the politically opposite camp. That by itself may not be sufficient to discredit their evidence. But we are not basing our decision on the evidence of these witnesses for another reason. If we believe the case that Sri K. Karunakaran, the then Home Minister, admitted the detention of Sri Rajan, that by itself would be sufficient to allow the petition. We would base our conclusion on the evidence of the witnesses in this case who speak first hand rather than what is said to be admitted especially when that is refuted. So in the case with the Ext. P3 letter to which we will advert in due course.

28. The petitioner in this case avers in his affidavit of 30-3-1977 that he met Sri Karunakaran, the then Home Minister, on 10-3-1976 at the Manmohan Palace at Trivandrum and Sri Karunakaran told him that his son Rajan had been arrested from the College for involvement in some serious case and he would do his level best to look into the matter and help the petitioner. He would also say that he later met Sri A. K. Antony, K.P.C.C. President, and a former student of the Maharaja's College, on the 4th of January, 1977 and on the 2nd of February, 1977 and Sri Antony assured him that Rajan was alive and in custody and he would see the Home Minister in this regard. In the counter affidavit filed by Sri Karunakaran reference is made to the averment of the petitioner. What is stated in reply is this:

'The allegation made in paragraph 2 of the additional affidavit that I told the petitioner on 10th March 1976 that his son Rajan had been arrested from his college for involvement in some serious cases and he would do his level best to look into the matter and help the petitioner is absolutely incorrect. I have never told the petitioner that his son Rajan was in police custody at any time, and so far, I have no knowledge that the said Rajan has been in police custody at any time.'

We regret to say that this is not meeting the point raised by the petitioner, for one would like a direct answer – particularly in view of the seriousness of the averment – as to whether the petitioner did meet Sri K. Karunakaran on 10th March, 1976. If he did meet him it would have been necessarily for the purpose of complaining about the disappearance of his son and more than what the reply of Sri Karunakaran was, the fact of meeting Sri Karunakaran itself would be relevant. Sri Karunakaran could also have then said what reply he gave to the petitioner. One would be tempted to read from the counter affidavit that the case is that the petitioner had not met the then Home Minister. But at the hearing when we put this question specifically to Sri T. C. N. Menon, it was submitted that Sri Karunakaran was not denying the fact of the petitioner meeting him, but he was only denying the case that he admitted about the arrest of Sri Rajan. Counsel would also say that he is also not admitting about the date for Sri Karunakaran is not sure of it. One may not remember on what date any visitor met him. But we would have been happy to find the case in the counter affidavit that though the petitioner met him sometime he did not mention to the petitioner that Rajan was in police custody but mentioned something also. Though this was what was submitted by the learned Additional Advocate General we are surprised to find later a different stand taken in the hearing note submitted by the Additional Advocate General at the hearing. The hearing note did not come at our instance. In fact we do not normally encourage the practice of filing hearing notes. When the case was being heard the hearing note was filed by the learned Additional Advocate General requesting us to look into the notes before disposing of the case. On going through the notes it is seen stated:

'Another important aspect which may be dealt with here is the petitioner's allegation that he met the then Home Minister, Kerala on 10-3-1976 and then the Home Minister told him that the petitioner's son had been taken into police custody in connection with a serious criminal case. I would like to submit that this allegation is absolutely unfounded. Apart from the categorical denial of the then Home Minister in his counter affidavit filed before this Court, the entirety of the circumstances and the petitioner's conduct shows that this allegation cannot be true.'

We assume that in view of what was stated by the learned Additional Advocate General before this court he is not pursuing this stand taken to his notes. If it is admitted that the petitioner met Sri Karunakaran on 10-3-1976 or some other day at about that time and then representation was made to Sri Karunakaran if the answer was different from what is stated by the petitioner that should have been mentioned in the counter affidavit. Whatever that be we cannot fail to give credence to the petitioner's case that he met Sri Karunakaran to represent about his grievance and evidently that must have been either on 10-3-1976 or somewhere about that time. It is more so when the petitioner has offered himself for cross-examination on his affidavit and the learned Additional Advocate General said that he does not desire to cross examine him.

29. It has come out that repeated representations made to the Government of Kerala were not of any use to the petitioner. He was not even shown the courtesy of an acknowledgment. To the Home Secretary he is said to have sent representations on 15-6-1976 by registered post, on 1-7-1976 and yet another on 6-8-1976. Mention is made in the counter affidavit of the 1st respondent that two unsigned petitions one dated 15-6-1976 and another dated 6-8-1976, were received in the Home Department. There is no denial that the petition dated 1-7-1976 was not received or that it was not signed. It appears that the case is that no action was taken on the petitions because they were unsigned. But it is seen that the petition dated 15-6-1976 is received, numbered and some action taken thereon, while not even any initials are seen on the petition dated 6-8-1976. Anyhow it is not necessary to go into this further. It is only when representations made by the petitioner to the Members of Parliament, Home Minister of Government of India and President of India were forwarded to the State Government that the necessity was felt for sending a report to the Central Government and the report Ext. X1 was obtained in that context. It is evidently based upon the report of the District Superintendent of Police, Kozhikode. A copy of that report was filed by him along with his counter affidavit marked Ext. R1. That shows the indifferent and careless manner in which an enquiry is said to have been conducted. In that report it was mentioned that the principal could not trace out the office copy of the communication from the college office. The background materials based on which he wrote to Sri Eachara Varier were also said to have been not available at the college office. Evidently the reference is to Ext. P1 file. The Principal categorically stated that the police officers did not question him about the letters he had written and about the report to the Governing Body and also to the Ministry of Education. Evidently therefore no serious attempt was made to look into this matter.

30. By itself the question whether the petitioner met the Home Minister on 10-3-1976 to represent about the disappearance of his son may not be very significant. But that becomes relevant as background material to assess the subsequent conduct of the Home Minister. It could possibly be said that the several representations received by the Home Secretary direct from the petitioner and through the Central Government did not come to the notice of the Home Minister. But the representation sent along with the letter of Sri Viswanatha Menon did come to his notice. The reply Ext. P1 is signed by him personally. If on 1st March, 1976 or thereafter the petitioner had met the Home Minister in connection with the controversy and the issue had not been closed for months, the Home Minister would have been, in the normal course, able to say that no action was called for as Rajan was not in custody. Ext. P3 is at least evidence of the fact that even as late as in December, 1976 the State or its officers had no case that Rajan had not been taken into custody, though the Home Minister himself had been contacted soon after 1-3-1976. Whether by Ext. P3 the Home Minister intimated that the matter of release was under consideration is a question on which there is keen controversy. For the Home Minister it is said that this was not what was meant. Though plainly read this is what appears from the words "prasthutha karyam" ["the said matter"] in the Ext. P3 letter. We do not want to rule out the possibility that what was meant was only that the petition was under consideration. If at all we err in this, we would like to err so as to accept the explanation of the author of the letter. Moreover we would like to base our decision on surer grounds and not on the construction of Ext. P3 letter. But the conduct of all those who dealt with and who were responsible for dealing with the successive representations of the petitioner received by the Home Secretary and the Home Minister is callous, if not highly suspicious. Though no action seems to have been initiated on representations received by the Home Secretary directly from the petitioner, it had to be a different story when representations made by Members of Parliament to the Central Government were forwarded to the 1st respondent. Sri A. K. Gopalan's letter together with the petitioner's representation is seen forwarded to the 1st respondent on 10-9-1976. Thereupon this was sent by the 1st respondent to the 2nd respondent, the Inspector General of Police, for his remarks. This was by letter dated 17-9-1976. A similar representation from M. K. Krishnan, M.P. was forwarded to the 1st respondent by the Home Ministry of the Union Government on 13-9-1976. It was then that Viswanatha Menon, M.P. forwarded the representation of the petitioner along with his letter to the Home Minister Sri Karunakaran along with his letter dated 19-9-1976. That again was directed to be forwarded to the 2nd respondent for enquiry and necessary action. The

Inspector General of Police seems to have sent up no report, so much so that he had to be reminded by letter dated 11-10-1976. On 22-10-1976 the Inspector General seems to have informed the 1st respondent that the matter was under correspondence with the D.I.G., C.I.D. and Railways and the report was awaited. In the meanwhile Sri Viswanatha Menon complained to the Home Minister by his letter dated 5-11-1976 that his earlier letter had not even been acknowledged. Possibly it was because of this reminder that Ext. P3 was sent nearly a month later. The Inspector General of Police was again reminded by the 1st respondent for the report by his letter dated 11-12-1976. The 2nd respondent in his turn wrote to the Deputy Inspector General of Police, Railways and C.I.D., reminding him that the report be sent. The Deputy Inspector General of Police, Railways and C.I.D. replied to the Inspector General of Police, that the report had been called for from the Superintendent of Police, Kozhikode and that was not received and hence was being reminded. Then comes the report of the Superintendent of Police, Kozhikode already adverted to elsewhere in this Judgment. Nothing but a casual enquiry seems to have been made. But every officer concerned seems to have been quite satisfied. They were evidently more interested in some report to be forwarded to the Union Government than in the report itself. None seems to have exercised himself on the correctness or adequacy of the report. The inordinate delay in setting a report, the casual manner in which the report was prepared, and the indifference with which it was considered by those through whose hands it passed need not be particularly commented. We are afraid it is nothing but a general reflection of an attitude of indifference to such issues relating to liberty and freedom of the citizen, and it must be a matter of great concern particularly because at the relevant period the citizen had no protection from court but had depended on the good sense and fairness of the executive.

31. Though all the respondents in this case have filed counter affidavits respondents 1 to 4 do not purport to speak on the issue before us from their personal knowledge. They were not in position to say from first-hand knowledge that Sri Rajan was not taken into police custody. The 5th respondent swears that he was present throughout in the Kakkayam Tourist Bungalow and that Rajan had not been taken there. We are not impressed with his statement. We have commented elsewhere in this judgment about the report prepared by him on the matter of disappearance of Rajan, a copy of which is filed along with his counter affidavit. We have, on the evidence of Professor Bahauddin, found that Ext. P1 file which was available was never sought by the police officers who conducted the enquiry and if so to say that background material was not available as seen stated in the report of the 5th respondent is nothing but dishonest.

Even after this evidence came into the case, Sri Lakshmana, the District Superintendent of Police had not offered himself for cross-examination. We have chosen to accept the evidence PW 9 who saw Rajan in the Kakkayam Tourist Bungalow. In these circumstances the counter affidavits filed by the respondents in this case are of no assistance to them in meeting the case that Rajan was taken into custody by the police on 1-3-1976.

32. It may not be out of place to point out that the counter affidavits have not been of much assistance to us also. Taking into account the gravity and the seriousness of the case we would have expected the counter affidavits of the Home Secretary or the then Home Minister to detail all the steps taken by the State Government in the matter of enquiry into complaints relating to the whereabouts of Sri Rajan. We would have expected an explanation for the delay in getting a report. We would have expected the affidavit of Sri Karunakaran, the present Chief Minister also to be more categorical, particularly in answering the plea that the petitioner met him on 10-3-1976, soon after the date on which the student is said to have been arrested. We would also have liked to know what, if any, was his response, if it was not that he would look into the matter. We would naturally have been anxious to know whether there was any follow up by Sri Karunakaran. We leave the matter of the counter affidavits at that.

33. At the hearing the learned Additional Advocate General submitted that it was proposed to appoint a Commission of Enquiry to go into this question. The issue arose long ago and it was only after the petitioner moved this Court that any such idea of appointing a Commission has arisen. We are not impressed by this offer. That apart, that would not be an answer to this writ. We cannot abdicate our function to adjudicate on this application in the hope that Government may in due course set about finding about the truth of the case. We are constrained to decide this case on the evidence before us.

34. From what we have discussed above, we find that Sri P. Rajan, son of the petitioner, was taken into custody from the premises of the Regional Engineering College Hostel, Calicut on the morning of 1-3-1976, that he was taken to Kakkayam Tourist Bungalow and was seen there on 2-3-1976. Therefore that part of the case stands proved.

35. The next question is whether it is shown that Sri Rajan continues to be in the police custody. If he does not, even if we find that he was once taken into custody we may not be able to issue any writ to the respondents. We do remember that a writ of habeas corpus is purely remedial and 'carries no punitive or deterrent force, save in so far as the authorities may be embarrassed by adverse publicity'. But the question whether Sri Rajan is in police custody now

is a matter for investigation. Now that we have found that he was taken into police custody normally he should be deemed to continue in such custody unless otherwise shown. Of course it is open to the respondents to show that he is no longer in such custody by reason of his having been released or he having absconded or having died in police custody. This is a pleading which the respondents should make in reply to the rule when once the fact of the police taking Sri Rajan into custody is either admitted or proved. But unfortunately the respondents have disabled themselves from pleading so or proving it by the stand they have taken. If we are called upon to decide one way or the other as we are, normally the presumption that Rajan continues to be in police custody has necessarily to be drawn by us. We have necessarily to notice the peculiar circumstances under which we come to the conclusion for the purpose of this petition that Sri Rajan is in the custody of the police. In moulding the relief in this case we will have to bear in mind this unique circumstance.

36. The very difficult part of our decision-making process in this case is the determination of the remedy that should be granted to the petitioner in the circumstances indicated. That a writ of habeas corpus need not be equated with its counterpart in England, though analogy may be drawn from it, is a principle well established. The power of the High Court to mould relief to suit the requirements has been recognised by the Supreme Court of India in *Dwarka Nath v. Income Tax Officer, Special Circle D Ward, Kanpur and another* (AIR 1966 SC. 81). The Court said:

‘..... but the scope of those writs also is widened by the use of the expression ‘nature’, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure.’

37. While discussing the relief that should be granted in this case it will be profitable to advert to a decision of the House of Lords in *Thomas John Barnardo v. Harry Ford* (1892 A C. page 326.) That was a case where on an application by the mother for a writ of habeas corpus in respect of her child directed to the head of the institution in which the child had been placed, it appeared that the child had been handed over to another person to be taken to

Canada without the authority from the mother. The Queen's Bench Division directed the issue of a writ in the circumstances and the Court of Appeal confirmed it. The House of Lords confirmed the decision of the Court of Appeal holding that the writ ought to issue on the ground that the applicant was entitled to require a return made to the writ in order that the facts might be more fully investigated. Having found that the petitioner's son was taken into police custody and has not yet been released or accounted for by the police we would be distressed at leaving the matter there merely because of the affirmation by the respondents that the boy is not with them under the custody of any police officer in the State. If in spite of the facts that have come to light in this case no consequences follow it may lead to continued use of unfettered powers by the executive and especially the police which may ultimately erode the basic values on which the democratic way of life in this country is founded. If we are not satisfied about the answer by the respondents particularly because no explanation is even attempted as to how they dealt with Rajan and where he is at present we should be able to deal with the matter. Personal freedom and liberty is the most cherished fundamental right of an individual and when we find as in this case that the authorities who have the backing of the police force of the State have infringed that freedom by taking a person into illegal custody we will not be satisfied unless it is shown that it is not possible for this Court to exercise its power to set the person at liberty. The very vehement plea by the Additional Advocate General that any direction would result in finding the respondents guilty of something for which they are not shown to be personally responsible and therefore we should desist from issuing any writ does not impress us at all. We repeat that our objective is not to impose any punitive actions for the improper conduct of any official but invoke and exercise the authority placed in this Court to protect the citizens' freedom, solemnly remembering the obligation of the Higher Judiciary of the land to act as sentinels of human liberty whenever and wherever there is serious threat to it. The petitioner's grievance is genuine. As a distressed father he invoked the powers of this Court. to command whoever is in custody to direct production of his son in this Court so that he may be released. Having positively found on the evidence that Sri Rajan has been taken into police custody and on the presumption that unless it is shown that the custody came to an end it would have continued with the police, we cannot but grant relief in this case. But as we said earlier we shall not foreclose the opportunity of the State to make amends for what it should have done earlier. What we have in mind by way of direction to be issued in this case would, we hope, achieve this object.

38. Lastly, Sri T. C. N. Menon, the learned Additional Advocate General urged that if some police officers misconducted themselves by taking into police custody any person without authority and kept him in police custody for the purpose of interrogation that will certainly call for stern action against such officers but would not be sufficient to issue a writ against the superior officers who are not directly responsible for the illegal detention. We are afraid this is oversimplification of the issue. The police officers taking a student from a college hostel for the purpose of interrogation possibly at places designed for this purpose in connection with investigation of cases are acting in their role as police officers. It is more so when, in spite of notice of the State being brought to this situation, nothing has been done to disapprove of such action. If what is alleged in this case is true—we have found it to be so—it is only a symptom of a disease. It would not be possible under such circumstances for any person seeking a writ of habeas corpus to pinpoint the officer who has taken the person into police custody. When the fact is that officers using police power of the State take persons into custody and deal with them as if such custody is required for the purpose of interrogation, it is not necessary that the petitioner should show which officer has the custody of the person at the moment. To say otherwise would be to unreasonably limit the doctrine of habeas corpus and deny the legitimate exercise of the function of this Court. The belated attempt made by the learned Additional Advocate General at the hearing to assign the blame on some overzealous police officers does not impress us as sufficient to warrant refusal of relief to the petitioner for that reason. It is not as we have no material in this case to indicate the police officers who could be said to be involved in the taking of Rajan into police custody. PW 4 had particularly identified the Crime Branch Inspector Sreedharan and the police constable who were on the scene when Rajan was taken into the van. The presence of Pulikkodan Narayanan at the Kakkayam Tourist Bungalow when Rajan was seen to be under restraint and was being tortured has also been spoken to. The presence of Superintendent of Police Sri Lakshmana at Kakkayam Tourist Bungalow at the time when Sri Rajan was being put on torture is also spoken to by PW 9 and we have accepted his evidence. Maybe if we are concerned with pinning the responsibility on one officer or the other, this evidence may have to be used. But this is not relevant because the question here is who is in custody of Rajan at the moment. If Rajan came into police custody in whose custody he is at the moment is a matter which must be peculiarly within the knowledge of respondents in this case and in such a case the writ must issue against those persons who are in a position to give effective compliance to the writ.

39. We may refer to a passage from the treatise on the Law of Habeas Corpus by R. J. Sharpe at page 170. The learned author says:

‘The general rule is that the writ of habeas corpus should be directed to the person who has physical custody of the prisoner. The writ may, however, be directed to several persons where there is some doubt as to who has custody or, to some person other than the gaoler or actual custodian of the party detained. With respect to the latter possibility, problems may occur where it is doubted that the person to whom the writ is directed has sufficient custody or control of the prisoner.

This issue will usually arise where it is sought to make a minister of the crown respondent to the writ. This has been done in a large number of cases without any argument or comment.’

In *King v. Secretary of State for Home Affairs, Ex. Parte O'Brien* (1923 (2) K.B. 361) the Court of Appeal in England considered the issue of an application of writ of habeas corpus to the Secretary of State when the applicant had been arrested and had been deported to Dublin. His case was that he should not have been restrained and therefore should be released. By surrendering the applicant to the Free State Government the Secretary of State had lost the legal control of his body. But notwithstanding this the Court of Appeal took the view that the application was properly made against the Secretary of State as there was sufficient doubt whether he had not, in view of his agreement with the Government, exercised de-facto control over the applicant’s detention. The author to whom reference was made earlier, Mr. R. J. Sharpe commenting on O’Brien’s case remarks thus:

‘The principle established in the O’Brien’s case is a sound one. It identifies the real issue as being that of control so that the Court’s order will be effective. The test may be stated as follows: if an order of discharge is made but not carried out, would it be reasonable to hold the prospective respondent to account for failure to implement the order?’

40. It is not disputed that the police visited the Regional Engineering College to interrogate the students in connection with the Crime No. 19 of 1976. In paragraph 5 of Ext. R1 it is admitted that the investigation of the case was conducted jointly by the Crime Branch and the local police and the 5th respondent was present throughout from 28-2-1976 to 12-3-1976 at the investigation camp at Kakkayam. His statement that Sri Rajan was not brought to the investigation camp cannot, as we have already found, be believed. Therefore it is only natural that the writ is to issue to him as well as the 3rd respondent, the Deputy Inspector General of Police who was in-charge of the investigation of the case on behalf of the Crime Branch. Since it is not ascertained as to which officer of police or which station of the police is in custody of Rajan now it

cannot be said that the writ cannot be issued to the Inspector General of Police. It would be only appropriate in the circumstance of the case that the Secretary, Home Affairs and the Chief Minister are also those to whom the writ is directed in the context of what we have said earlier. In the circumstances we think that in order to obtain compliance the writ should be issued to respondents 1 to 5.

41. We now come to the course to be adopted in this case. It is difficult to believe that any serious notice had been taken of the petitioner's complaint at any earlier stage. That it has been brought to the notice of Sri Karunakaran, the then Home Minister, cannot be in doubt. There is some evidence disclosed to show that after the relaxation of the emergency the issue has become rather serious, particularly among the student population. We are referring to the resolution passed by the Calicut Engineering College Union protesting against the statement of Sri Karunakaran that Rajan has not been taken into custody. Possibly as a result of this or possibly as a result of this petition there is an offer by the Additional Advocate General that a Commission of Enquiry will be appointed soon after the decision of this case to go into the truth or otherwise of the arrest of Sri Rajan. As to the truth of that we have already found. If honestly the Government is not in a position to tell the Court the whereabouts of Rajan it is highly regrettable. There should no doubt be sincere anxiety to bring to book those responsible, but more than that it should be to ascertain the whereabouts of Rajan and if he is not available to make it known to the parents what happened to him after he was taken into police custody. Whether he is still in police custody and if not, how such custody came to an end, has to be found out. We do not feel that any such honest anxiety is reflected in the offer to appoint a Commission under the Commission of Enquiries Act. We know that failure to comply with the direction to produce Sri Rajan may result in the respondents being held guilty of contempt. But our primary concern is to grant effective relief in this case if that would be possible.

42. We hereby issue a writ of habeas corpus to the respondents directing them to produce Sri Rajan in this Court on the 21st of April 1977.

43. If, for any reason the respondents think that they will not be able to produce the said Sri Rajan on that day their counsel may file a Memo submitting this information before the Registrar of the High Court on 19th April, 1977 in which case the case will stand posted to 23-5-1977, the date of re-opening of the Courts after the midsummer recess. On that day the respondents may furnish to the Court detailed information as to the steps taken by the respondents to comply with the order of this Court, and particularly to locate Sri Rajan. Thereupon it will be open to this Court to pass further orders on this petition

and to that extent this order need not be taken to have closed the case. We know that we are adopting a very unusual procedure for which there is no parallel or precedent. But our power to do so cannot be in question, for, it is to enforce the object of finding out the truth and giving relief that we are adopting this procedure. We cannot think of a better device by which the Court's conscience would be satisfied.

43 (a). It is unfortunate that the respondents have not viewed the matter with the sense of responsibility expected of them at least when their attention was drawn to the serious situation. We once again reiterate that such responsibility cannot be disowned as if it is some stray act of some police officers somewhere. We do fervently hope that the guilty would meet with punishment though it is not our province to impose any.

Costs incurred in this petition so far will be borne by the respective parties.

Khalid J: —

In view of the importance and unique nature of this case, I think it proper to add a few lines to what has fallen from my learned brother. My learned brother has in his judgment just pronounced dealt with the facts and evidence in the case in great detail. I therefore refrain from repeating the same.

2. This petition poses a simple question, of which the solution also should have been simple. But the solution has been rendered difficult on account of the unhelpful attitude of the respondents. What is involved in this case in more a human problem than a legal one.

3. A heart-broken father, with his wife mentally deranged, with his home made desolate by the disappearance of his only son, with his two daughters grief-stricken over this tragedy, has, after approaching the high dignitaries of the State and the Centre, taken refuge in this Court as a last resort requesting this Court to exercise its sacred duty to cause the production of his son who disappeared from 1-3-1976. If the respondents had assisted us in this difficult task, and helped us to get at the truth, our task would have been easy. In view of the rigid stand taken by the respondents that Rajan the petitioner's son, was never taken into custody by the police, we had necessarily to probe into the matter further by taking evidence.

4. According to the petitioner, the Principal of the Regional Engineering College informed him by a registered letter that his son was taken into custody by the police on 1-3-1976. Ever since, he has been petitioning to several important

persons, going about the various jails in the State, and approaching persons highly placed in life, to ascertain the whereabouts of his son. In the affidavit filed in support of the original petition and in the reply affidavit he has given the various details which culminated in the filing of this petition.

5. In the counter affidavits filed by the respondents, the stand taken is that Rajan was never taken into custody. The counter affidavits and the documents filed along with these affidavits have been closely scrutinised by me. I have painfully to observe that the respondents have tried to hide the truth from this Court. I am emboldened to say so on the affidavits filed by disinterested persons and their oral evidence.

6. The silver lining in this unhappy case is the evidence of the Principal. He has unequivocally and in clear terms spoken about the fact that he knew in the early hours of 1-3-1976 that Rajan was taken into custody by the police. This is evidenced by the registered letter sent by him to the petitioner. He has proved the copy of the letter. He also deposed that he informed the governing body of the College and the Central Education Ministry about this matter. There has not been any challenge against his evidence. The learned Additional Advocate General during his submissions at the bar conceded that the evidence of the Principal has to be accepted in toto. The only contention raised by him was that the information obtained by the Principal regarding the taking into custody of Rajan was from others who have not been examined. In other words, the contention is that the evidence of the principal cannot be said to be direct evidence about the taking into custody of Rajan. I have no hesitation to reject this plea. On no account can the evidence of the Principal be ignored in support of the plea that Rajan was taken into custody on 1-3-1976. The life of Rajan, or for that matter of any citizen of this country, is too precious to be decided on a technical plea based on the principle of hearsay evidence. At a time when nobody was interested in fabricating any false case, the Principal has sent this letter intimating the petitioner about the fact that his son was taken into custody. This piece of evidence has all the solemnity about it and no argument will be of any avail to reject this evidence.

7. Evidence about the disappearance of Rajan is given by other witnesses also. They are PWs 2 to 10. A close scrutiny of their evidence clearly shows that on 1-3-1976 Rajan was taken into custody. Their credibility has not been challenged. All that the learned Additional Advocate General submitted regarding their evidence is that their evidence is not consistent and is full of contradictions and therefore cannot be made the basis for a conclusion that Rajan was taken into custody on 1-3-1976. A very minute analysis of the evidence may indicate

that there is some discrepancy regarding the identity of the policemen who came and regarding their apparel. The discrepancies, if any, are only inconsequential. The evidence of these witnesses is conclusive on one aspect, and that is, Rajan was taken into custody on that day. It was not suggested that these witnesses were perjuring or that these witnesses have any particular bias against the respondents. The only submission made before us was that they have given an exaggerated version in view of their emotional involvement in the case. Even granting this submission to be well-founded, this cannot take away the effect of their evidence that on 1-3-1976 Rajan was taken into custody.

8. We are not interested in this case to find out the guilt of any particular person. We are only interested in this case to find out the truth whether Rajan was taken into custody on 1-3-1976.

9. The evidence of these witnesses taken as a whole proves beyond reasonable doubt that Rajan was taken into custody on 1-3-1976. He was last seen on 2-3-1976 being tortured and taken in an unconscious state. The respondents have no case that he was either released or that he made good his escape or that he has left this world. The presumption therefore is that he continues to be in the custody of the police. On this finding, therefore, a writ has necessarily to issue.

10. If the respondents had taken this Court into confidence and given all the details truly and correctly, we would have been in a better position to pass an effective order. The petitioner tendered himself for cross examination. The State Counsel did not want to cross-examine him. The petitioner's counsel submitted that if all or any of the respondents were tendered for cross-examination he was willing to do so. We would have been happy if the respondents had made themselves available before this Court to aid us in getting at the truth. But that was not to be. At any rate the respondents cannot take shelter under the specious plea that it is outside the domain of this Court to take evidence in a case like this. Some of the affidavits filed in this case on behalf of the respondents have not been sufficiently communicative and some others are incorrect on facts. The statement in the affidavits of the 1st and 5th respondents that the Principal did not have the letter sent to the petitioner and the back papers is a reckless and irresponsible one, almost bordering on untruth when it is read along with the evidence of PW 1. Since these affidavits have been considered at length by my learned brother, I err on the side of brevity and content myself by observing that there has been more an attempt at suppressing truth than in divulging it.

11. The most difficult aspect of the case has been the nature of the order to be passed in this case. We have spent anxious hours considering about this aspect of the case. We will be abdicating our function if we do not, on the finding that Rajan was taken into custody on 1-3-1976 and continues to be in such custody, issue a writ of habeas corpus for production of Rajan, the petitioner's son. In view of the peculiar circumstances of this case, I respectfully agree with my learned brother to the form of the order to be passed in this case.

Which is denser—the pain of the son at the death of his father or the pain of the father at the death of his son?

From the tears of a father's pen comes an eloquent, moving and remarkable statement on cruelty, courage, and enduring hope. Professor Eachara Varier describes his desperate and ultimately unsuccessful attempts to get his son out of a police camp where he is taken one morning for no reason. The camp is a place where the rules of life and death are very different to the rest of the world. It is a place where a few officers have absolute power to decide who to arrest, how to arrest them, how to torture them, when to kill them, and how to dispose of their dead bodies. Above them are the senior police officers, politicians and bureaucrats who must hide the truth from the families of victims and wider society. And then there is the father who struggles against them all...

Memories of a father brings back many poignant memories to me of the traumas that I suffered as a member of one of Sri Lanka's Disappearances Commissions in the nineties, when fathers and mothers came before us, asking us for justice on behalf of their disappeared sons and daughters. I hear their cries still echoing in my ears. When will these pleas be heard in all their sadness in India, Sri Lanka and countless other countries in which citizens have been victimised?

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