



The ongoing upheaval in several areas of society in Sri Lanka has been in the public domain for a while. Of them, the reasons for the urgent attempts to suppress the judiciary do not seem accidental. The quest for the replacement of the democratic style of governance with a "police" state where the military and intelligence services will have enormous powers has been on the cards for some time.

A palpable sense of impunity for actions by the executive and the security establishment against the freedoms of the individual has been a stark reality over the years. The allegations of serious abuses of human rights from enforced disappearances, extrajudicial killings, rape of children, sanctioned torture and underworld kidnappings are often never seri-

ously investigated. The principle of the rule of law, which is that no one is above the law. With this move the very possibility of the judiciary being on par with the executive was removed and the executive was placed above the judiciary.

"The judicial power of the People shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, wherein the judicial power of the People may be exercised directly by Parliament according to law". By this clause the courts were effectively placed below parliament. "Emergency" laws and the "anti-terrorism" laws removed the power of the judiciary that protected the rights of the individual through what has come to be known as 'ouster' clauses.



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roles of accusers, judges and executioners. No courts will hear your complaint with the expectation of a fair hearing.

In the present manifestation of a precursor to the above, a panel adjudicated by lay individuals the majority of whom belong to the complainant party and on whose approval the impeachment

SETTING THE SCENE FOR A BRAVE NEW SRI LANKAN STATE



ously investigated.

Regimes beleaguered by serious economic problems will continue to impose harsher conditions on the populace. It is anticipated that such measures will necessarily bring about retaliation from labour unions, the legal fraternity, educationists and other organisations representing citizens. Protests of the people can be ruthlessly crushed and recourse to justice will be denied within such a scenario.

The government seems intent on conveying a strong message to the effect that natural justice is no longer welcome. The courts will be required to approve government decree and protection of individual freedoms will be regarded as a hostile action against the government.

The once "independent" legal fraternity stand to lose significantly when the possibility of the protection of the dignity and the freedom of individuals is no longer feasible.

The present imbroglio is veritably the last chance available for everyone including the judiciary and the legal profession to fight back from the ultimate threat to survival of the judiciary as a non-aligned entity and the possibility of the protection of the final vestiges of dignity and the fundamental rights of the individual in Sri Lanka.

Many years of cumulative neglect and condoning by individuals within the judiciary has led to the possibility of the "executive" president being able to straddle a position and make a final thrust against any modicum of challenge by way of demand for justice.

Removal of judges in Sri Lanka according to the constitutional scheme is virtually in the hands of the executive. This skewers the very root of judicial independence. Though the "people's representative" legislature is involved, the requirement of a simple majority in that shallow institution makes the ultimate decision at the whim of any government, which invariably has a majority vote in that largely disreputable institution.

Select committees forming a resolution passed by parliament shall be presented to the president for the action of removal of a judge. In this convenient scheme of processes, the judiciary is entirely under the benignancy of the government in power.

This highly selective comparative exercise brings to the fore, the inadequacies of the Sri Lankan method of removal of a judge, which is a heavy setback on independence of the judicial institution, a concept that has been accepted as a coveted virtue in the more mature, developed world. The lack of it is a severe dent on the rule of law, human rights protection and liberty quotient of citizens in relation to its government.

The arrogantly promulgated 1978 constitution placed the executive president outside the jurisdiction of the courts and technically above the law. This was a serious infringement on the very foundation of

The appointment processes of judges were tampered with by successive "executives", who took upon themselves to appoint the judges of their choice instead of following proper procedures, which would have ensured that the judges were chosen on the basis of merit and fair procedure. In some countries judges are not considered to be part of a separate branch of the state but mere government servants like others of similar status. In communist China, parts of north Africa in theocratic Islamic states, Vietnam, Cambodia and militarised Burma, judges do not have judicial independence and simply perform administrative functions.

In the above scenario, citizens will not have protection of their individual rights. The protection of individual rights is the sole prerogative of an independent judiciary.

In law enforcement, the vacuum that will be created by the removal of the independent character of judges will be filled by the Ministry of Defence.

Paramilitary and intelligence services will play the multiple

was originated, sit in judgment.

This fundamentally violates the basic principles of criminal and natural justice which state that the accuser must not be the judge of his own case.

"Sovereignty of the Sri Lankan People under the 1978 Constitution is one and indivisible. It remains with the People. It is only the exercise of certain Legislative, Executive and Judicial powers of the Sovereign People that are delegated to Parliament, the Executive and the Judiciary. Fundamental Rights and Franchise remain with the People and the Supreme Court has been constituted the guardian of such rights."

There cannot be such a thing as "Sovereignty" of Parliament. The authority and independence of parliament is limited to what is set out in the constitution and therefore the extent of such authority and independence are subject to the interpretation of the Supreme Court. That should be the final word in this embarrassing fiasco.

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