



# PLIGHT OF OUR NATION: SF THEN; CJ NOW

I thought the President would have chastened himself after the Sarath Fonseka episode. Vital issues pertaining to morality, justice, fair play, and legality were part of the public discourse during that incident. The bending of the arm of the judiciary to accommodate the desires of the powers that are was plain for all independent thinking persons to observe. Eventually SF was released due to US government pressure. The release wasn't unconditional and the man that the President had once declared to be "the greatest Army General in the World," lies deprived of his hard-won titles, his pension and his citizenship rights. President Mahinda Rajapakse smiles! There is nobody who could beam better before the camera.

This gory act of deprivation of a solid and quality general who had won the war for us will stand as a black mark in the annals of Lankan history.

Nor was that the last to be. The impeachment motion against the Chief Justice Dr Shirani Bandaranayake is the next shocker. With a two-third parliamentary majority on his side and his brothers tightening the reins from the vantage point of key positions of

started the rot. It is reported that Sarath had recently expressed his regret over his decision on the "Helping Hambantota" case. If that report is correct, even for a retired CJ it isn't a statement that should have been made. It only exposes the former CJ's politicization of the judiciary. Sarath also allowed the floor-crossing gimmicks of Opposition MPs. This has since caused innumerable complications to the practice of our democracy. Some former judicial high-ups have had no compunction in accepting jobs in the Presidential Secretariat. This new practice raises questions regarding their impartiality while in office. On the other hand, government has also begun a questionable practice of appointing the kith and kin of justice personnel as ambassadors in our missions. Premadasa had started by giving judges houses.

All this has exposed a serious crisis in the highest body of adjudication in our country. Gone are the days of a justice system that evoked absolute respect from the people. Ranil Wickremasinghe put it nicely recently. He said that when the house of the judiciary permits the entry of thieves it cannot complain when the thieves engage in their act of thieving. I think that is aptly put. In the last analysis incumbents in office-whatever that

"Judges may be dismissed only on serious grounds of misconduct or incompetence, after a procedure that complies with due process and fair trial guarantees and that also provides for an independent review of the decision." She noted that "the misuse of disciplinary proceedings as a reprisals mechanism against independent judges is unacceptable." In her view, Knaut said, "the procedure for the removal of judges of the Supreme Court set out in article 107 of the Constitution of Sri Lanka allows the Parliament to exercise considerable control over the judiciary and is therefore incompatible with both the principle of separation of power and article 14 of the International Covenant on Civil and Political Rights." The High Commissioner did put it succinctly and accurately. The Chief justice had incurred the wrath of the President over a few matters of the recent past. She stood firm when a Deputy Minister threatened a magistrate over the telephone. She stood firm over the case of Z scores. When the

President took the unprecedented step of summoning the judges for a chat the CJ and other judges refused to comply because that would have compromised the image of the judiciary before the public perception. A letter went from the JSC secretary reminding the government that the judiciary should not be politically interfered with. Finally, the CJ gave a verdict on the Divineguma Bill stating that the bill had 14 instances of violating the constitution. Can anybody in his or her good sense disagree with the Chief Justice? The Divineguma, if it becomes law, will effectively take an 80 billion worth of government jurisdiction out of parliamentary control. No questions could be asked regarding its operational details. Somebody remarked that Divineguma will create a government within the government. But, then, it is in the hands of the President's brother. Ask no questions. The political context and political motivation surrounding this impeachment motion is therefore clear. A woman MP was given parliamentary time to heap personal abuse on the CJ. This woman spoke in true Mariyakade style. I am not sure if she had lifted her sari while pouring her vitriolic. What happened thereafter is known. The rubber stamp of parliament has been received for the impeachment motion. MPs had to lock up their conscience and cast their signatures to the motion. "It is not to

question why; but to do or die."

The nation is dying under a vicious Executive Presidential System. That system catches all into the spider web of a patronage process. Society is divided, with each one witch-hunting on the other. The



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Executive Presidential System has demonstrated that it does generate the worst within humans- selfishness.

Alas! The institution that is fundamental to the liberty of the people and the rule of law is now engaged in a battle for survival.

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## The nation is dying under a vicious Executive Presidential System.

power President Rajapakse doesn't seem to have any qualms about riding roughshod over institutions that have thus far been the mainstay of all that's decent in the life of our nation. Since the war had been won it has all been an exercise of power for the government. Parliament is captive. People are captive.

We haven't seen anything in the areas of policy development in country that cries for changes in all areas of governance. Ministers warm their chairs and are more interested in scoring marks from the President, the brothers, and the innocuous-looking but powerful son. With the 18th Amendment on, the President has amassed all power around himself and he runs the country on a system of patronage with carrots aplenty to hand out to those who get on his side and with sticks aplenty to aim at those who dare to cross his path. A farming out of money-making opportunities is the modus operandi.

The behavior of our judiciary over the last five or six years has been far from exemplary. Former CJ, Sarath Silva, may be said to have

office may be, have to protect the honor of their office for themselves and for future generations. In other words keepers of office should never let down their offices. Justice Bandaranayake received a letter from the Parliamentary Select Committee set up to investigate the impeachment motion asking her to respond to the 14 allegations against her within seven days. Revd Maduluwawe Sobitha remarked that even a criminal is given more time. The CJ asked for more time but has, reportedly been refused. A team of leading lawyers led by Romesh de Silva will represent her. They were preparing her responses to the charges. These developments came as the impeachment resolution itself caught the attention of the office of the UN High Commissioner for Human Rights. From its headquarters in Geneva, Gabriela Knaut, the UN Special Rapporteur on the independence of judges and lawyers, issued a detailed statement:

The UN High Commissioner issued the following statement:

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මධ්‍යම කාලීන යුගයේ නොව මේ සහජාතයේ ආරම්භයේ සමහර තෙල්බානන් ත්‍රස්තවාදීන්ගේ චේතනාමය බාහිරයන් මුදු පුපුරුවා හැරියහ. එල්ටීටීඊ ත්‍රස්තවාදීන් තරමටම අමාත්‍යවරයෙකු වූ තෙල්බානන් ත්‍රස්තවාදීන්ගේ මේ ක්‍රියාව නිසා ලංකාවේ පමණක් නොව නායිලන්තය, බුරුමය හා කම්බෝජය වැනි බොහෝ රටවල ඒ ඒ රටවල අභියාචක මුස්ලිම් බැතිමතුන්ට වරද පටවන්නට බියේ හත. එසේම තයිපීර්තාවේ හා කොකෝවේ අභියාචක කොන්ලිකාස් මුස්ලිම් අන්තවාදීන් අතින් මුරුකු පිටත් ඝාතනයට ලක්වූහ. එහෙත් කිසිම කොන්ලික රටක දේශීය ඉස්ලාම් වැඩියන්ට නිරන්තර කළ බවත් වාර්තා නොවේ. එවරම් බරපතල සිද්ධීන් පවා ශ්‍රී ලංකාවේ බොහෝ ඉස්ලාම් සමාජිකයන්ට බාධාවක් නොවේ නම් දැන් මේ දැමුණේ සුර සිද්ධිය 'මහ මෙරක් සේ උළුවනා' දේශපාලනිකයන්ගේ කිරීමට සත්‍ය දරන්නන් මන්ද?

දැමුණේ පමණක් නොව තව පුද්‍රා භූමි රාශියක් ශ්‍රී ලංකාවේ ඇත. මහනුවර දළදා මාලිගාව, විශ්ඤා කතරගම හා පන්තිකි දේවාල පමණක් නොව ශාන්ත පාළුව දේවස්ථානයේදී පිහිටා ඇත්තේ පුද්‍රා භූමි භූමිය.

පුද්‍රා භූමි ප්‍රදේශයක් තුළ සුරාසැල්, කැසිනෝ හා සුදු පොළවල් සහ ගනිතා මඩම් පිහිටුවන්නට තැන් කළ හොත් ඊට බරපතල දැවුම් දිය යුතුය. එහෙත් පුද්‍රා භූමිය තුළ තව පුද්‍රා ස්ථානයක් පිහිටුවීමේ ඇති වරද කුමක්ද? 1956 මැතිවරණ සමයේ අප දැමුණේ සැරිසැරුවේ මුදු. එදා දැමුණේ පුදු බිමක් නොව ජන භයාන ප්‍රදේශයක් විය. මුස්ලිම් භක්තිකයන් එහි සිටියේදැයි අපි නොදනිමු. එහෙත් අද දැමුණේ හතරයක් නොව මහා හතරයකි. නොතිදන හතරය යැයි කියනු ලැබේ. එය අතිවිශාල වෙළඳ මධ්‍යස්ථානයකි. එහි වැඩියන් බහුතරය කවර ආගමට අයිති වුවත් වැඩියන්ගේ මුස්ලිම් මවුතු සියල්ලෝම සංක්‍රමණිකයන්ය. තමන් නිත්‍යානුකූලව සංක්‍රමණය වූ පෙදෙස්වල තම පුද්‍රා ස්ථාන ඉදිකර ගැනීම මුලික මිනිස් අයිතිවාසිකමකි. මිස්සිට්‍රියානුවන් වෙල්බර්න් හතරයේ සියලු බොහෝ විනාශස්ථාන හතරක් කිවේ.

දැමුණේ මහ හතර සහායේ පැවැති ඉස්ලාම් හෝ නිදහස් හෝ ක්‍රිස්තියානි හෝ මිනීම බැතිමතෙකුට පුද්‍රා ස්ථානයක් පිහිටුවා ගැනීමට ඉඩදීම පුද්‍රාහත්තීක මුලික මිනිස් අයිතිවාසිකමකි.