



Short Note

Resolution Seeking Parliamentary Approval to Implement the Recommendations of the Commission of Inquiry on Political Victimization

19 April 2021, Colombo, Sri Lanka: On 9th April 2021, Prime Minister Mahinda Rajapaksa tabled a Resolution in Parliament seeking approval to implement the recommendations of the ‘Commission of Inquiry to Investigate Allegations of Political Victimization During the Period Commencing 08th January 2015 and Ending 16th November 2019’ (The CoI). The motion is listed to be debated in Parliament this week.

The CoI was established¹ on 9th January 2020 and its final report was handed over to the President on 8th December 2020. Approval of the Cabinet of Ministers was granted to submit the report of the CoI to the Parliament and implement the recommendations of the CoI on 18th January 2021.² Accordingly, on 29th January 2021, a Special Presidential Commission of Inquiry (SPCoI) was appointed to implement the recommendations of the CoI.³

The SPCoI is mandated to investigate the respondents mentioned in item No. 08 of the CoI report (relating to the Anti-Corruption Committee) and recommend whether they should be subjected to civic disability. The Resolution tabled on 9th April seeks to obtain parliamentary

¹ Gazette Extraordinary No. 2157/44 of 09 January 2020 available at http://documents.gov.lk/files/egz/2020/1/2157-44_E.pdf

² Cabinet Decision dated 18.01.2021 available at http://www.cabinetoffice.gov.lk/cab/index.php?option=com_content&view=article&id=16&Itemid=49&lang=en&dID=10884

³ Gazette Extraordinary No. 2212/53 of 29 January 2021 available at http://www.documents.gov.lk/files/egz/2021/1/2212-53_E.pdf

approval to implement the decisions and recommendations mentioned in Item No. 09 and 10, omitting Item No. 08, in the Final Report of the CoI.

This would include referring decisions and recommendations made by the CoI on the complaints in Item No. 09 to the relevant authorities, including the Commission to Investigate Allegations of Bribery or Corruption, the Public Service Commission, the Inspector General of Police, the Minister in-charge of the relevant Ministries and the Secretaries to the Ministries, for implementation.

The resolution seeks the approval of Parliament to initiate criminal prosecution of police officers, lawyers, officers of the Attorney General's Department, witnesses and others involved in the cases. It also seeks approval for the dismissal of several cases currently pending in court, undermining the independence of the Judiciary and the rule of law.

If the Resolution were to be passed in Parliament and subsequent action is taken, this would have both legal and political ramifications. In this short note, the Centre for Policy Alternatives (CPA) makes brief observations on the impact of such a Resolution and subsequent action. CPA will also be releasing a report commenting on the CoI, SPCoI and broader implications shortly.

Independence of the Judiciary

At the core of the CoI, SPCoI, and the Resolution lies the faulty suggestion that the Judiciary did not arrive at its findings during the time period under purview in an independent and impartial manner. This is inimical to both the independent functioning of the Courts and tribunals, as well as the public trust placed in the legal system. If the findings of the CoI were to be given effect to, the decisions of the Judiciary would be reassessed in a process external to the established Court system. This is an unprecedented step and would violate the sovereignty of the People, whose judicial power shall be exercised through Courts⁴,

⁴ Article 4 (c) *“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”*

according to the Constitution. CPA also notes that this is the latest attempt by the Executive to undermine the work of the Judiciary and this must be robustly countered to ensure each arm of government is able to work independently.

Moreover, this would have larger ramifications on the law enforcement and justice sector in general and further politicize entities required to work independently. This action would open the door to politically motivated action against investigators and prosecutors for carrying out their duties. This would result in a climate of fear and paralysis among investigators and prosecutors, stifling all current and future investigations involving persons of political influence. This would have an adverse impact on victims and witnesses, who may be deterred from coming forward due to fear of reprisal.

Furthermore, the impugning of the findings of a competent Court would also be in derogation of fair trial and due process rights which are safeguarded in the Constitution and upheld by the Courts.

Politicization of the Process

Despite seeking to alleviate incidents of political victimization, CPA notes that the CoI itself has become subject to criticisms of politicization. The procedure adopted in arriving at findings of political victimization, its mandate, and findings have been criticized and challenged by several Parliamentarians and others. CPA notes several areas that raise serious attention including due process concerns, acting outside its legal mandate, and reversing almost all judicial findings pertaining to political matters. This has led to criticisms relating to the politicization of the CoI.

Separation of Powers

If the Resolution tabled were to be passed, regardless of the legal validity of the resolution, the CoI, SPCoI and Parliament would override the judicial process, in violation of the principles of the Separation of Powers and the Rule of Law in a constitutional democracy. If the Legislature will be able to second-guess and reverse decisions of the Judiciary, this would

lead to the undermining of the judiciary as well as the usurpation of the judicial power of the people by the Legislature.

The list below includes the complaints in Item No. 09 for easy reference:

1. Complaints against criminal investigations into several cases such as the case of alleged abductions involving Admiral Wasantha Karannagoda and others, the assassination of MP Nadaraja Raviraj, the death of Wasim Thajudeen, the murder of Lasantha Wickrematunge, the assassination of former MP Joseph Pararajasingam, the Welikada prison massacre, the disappearance of journalist Prageeth Ekneligoda and the abduction of Keith Noayhr.
2. Complaints against the investigations of alleged financial irregularities and misappropriation of public funds in the Divi Neguma Department, the Tourism Development Authority, Co-operative Establishment (Sathosa), the Sri Lankan Embassy in the United States etc.
3. Complaint against the investigation of allegations of cheating and misappropriation against MP Udaya Gammanpila.
4. Complaint against the investigation into alleged misappropriation of public funds by former Minister Rohitha Bogollagama
5. Complaint against the investigation into misappropriation of public property in launching the Carlton Sports Network (CSN)
6. Complaint against the investigation into the alleged misappropriation of funds allocated for the Tharunyata Hetak Organisation
7. Complaint against the imprisonment of Duminda Silva
8. Complaint against the suspension of DIG of the Northern Province for the charge of aiding the escape the prime suspect in the Vidya murder case
9. Complaint against the investigation into the Avant Garde controversy
10. Complaint against the investigation into the Rakna Araksha Lanka company
11. Complaint against investigation into smuggled gold released to the Navy
12. Complaint against allegations of misappropriation of public funds in the Litro Gas case

13. Complaint against the investigation regarding the MiG aircraft deal with Ukraine
14. Complaints against disciplinary action and inquiries against several public officers including chairman of the National Lottery Board, employees of the Sri Lanka Broadcasting Corporation (SLBC)/ Rupavahini Corporation (SLRC), Ceylon Petroleum Corporation, former School Principal Upali Gunasekara
15. Complaint against accusation of fraudulent transfer of funds related to the Hyatt Regency case

The complaints in Item No. 10 include

1. Complaint against the investigation into the purchase of a land by the D.A. Rajapaksa Foundation
2. Complaint against the investigation into the 16 acre land in Malwana alleged to have been bought by the former Economic Development Minister Basil Rajapaksa using public funds
3. Complaint against allegations of misuse of public funds against Commissioner of the Colombo Municipal Council
4. Complaints against removals of several public officers due to various allegations