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Constitutional Reform

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அரசியலமைப்புச் சீர்திருத்தம்

LAW & SOCIETY TRUST

3 Kynsey Terrace, Colombo 8, Sri Lanka
(+94) – 11 2 691 228 / 11 2 684 845 / 11 2 686 843
lstadmin@sltnet.lk / admin@lawandsocietytrust.org
www.lawandsocietytrust.org

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Re-launch of the LST Review

DINUSHIKA DISSANAYAKE
Executive Director, Law & Society Trust.

It gives me great pleasure to introduce the new LST Review. An institution in its own right, for over two and a half decades the Review has stimulated debate and discussion within Sri Lanka's changing socio-political and legal landscape. For this we at LST thank all those who have contributed to the Review over the years, its former editors and of course our readers.

The Review is in new hands—with Juanita Arulanantham and Thiagi Piyadasa as Co-Editors and Vijay Nagaraj, Head of Research at the Law and Society Trust, supported by Harshani Connel, Dilhara Pathirana and myself. We hope the Review will continue to be a space for diverse audiences and ideas and generate much needed critical analysis of socio-legal developments, both local and international.

Henceforth, the Review will be a quarterly publication and we look forward to your critical engagement and contributions to make this an invaluable resource for everyone concerned with socio-legal questions and debates in Sri Lanka. The Review will also carry original contributions in Sinhala and Tamil. A dedicated webpage is also under construction to enable a more interactive space that will, in time, also allow us to upload and make available translations of selected contributions. We look forward to your suggestions and indeed responses to the contributions in the LST Review.

A New Constitution:
Looking to our Future; Facing our Past

JUANITA ARULANANTHAM, THIAGI PIYADASA

This issue of the LST Review focuses on the ongoing Constitutional Reform process, particularly the recently released report of the Public Representations Committee on Constitutional Reforms (PRCCR).

The present constitutional reform process involves many issues that have been of great importance and concern to Sri Lanka's peoples, particularly following the end of the war. With a Government that came into power primarily on the platform of good governance, the new constitution is widely expected to address concerns relating to corruption and abuse of power. In this regard, the executive presidency has for years been seen as a tool for blatant abuse of power, leading to excesses of both grave rights violations and large scale corruption. Thus, the abolition of the executive presidency is a key expectation for the new Constitution.

In his article examining this shift from a Presidential state to a Parliamentary one, Asanga Welikala highlights the importance of an approach that 'balances the best features of legal and political constitutionalism rather than privilege one over the other'. Welikala particularly questions the emphasis on legal mechanisms over political mechanisms for the protection of rights and constitutionalism, and in doing so he urges proper consideration for all their implications. Notably, this argument runs counter to the approach the PRCCR has adopted in its recommendations concerning Sri Lanka's Bill of Rights.

The PRCCR recommends that a fairly wide ranging list of socio-economic rights – 'positive' rights - be included in the new Bill of Rights. This is a significantly drastic change from the current Fundamental Rights chapter, which does not even contain a provision explicitly guaranteeing the Right to Life. The implications of this for the judiciary and its role, as well as public perception and legitimacy concerning the law and Constitution, are extremely significant. This must however also be viewed against Sri Lanka's history in terms of recognition of rights. The question whether thus far, such political mechanisms have come to the fore in the absence of legal mechanisms on 'positive', socio economic rights, is one that must be considered.

Another important issue the new Constitution is expected to address is the need for reconciliation. Post war, Sri Lanka has begun re-examining an issue that has weighed heavily on its peoples for decades – that of power sharing. In his article in this issue Kumudu Kusum Kumara notes that ultimately the constitutional reform process will hinge on the issue of devolution of power and the state structure. He further questions if the extent of public engagement is sufficient to create the necessary dialogue on key issues including power sharing. Swasthika Arulingam, in her analysis of the PRCCR report in relation to Tamil political aspirations voices a similar concern, questioning whether the recommendations of the PRCCR really reflects the political aspirations of the Tamil people on power sharing.

It is thus clear that the issue of power sharing will take center stage in this process of constitutional reform. While the new Constitution is expected to address the issue of meaningful power sharing (at least to some extent), the demands of the Tamil people however, are no longer limited to this. Post war, there is now a strong demand for accountability for excesses committed during and in the immediate aftermath of the war. A critical concern is whether the demand for accountability will be bypassed under the cover of power sharing. If one of the objectives of the new constitution is to forge reconciliation, it is highly questionable whether this can be achieved with meaningful power sharing alone. This is something that the Government will have to grapple with if it is serious about achieving sustainable reconciliation.

Admittedly, the Government has not completely ignored the demand for accountability, with progress in the form of the recent Bill to set up the Office of Missing Persons (OMP). In her article reviewing the Bill, however, Deanne Uyangoda highlights serious concerns regarding how far the Bill meets expectations of victims and their families. Despite being politically contentious, it is important that processes like the OMP are not limited to tokenism, but attempt to meaningfully and effectively ensure victims' right to truth and justice.

In light of the current political reality however, legal and constitutional guarantees on power sharing and accountability can only, for political reasons, be an uneasy compromise at best. Their effectiveness is yet to be seen. Safe to say, however, that success in forging reconciliation cannot be solely dependent on such legal mechanisms. In order for meaningful power sharing and an effective and satisfactory accountability process, what is necessary is real political will. It is for this reason that the need for public engagement – highlighted by both Kumudu Kusum Kumara and Swasthika Arulingam – is necessary on both issues. Political will on the part of political leadership is not sufficient. Sri Lanka's peoples must also recognize the importance of finding middle ground on both power sharing and accountability.

The present process of constitutional reform is one that is not only significant to Sri Lanka, but also particularly to the Law & Society Trust, with our Founder the late Neelan Tiruchelvam playing a critical role in Sri Lanka's constitutional history, particularly with the 2000 draft constitution. It is thus only natural that this issue includes a reflection on his life and work.

Reflections on Neelan Tiruchelvam and Constitutionalism

RADHIKA COOMARASWAMY

Radhika Coomaraswamy focuses on the life and work of an individual who was not merely one of the most compelling legal personalities of Sri Lanka, but also, as its founder, one who was immensely significant to the Law & Society Trust. Coomaraswamy focuses particularly on Neelan Tiruchelvam's contribution to Sri Lanka's constitutional developments, including that of introducing the very concept of constitutionalism as an ideology to the country. This contribution is particularly relevant at this time when Sri Lanka once again engages with the issue of Constitutional Reform. On his 17th death anniversary, the Law& Society Trust remembers the life and work of its founder, Neelan Tiruchelvam in this, its first issue re-launching the Review.

Radhika Coomaraswamy is an internationally recognized human rights advocate and the former United Nations Special Rapporteur on Violence against Women. She is also a former Chairperson of the Sri Lanka Human Rights Commission.

Neelan Tiruchelvam was the academic and scholar-activist who must be credited with introducing constitutionalism as an ideology to Sri Lanka. Neelan was part of a diverse group of scholars from Asia and Africa who were determined to make law relevant to their societies and to use it to ensure transformative justice for their people. They included, amongst others, Upendra Baxi, Clarence Dias and Yash Ghai, who ushered a new era in thinking about the law - particularly about constitutions.

Constitutionalism to these individuals had two aspects - substance and process. Substance related to rule of law, human rights, electoral reforms, and so on. But process was equally important—to move away from making constitutions that instrumentally served those in power to constitutions that are consensually based and have the ownership of all sectors of society. Ambedkar's Indian Constitution and Mandela's South African constitution were the models that served as inspirations.

For Neelan, the most important idea was always process - to have a Constitution or any piece of social legislation only after wide consultation with all parties. Until the recent efforts, Parliamentarians and Parliamentary Select Committees drafted all Sri Lankan Constitutions. The 1972 Constitution was drawn up after elections and the summoning of Parliament as a Constituent Assembly. But it ended up as an instrumental constitution, alienating the major Tamil parties and the opposition and therefore being adopted only by the ruling coalition. The 1978 Constitution was similar, in that again those who voted for it were members of the ruling party. Neelan constantly reminded us that this narrow base was a source of their illegitimacy

and volatility. They went against the values of constitutionalism as an ideology that put process at the centre.

The idea of wide ranging public consultation with panels going into the field only took place after the 2015 election, long after Neelan's death. Consulting a wide array of individuals allows drafters to assess the consensus in the country but it also allows the consulted individuals to feel that they participated and had ownership over the process. The Public Representations Committee led by Lal Wijenaike played that role in what seems to have been an exemplary process and an important report. However, it is imperative that the process animated by the Committee is in fact continued.

Another area of great interest to 'constitutionalism' scholars was human rights, especially social and economic rights of individuals where the legal systems they inherited often denied or ignored these rights. All these individuals, including Neelan, were advisors to Chief Justice P. N. Bhagwati as he introduced Public Interest Litigation into India. The expanding of the concept of standing so that people could speak on behalf of voiceless people, the creation of factual boards of inquiries by the Supreme Court and new remedies were innovations introduced by them in the 1970s.

In this way the rights of a broad array of Indian workers, Indians in unconscionable detention centres or the exploitative realities of workers was challenged and their rights protected. The high point of this movement was when the pavement dwellers of Bombay challenged the government for not providing low cost housing and the Court recognized their standing, requiring the State to submit a housing plan. Similar action has been taken in South Africa. While the South African Constitution specifically recognizes social and economic rights, in India, these rights were recognized as a part of the 'Right to Life and Dignity' clause of the Constitution. Since that time, there has been a withdrawal of that level of Supreme Court activism, but the precedent does exist and has been seized in important cases not only in India but also around the world.

One of the concerns for scholars like Neelan was that the Anglo American legal system did have a crisis of legitimacy in developing societies with their different structures of conflict resolution. It was Neelan's hope that these traditional structures would influence larger constitutional systems. His Ph.D thesis was on Gam Sabhavas– village level councils in Sri Lanka - and he often felt that informal village level dispute settlement should have constitutional protection and that these forms should be revised and reinvented to suit modern realities. In India too there was the desire to resurrect the panchayat system to strengthen democracy at the local level. The need to find a system that would combine parliamentary democracy with strong indigenous traditions was one of the driving impulses for Neelan.

Neelan and his colleagues were part of what came to be called the law and society movement. This movement was very critical of those aspects of colonial law and ideology that had an adverse impact on local communities and they felt it was their task to expose these norms and practices. They were looking for new conceptions of law that were organically linked to the society and not imposed from above. In this they were careful not to choose feudal or medieval norms to celebrate but those organic practices that actually moved forward the agenda of social justice and human liberation.

Neelan and his colleagues began their careers by being strong critics of 'the rule of law' - a euphemism for the power of vested interests - and this concern remained throughout their lifetime. However, after the emergency in India and some of the developments in Sri Lanka in the 1980s, Neelan returned to rule of law as something essential to be embraced and reinvented as a bulwark against authoritarianism.

Other colleagues became part of the post-structuralist and post - modernist movements and

maintained their contempt for the rule of law and human rights project as it was evolving on the world stage. But for Neelan this was not possible. The realities of Sri Lanka required a clinging to these doctrines of human rights and the rule of law and making them serve the interests of social justice and equality since there was nothing else. In that sense there emerged a tension within progressive circles that has yet to be bridged.

The research institutions that Neelan founded, the International Centre for Ethnic Studies and the Law and Society Trust, became centres for these discussions of human rights as a positive and revolutionary tool in galvanizing non-violent change in Sri Lanka and the region. The developments in South Africa, in particular, and the South African Constitution were some of their major inspirations and South African thinkers often visited Kynsey Road to address the two centres. The two centres were also fully involved with international mechanisms for human rights and their scrutiny of sovereign states. Because of the reality of Sri Lanka, given the tension between the concept of state sovereignty and human rights - Neelan came down firmly on the side of human rights. Not all his colleagues of that era shared the same trajectory. Others felt that human rights was becoming the cat's paw of imperialism, a debate that would place many at loggerheads when the doctrine of the "responsibility to protect" found new ground in and around 2008.

In today's world, we are consumed by what some have called "the ideologies of smallness" and parochialism. There are many constitutional experts in Sri Lanka but Neelan helped create and was part of an international network of some of the best minds who learnt from each other and who challenged each other to new ways of thinking about constitutional affairs. This led to many important and ground-breaking research projects and publications with a focus on comparative approaches, the judiciary in plural societies, diversity and power sharing, secessionist movements etc. One such seminal work was a volume on violence in South Asia edited by Veena Das, which brought anthropologists and lawyers together in an attempt to understand the types of violence that were engulfing the subcontinent.

Perhaps the issue that was closest to Neelan's heart and which may have been responsible for his death was the belief that the intractable ethnic conflict in Sri Lanka could be resolved through constitutionalism. Generations of Tamil lawyers and politicians, including his father, were firm believers in this and Neelan took this concern to the next level. He created national and international spaces and initiatives to advance this agenda. He was involved in every Sri Lankan constitutional negotiation in this area since the 1970s and nearly succeeded with the 1995 proposals. However, this would earn him the ire of the Liberation Tigers of Tamil Eelam. Neelan's quest for a non-violent constitutional solution was anathema to them and they ran a merciless hate campaign before his murder. His writings in this area and the research he fostered and stimulated continue to be the best guides as we head toward a new Constitution that also aims at addressing the ethnic question.

One must understand that for Neelan's generation and the one that preceded it, if one believed in non-violence, Constitutionalism was the only answer to the ethnic conflict. From Ambedkar onwards these idealists have tried to both craft progressive Constitutions and also put in motion constitutional processes that have tried to cater to the needs of the vulnerable, discriminated and the exploited. For that they had to rely on unscrupulous politicians as allies and a weak judicial system. As a result they often faltered, allowing more extreme elements to point to their naiveté and their failings. However, the violence that has engulfed Sri Lanka reminds us of the road not taken. As we head toward a new Constitution in a post-war situation, it is imperative that all of us committed to transformative constitutionalism are guided by Neelan's thinking and commit to realising in substance and through process an ideal he so cherished.

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කුමුදු කුසුම් කුමාර

ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණය පිළිබඳ මහජන අදහස් විමසීමේ කමිටු වාර්තාවේ ඉදිරිපත් කොට ඇති අදහස් හා වත්මන් ව්‍යවස්ථා ප්‍රතිසංස්කරණය අපේක්ෂිත පරිදි සම්මත කර ගැනීමට සිංහල බෞද්ධ ජන ප්‍රජාවෙන් කොතෙක් දුරට අනුබලයක් ලැබේද යන්න කුමුදු කුසුම් කුමාර මෙම ලිපිය තුළින් සාකච්ඡා කරයි.

කුමුදු කුසුම් කුමාර ආණ්ඩුක්‍රම ව්‍යාවස්ථා ප්‍රතිසංස්කරණය පිළිබඳ මහජන අදහස් විමසීමේ කමිටුවේ සාමාජිකයෙක් විය. ඔහු කොළඹ විශ්ව විද්‍යාලයේ, සමාජ විද්‍යා අධ්‍යයන අංශයෙහි ජ්‍යෙෂ්ඨ කථිකාචාර්යවරයෙකි.

හැඳින්වීම

වත්මන් ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණයේ දේශපාලනය තීන්දු වී ඇත්තේ පරාජිත ජනාධිපති මහින්ද රාජපක්ෂගේ පාලක රෙජිමය යළිත් බලයට එනු ඇතැයි වත්මන් පාලක රෙජිමය වෙළාගෙන ඇති බිය සහ ඔවුනට නව ලිබරල් ප්‍රතිපත්ති න්‍යාය පත්‍රය ක්‍රියාත්මක කිරීම සඳහා අවශ්‍ය නෛතික රාමුව සකස් කරගැනීමේ අපේක්ෂාව මත පදනම්ව යැයි යන අදහස සත්‍යයෙන් එතරම්ම දුරස්ථ ප්‍රකාශයක් නොවන බව පෙනෙයි. මහින්ද රාජපක්ෂට සිංහල බෞද්ධ බලවේගවල සහාය ලැබෙතැයි විශ්වාස කරන හෙයින් ඒවා අවුළුවාලන ආකාරයේ ව්‍යවස්ථා ප්‍රතිසංස්කරණ යෝජනා ඉදිරිපත් නොකළ යුතුය යන තීරණයට ආණ්ඩුව කල් තබාම එළඹ ඇති සෙයකි. ව්‍යවස්ථා ප්‍රතිසංස්කරණ පිළිබඳව උනන්දුවක් දක්වන ඇතැම් "සිවිල් සමාජ සංවිධාන" ද එම ස්ථාවරය පිළිගෙන ඇති සෙයකි.

'ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණය පිළිබඳ මහජන අදහස් විමසීමේ කමිටු වාර්තාවේ ඇති ගැටළුව නම් එහි නිර්දේශ වල එන වැදගත් මාතෘකා පිළිබඳ එකඟතාවක් නොමැතිකම' යැයි ඇතැමුන් කියන විට එහි සැඟවුන අදහසක් නම් 'මෙම අපේක්ෂිත එකඟතාව ආණ්ඩුව කල්තබාම එළඹ ඇති තීරණය අපේක්ෂා කරන්නකි' යන්න යැයි තර්කයක් ඉදිරිපත් කෙරෙන්නට ඉඩ තිබේ. ව්‍යවස්ථා ප්‍රතිසංස්කරණය පිළිබඳ මහජන අදහස් විමසීම ඇරඹීමටත් ප්‍රථම ජනාධිපති සහ අගමැති වෙන් වෙන් ව ප්‍රසිද්ධියේ ප්‍රකාශ කොට තිබුණේ වත්මන් ව්‍යවස්ථාවේ 'ලංකාව ඒකීය රාජ්‍යයක් වශයෙන් සැලකීම' සහ 'බුද්ධාගමට ප්‍රමුඛ ස්ථානය දීම' ඉදිරියටත් නොවෙනස්ව පැවතිය යුතු බවයි. මහත් බලාපොරොත්තු ඇති කරමින් ආරම්භ කෙරුණු ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණය පිළිබඳ මහජන අදහස් විමසීමේ වාර්තාව දැන් පළ කොට ඇත. මෙම අවස්ථාවේ ආණ්ඩුව සහ

ඇතැම් "සිවිල් සමාජ" සංවිධාන එම වාර්තාව ගැන දක්වන එළඹුම වටහා ගත හැක්කේ ඉහත පදනම මත විය හැකිය. එම වාර්තාව සම්පාදනය කරන ලද්දේ අමාත්‍ය මණ්ඩලයෙන් නිර්දේශ කළ, මහජන නියෝජිත කමිටුවක් මඟින් නමුත් මේ දක්වා එය පාර්ලිමේන්තුවෙහි සභාගත කොට නැත.

මහජනයා කුමන අදහස් නියෝජනය කළත්, මේ මොහොතේ තම දේශපාලන අරමුණු ඉෂ්ට කර ගැනීම සඳහා නව ව්‍යවස්ථාවක් සම්මත කර ගැනීමට ආණ්ඩුවට අවශ්‍ය වනු ඇත. එය ආණ්ඩුවට කෙතරම් වැදගත් ද යන්න, ජාත්‍යන්තර නිරීක්ෂණයට පවා ලක් වී ඇති පරිදි, තමන් අනු යන 'යහපාලන' ප්‍රතිපත්ති පිළිබඳ පවා මෙම කරුණේ දී සම්මුති ගැසීමට ආණ්ඩුව සූදානම් බව පෙන්නුම් කිරීමෙන් වටහා ගත හැකිය. ව්‍යවස්ථා ප්‍රතිසංස්කරණ සඳහා අවශ්‍ය පාර්ලිමේන්තු බහුතරය ලබා ගැනීමට ආණ්ඩුවේ ඇති අපේක්ෂාව මත කෙරෙන සන්ධාන පක්ෂ දේශපාලනයේ ඇති සංකීර්ණ භාවය, එකිනෙක මත අතිපිහිත වන අමාත්‍යාංශ වගකීම් සහිත අති පුළුල් අමාත්‍ය මණ්ඩලයක් තිබීමෙන් සහ වගවීම වැනි තීරණාත්මක කරුණු සම්බන්ධයෙන් මිශ්‍ර පණිවුඩ නිකුත් කිරීමෙන් ප්‍රකාශ වන්නේ යැයි එක්සත් ජාතීන්ගේ මානව හිමිකම් කොමිසමේ ලේකම් සයීඩ් කුමරු නිල ප්‍රකාශයකින් සඳහන් කළේ ය.

මේ මොහොතේ ආණ්ඩුවට අවශ්‍ය ව්‍යවස්ථා ප්‍රතිසංස්කරණවල හරය ලෙස විධායක ජනාධිපති ක්‍රමය සම්පූර්ණයෙන් අහෝසි කිරීම, දෙමළ ප්‍රජාවේ දේශපාලන ප්‍රභූන්ට සහ ඒ මඟින් ජාත්‍යන්තරයට පිළිගැනෙන ආකාරයට බලය බෙදීම, සහ නව ලිබරල් ආර්ථික ප්‍රතිපත්ති මෙරට ස්ථාපිත කිරීම සඳහා අවශ්‍ය නෛතික රාමුව ස්ථාපිත කිරීම සඳහන් කළ හැකිය.

විධායක බලතල ජනාධිපතිගෙන් පාර්ලිමේන්තුවට සහ එනයින් ඇමති මණ්ඩලයට සහ අවසානයේ අගමැති අතට ගැනීමට ආණ්ඩුවට අවශ්‍යය. විධායක ජනාධිපති ධූරය අහෝසි කොට ඒ වෙනුවට විධායක අගමැතිවරයෙකු පත් කර ගැනීම සඳහා යෝජනාවක් ව්‍යවස්ථා සම්පාදනය සඳහා වන පාර්ලිමේන්තු කමිටුවේ සාකච්ඡාවට ඉදිරිපත් කෙරී ඇති බවට වාර්තා වී තිබේ. එමෙන්ම, අවම වශයෙන් පශ්චාත් මහින්ද සමයේ ලංකා ආර්ථිකය ගොඩ නැඟීමට අවශ්‍ය ජාත්‍යන්තර පිළිගැනීම සහ සහයෝගය ලබාගැනීම සඳහා දෙමළ සහ මුස්ලිම් ප්‍රජාවන්හි දේශපාලන ප්‍රභූන් එකඟ වන ආකාරයේ බලය බෙදීමක් ව්‍යවස්ථාවෙන් කළ යුතුව තිබේ. නව ලිබරල් ආර්ථික ප්‍රතිපත්ති මෙරට ස්ථාපිත කිරීම සඳහා නෛතික රාමුව සකස් කිරීමට ඉඩ සලසන වෙනස්කම් අධිකරණ පද්ධතිය තුළ ඇති කරමින් ඒවා ව්‍යවස්ථාවේ ආරක්ෂිත විධිවිධාන ලෙසින් නිදන් කෙරෙන පරිදි ව්‍යවස්ථා ප්‍රතිසංස්කරණ කිරීමට ආණ්ඩුවට අවශ්‍යය.

ආණ්ඩුවේ මෙම ව්‍යවස්ථා ප්‍රතිසංස්කරණ අපේක්ෂිත පරිදි සම්මත කර ගැනීමට සිංහල බෞද්ධ ජන ප්‍රජාවෙන් කොතෙක් දුරට අනුබලයක් ලැබේ ද? ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණය පිළිබඳ මහජන අදහස් විමසීමේ කමිටු වාර්තාවේ ඉදිරිපත් කොට ඇති අදහස් පසුබිමෙහි මෙම ලිපියේ ඉදිරි කොටසින් අප සාකච්ඡා කරන්නට අදහස් කරන්නේ ඉහත කරුණයි.

ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණය පිළිබඳ මහජන අදහස් විමසීමේ කමිටු වාර්තාව:

ප්‍රජාතන්ත්‍රවාදය සහ සාමය සහ ජාතික ප්‍රතිසන්ධානය පිළිබඳ පොදු එකඟතාව

මෙම කමිටු වාර්තාව, කමිටුවට ඉදිරිපත් කෙරුණ මහජන නියෝජනයන් අතර පොදු එකඟතාවක් පෙන්නුම් කරන අදහස් බොහොමයක් ඇති බව අවධාරණය කරයි. එසේ තිබියදීත් ව්‍යවස්ථා ප්‍රතිසංස්කරණ ක්‍රියාවලියේ ඉදිරි මග තීරණය කරනු ඇත්තේ පොදු එකඟතාවක් ඇති ඒවාට වඩා ජනයා බෙදා වෙන් කරන අදහස් බව පෙනෙන්නට තිබේ. මූලිකව ලිබරල් ප්‍රජාතන්ත්‍රවාදී දේශපාලන කතිකාව තුළ සූත්‍රගත කෙරුණු මෙම පොදු අදහස් කුමන හෝ ප්‍රජාවක ජනවාර්ගික දෘෂ්ටියෙන් ඉදිරිපත් කෙරෙන අදහස් වලින් අවුලට යවයි.

'මේවා ළඟා කර ගත හැක්කේ කෙසේද?' යන්න ගැන ඔවුන් අතර වෙනස් මත තිබුණත්, ප්‍රජාතන්ත්‍රවාදය සහ සාමය සහ ජාතික ප්‍රතිසන්ධානය ඇති කළ යුතුය යන්න ගැන පොදු එකඟතාවක් තිබෙන බව වාර්තාව අවධාරණය කරයි. මෙම පොදු අදහස්

පළාත් භේදයකින් තොරව, කමිටුව ඉදිරියේ අදහස් දැක්වූ අයගෙන් බහුතරයේ අදහස් මත පදනම් වෙයි.

නමුත්, එය සමස්ත ලාංකේය පුරවැසි සමාජයේ අදහස් පිළිබඳ සාධාරණ නියෝජනයක් ලෙස සාමාන්‍යකරණය කළ හැකි ද? යන ගැටළුව මෙහි දී මතු විය හැකි ය. එයට හේතු වන ප්‍රධාන කරුණු කිහිපයක් ගැන පමණක් අපට දැනට කල්පනා කළ හැකි ය.

පළමුව, ප්‍රජාතන්ත්‍රවාදය කමිටුවට කරුණු ඉදිරිපත් කළ සැමගේ අපේක්ෂාවක් නොවේ. සිංහල බෞද්ධ ජාතිකවාදී මත ඉදිරිපත් කළ බොහොමයක් දෙනා ප්‍රජාතන්ත්‍රවාදය වැනි කරුණු කෙරෙහි අවධානයක් නොදැක්වීය යන්න මගේ නිරීක්ෂණයයි.

තවද, හිතා මතා තම අදහස් ඉදිරිපත් කිරීමෙන් වැළකී සිටි ජන කොටස්වල අදහස් මෙම පොදු එකඟතාවට අඩංගු නොවේ. එයිනුත් වැදගත්ව, පොදුවේ ගත් කල, සිංහල බෞද්ධ, ජාතිකවාදී මත දරණ දේශපාලන පක්ෂ, සංවිධාන, සහ පුද්ගලයන් කමිටුව හමුවේ කරුණු ඉදිරිපත් කිරීමට පැමිණියේ සාපේක්ෂව අඩුවෙනි.

ශ්‍රී ලංකා නිදහස් පක්ෂයේ මහින්ද රාජපක්ෂ පිල නොහොත් "පොදු විපක්ෂය" මෙම මහජන අදහස් දැක්වීමේ ක්‍රියාවලියට සහභාගී වූ බවක් දැකිය නොහැකි වීය. මහජන එක්සත් පෙරමුණ සහ ජාතික හෙළ උරුමය මෙන්ම ජනතා විමුක්ති පෙරමුණ ද කමිටුවේ සාමාජිකයන් ලෙස නියෝජිතයන් නම් කිරීමට රජයෙන් ඔවුනට කෙරුණු ඇරයුමට ප්‍රතිචාර නොදැක්වූ බව වාර්තා විය. මේ තත්ත්වය අදාළ කණ්ඩායම් සහ පක්ෂවල සාමාජිකයන් සහ හිතවතුන් කමිටුවට කරුණු දැක්වීමට පැමිණීම අධෛර්යමත් කළා විය යුතුය. සිංහල බෞද්ධ මතවාදයේ වත්මන් බුද්ධිමය නායකයන් ලෙස පිළිගැනෙන ආචාර්ය නලින් ද සිල්වා, ආචාර්ය ගුණදාස අමරසේකර වැනි විද්වත්තු ද මෙම ක්‍රියාවලියට සහභාගී නොවූහ.

මෙම ක්‍රියාවලියට සංවිධානාත්මකව මැදිහත්වීම් කළ දේශපාලන පක්ෂ සහ සංවිධාන, සහ බලපෑම් කණ්ඩායම්වලට සාපේක්ෂව තම අදහස් නියෝජනයට සාමාන්‍ය පුරවැසි ජනතාව ඒ සඳහා කැඳවීමේ සංවිධානාත්මක, පුළුල් වැඩ පිළිවෙළකින් තොරව ඔවුන්ගේ ස්වාධීන අදහස් පුළුල් ව නියෝජනය වීමේ ඉඩ කඩ අඩුවීම ද මෙහිලා ඉදිරිපත් වූ පොදු අදහස් වල ස්වරූපයට බලපාන්නට ඉඩ තිබුණේ ය. තවද, මෙම කටයුත්තෙහිලා මහජන නියෝජනය හුදු සංඛ්‍යානමය කරුණකට ලඝු නොකළ යුතු නමුදු එසේ කිරීමට ඇති නැඹුරුවෙන් ගම්‍ය වන දේශපාලනය ද මෙහි ලා සැලකිය යුතු ය.

සංඛ්‍යානමය අගය

නියෝජනයන් ඉදිරිපත් කළ පුද්ගලයන් හා සංවිධාන සංඛ්‍යාව උපරිමයෙන් 3800 ට (බලන්න: වාර්තාවේ දෙමළ පරිවර්තනය) ආසන්න සංඛ්‍යාවක් ලෙස සැලකිය හැකිය. මෙයින් සෑහෙන පිරිසක් සමාජයට කළ හැකි බලපෑම අතින් වැදගත් වන 'මතධාරීන්' විය හැකිය, යන්න සැලකිල්ලට ගත යුතු නමුත්, මිලියන පහළොවක් වන ඡන්දදායකයන් පිරිසක් නියෝජනයට සාමාන්‍යකරණය කිරීමේ උත්සාහයට නියැදියක් ලෙස එය යොදාගැනීමේ ඇති ගැටළු නොසලකා හැරිය නොහැකිය.

මෙහිදී 'නියෝජනය කෙරුණු සංවිධාන වල අති විශාල සාමාජික සංඛ්‍යාවක් සිටින්නේය' යන කරුණ මත නියෝජනයේ සංඛ්‍යාත්මක අගය ඉහළ දැමීමේ උත්සාහය, 'ආණ්ඩුක්‍රම ව්‍යවස්ථා සංශෝධනයෙහිලා මහජන නියෝජනයන් ඉදිරිපත් කිරීම තනි සක්‍රීය පුරවැසියාගේ දේශපාලන වගකීම ඉටු කිරීමේ ඉහළතම අවස්ථාවකි' යන්න සංවිධානයක සාමාජිකයෙකු වීමට ලඝු කරන්නට ගන්නා උත්සාහයකි. මන්ද සෑම එක් පුරවැසි නියෝජනයක්ම එම පුරවැසියා විසින් පරෙස්සමෙන් සලකා බලාගත් තීරණයක් මත පදනම් විය යුතු හෙයිනි. කිසියම් සංවිධානයක සමස්ත සාමාජිකත්වය එම සංවිධානයෙන් ඉදිරිපත් කෙරෙන නියෝජනයන් වෙනුවෙන් පෙනී සිටින්නේය, යන්න ව්‍යවස්ථා ප්‍රතිසංස්කරණ ක්‍රියාවලිය තුළට පිළිගැන්වීමට නම් එම සංවිධානය තම සංවිධානයේ සියලු සාමාජිකයන් තනි තනි ව අදාළ යෝජනා පරෙස්සමෙන් සලකා බලා තීරණ ගැනීමට ඉඩ සලසන ක්‍රියාවලියක් මඟින් එක් එක් සාමාජිකයාගේ එකඟතාව ලබා ගත යුතුව තිබුණි. මේ අනුව, ආණ්ඩුක්‍රම ව්‍යවස්ථා

ප්‍රතිසංස්කරණ පිළිබඳ මහජන නියෝජනය එක් එක් පුරවැසියා තම දේශපාලන වගකීම ඉටු කිරීම පිළිබඳ කරුණක් මිස, යමකු කිසියම් සංවිධානයක සාමාජිකයෙකු නිසා එම සංවිධානයේ නමින් පොදු නියෝජනයක් ඉදිරිපත් කිරීම මත ඉබේටම සිදුවන හෝ හුදු පෙත්සම් අත්සන් කිරීමේ ව්‍යාපාරයකින් නීන්දු වන දෙයක් බව පිළිගතහොත් එය "ජනතා පරමාධිපත්‍යය" නිසි ලෙස නියෝජනය කිරීමක් නොවනු ඇත.

අනෙක් අතට සියලු පුරවැසියන්ගේ අදහස් ඔවුන්ගේ තරාතිරම නොබලා වැදගත් වන මෙම කාර්යයේ දී පුද්ගලයන්ගේ තරාතිරම සලකා ලැබී ඇති නියෝජනයන්ගේ සංඛ්‍යානමය අගය ඉහළ දැමීමට ගන්නා උත්සාහය ව්‍යවස්ථා සම්පාදනය විශේෂඥයන්ගේ කාර්යයක් ලෙස හුවා දැක්වීමකි. ව්‍යවස්ථා සම්පාදනයට විශේෂඥයන්ගේ උපදෙස් ලබා ගැනීමට අවශ්‍ය කෙරෙන තැනකදී එය කළ හැකි නමුත් මහජන අදහස් නියෝජනයේදී යමකුගේ විශේෂඥ දැනුම මත ඔවුන්ගේ නියෝජනයන්ට සෙසු පුරවැසියන්ගේ ඒවාට වඩා වැඩි අගයක් ලැබිය යුතු නැත.

කෙටියෙන් කියතොත් කුමන හෝ හේතු දක්වමින් මහජන නියෝජනයන් පිළිගැනීමට සංඛ්‍යානමය පදනමක් ඇතැයි කියා සිටින්නට ගෙනෙන තර්ක නියෝජනාත්මක නියැදියක් නොවන ජන පිරිසකගේ නියෝජනයන් ජාතික මට්ටමේ සාමාන්‍යකරණයක් සඳහා යොදන්නට ගන්නා ප්‍රජාතන්ත්‍රීය විරෝධී උත්සාහයකි.

මෙවැනි ම තවත් ගැටළුවක් වාර්තාවේ එන නිර්දේශ සම්බන්ධයෙන් ද මතු වී තිබේ. එය නම් දෙන ලද මාතෘකාවක් පිළිබඳ වාර්තාවේ එන නිර්දේශ කිහිපයක් අතුරෙන් තමන්ට විවේචනය කිරීමට අවශ්‍ය එකක් ගෙන එය ව්‍යවස්ථාවට ඇතුළු කරන්නට යන්නේ යැයි කියමින් සිංහල බෞද්ධ ජාතිකවාදීන් ගෙන යන දේශපාලන ප්‍රචාරයට ප්‍රතිචාර වශයෙන් දෙන ලද නිර්දේශයක් වෙනුවෙන් පෙනී සිටින කමිටු සාමාජිකයන්ගේ සංඛ්‍යාව ඉදිරිපත් කරමින් තර්ක කිරීමට ඇතමුන් ගන්නා උත්සාහය යි. වාර්තාවේ නිර්දේශ ඉදිරිපත් කිරීමේදී කමිටුවේ අදහස වූයේ දෙන ලද මාතෘකාවක් යටතේ ඉදිරිපත් කෙරෙන සියළු නිර්දේශ වැදගත් කම අතින් එක හා සමාන මට්ටමක ලා සැළකිය යුතු බවයි. මන්ද ඒවා ජනතාවගේ නියෝජනයන් මත පදනම්ව ඉදිරිපත් කෙරෙන බැවිනි. ජනතාවගේ නියෝජනයන්ට සංඛ්‍යානමය අගයක් දීමට වලංගු පදනමක් සැපයීමට නොහැකි හෙයින් එසේ නොකිරීමට කමිටුව එකඟ වුණි. ඒ ලෙසින්ම කමිටුවේ සාමාජිකයන් වැඩි දෙනෙක් දෙන ලද නිර්දේශයක් වෙනුවෙන් පෙනී සිටින්නේද යන්න මත එම නිර්දේශයට අන් ඒවාට වඩා වලංගුභාවයක් පැවරිය නොහැකි යැයි ද කමිටුව එකඟ වීය. කමිටුව එකඟ වූයේ මහජන නියෝජනයන් මත පදනම්ව සියලු නිර්දේශ ව්‍යවස්ථා සම්පාදක මණ්ඩලයේ සාකච්ඡාව සඳහා එක හා සමාන වැදගත් කමකින් සළකා ඉදිරිපත් කිරීමට ය. එවැනි තත්ත්වයක් තුළ සිංහල බෞද්ධ ජාතිකවාදී ප්‍රචාරණයන්ට ප්‍රතිචාර වශයෙන් වුව නිර්දේශයක් වෙනුවෙන් පෙනී සිටින කමිටු සාමාජික සංඛ්‍යාව සාකච්ඡා කිරීම එම නිර්දේශ ඉදිරිපත් කිරීමේ අරමුණ පරාජය කරයි.

සිදු විය යුත්තේ සංඛ්‍යානමය අගය මත වාර්තාවේ එන අදහස් හා නිර්දේශ බහුතරයක් නියෝජනය කරන්නේය යන බහුතරවාදී ආකල්පය ගැනීම නොව, දේශපාලනිකව ප්‍රගතිශීලී වන අදහස් සඳහා සියලු ජන කොටස් දිනා ගැනීමේ කටයුත්තයි.

ප්‍රජාතන්ත්‍රවාදය, සාමය හා ප්‍රතිසන්ධානය අත්පත් කර ගන්නේ කෙසේ ද?

ඉතින්, කමිටුව ඉදිරියේ නියෝජනයන් ඉදිරිපත් කළ වැඩි දෙනෙකු ප්‍රජාතන්ත්‍රවාදය ශක්තිමත් කිරීමටත්, තියුණු කිරීමටත්, සාමය හා ප්‍රතිසන්ධානය වෙනුවෙනුත් කැමැත්ත පළ කළා වුවත් එසේ නොකළ අයගේ අදහස් 'සාමය, සමගිය අත්පත් කර ගන්නේ කෙසේ ද?' යන්න සම්බන්ධ කොට ගෙන ඉදිරිපත් වන කළ පළමු අදහස යටපත් කරන ආකාරය වාර්තාවේ ඉදිරිපත් වූ නියෝජනයන් සලකා බලමින් විමසුමට ලක් කළ හැකිය. (මෙහි ඉදිරියට වරහන් ඇතුළත දැක්වෙන අංක කමිටු වාර්තාවේ සිංහල පිටපතේ එන අදාළ පිටු අංක ය. තවද, වාර්තාවේ එන අදහස් ඉදිරිපත් කිරීමේ දී එහි එන භාෂාවම මෙම ලිපියේ යොදා ගන්නා ලදී.)

"පූර්විකාව"

"යෝජිත ව්‍යවස්ථාවේ පූර්විකාවේ..... අනාගතයට පාඩමක් හා සිහි ගැන්වීමක් ලෙස රාජ්‍යයේ අතීත සිදුවීම් ගැන සඳහනක් ඇතුළත් කිරීමට සමහරුන්ට අවශ්‍ය විය" (9) යැයි වාර්තාව කියා සිටින නමුත් එම අතීත සිදුවීම් නිශ්චිතව දක්වනවා වෙනුවට සඳහන් කෙරෙන්නේ "කෙසේ වෙතත් පූර්විකාවේ ඇතුළත් විය යුත්තේ ප්‍රජාතන්ත්‍රවාදය, නීතියේ ආධිපත්‍යය, මානව හිමිකම්, මානව අභිමානය, සාධාරණත්වය, සමානත්වය, බහුවිධතාව, විවිධත්වය, සාමය ආදිය ප්‍රවර්ධනය කිරීමටත්, ගරුකිරීමටත්, කැපවීම බවට එකඟත්වයක් ඇති විය" යනුවෙනි. එකඟතාව ගොඩ නැංවීමේ යහපත් අරමුණ වෙනුවෙන් වුවද, රාජ්‍යයේ අතීත සිදුවීම් සඳහන් කිරීමේ අවශ්‍යතාව තුළ නියෝජනය කෙරෙන ජනවර්ග වල අවශ්‍යතාව අප කැප කරන්නේ සිංහල බෞද්ධයන් රැකීමට කැමති රාජ්‍ය ප්‍රතිරූපය වෙනුවෙන් නොවේ ද යන්න මෙහි දී සලකා බැලිය යුතුය.

ආගම

ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ ආගම පිළිබඳ කරුණු ඇතුළත් කළ යුතු ආකාරය ගැන ජනතාව දැක්වූ අදහස් (15-16) අතර 'වත්මන් ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 9 වැනි වගන්තියෙහි ඇති පරිදි බුද්ධාගමට ප්‍රමුඛ ස්ථානය දෙමින් රාජ්‍යය එය ආරක්ෂා කළ යුතුය' යන්න වෙයි. බුද්ධාගමට ව්‍යවස්ථාවෙහි ප්‍රමුඛත්වය දී තිබීම වෙනස් කිරීමට ඇති අකමැත්ත බැඳී ඇත්තේ, රාජ්‍ය ආරක්ෂාවෙන් තොරව බුද්ධාගම සහ සංඝ සමාජය පිරිහීමට ඇති ඉඩ පිළිබඳ බිය සහ එය සිංහල ජනයාගේ ස්වයං අනන්‍යතාවේ පැවැත්මට ගැට ගැසී ඇතැයි විශ්වාස කිරීම සමඟය.

කලින් පොදු එකඟතාවක් ඇතැයි පෙන්නුම් කළ කරුණු ද මෙහි දී අර්බුදයට ලක්වෙයි. එහෙයින් මේ වෙනුවෙන් පෙනී සිටින ජනයා කලින් කී පොදු එකඟතාවට අයත් නොවනු ඇත. මෙම යෝජනාව සමානාත්මතාවේ මූලධර්ම උල්ලංඝනය කරන අතර, ආගමික අසමගියටද හේතු විය හැකි හෙයින් ප්‍රජාතන්ත්‍රවාදය, සමගිය, සහ ප්‍රතිසන්ධානය සඳහා නොවේ. මේ අනුව 'ප්‍රජාතන්ත්‍රවාදය' යනු බහුතරයේ ප්‍රජාතන්ත්‍රවාදය යි. සමානාත්මතාව, සමගිය සහ ප්‍රතිසන්ධානය සිංහල බෞද්ධ බහුතර ප්‍රජාවේ එකඟතාව මත ගොඩ නැගෙන දෙයක් විය යුතු ය. 'මතභේදාත්මක තත්ත්වයක් ඇතිවීම වැළැක්වීම සඳහා, බෞද්ධ නොවන අයගේ අයිතීන්ට හානි වන ආකාරයට බෞද්ධ ආගමික කණ්ඩායම් හෝ පුද්ගලයන්ට ක්‍රියා කිරීමට ඉඩ නොදිය යුතුය යන පදනම මත බුද්ධාගමට ප්‍රධාන ස්ථානය දෙන අතර, අන් සියලුම ආගම් ද, සමාන ආකාරයට රජයෙන් ආරක්ෂා කළ යුතුය' යන ස්ථාවරයත්, 'බුද්ධ ධර්මයට රජයේ ආරක්ෂාව දෙන නමුත් එය ආයතනික ආගමෙන් වෙන් කළ යුතුය' යන මතයත්, වාර්තාවට අනුව එළඹිය හැකි සම්මුති වන්නේ ය. නමුත් ඉහත සිංහල බෞද්ධ ස්ථාවරය එබඳු සම්මුති යෝජනා ප්‍රතික්ෂේප කරන්නකි.

සම්මුති යෝජනා ඉදිරිපත් කෙරෙන්නේ "ප්‍රායෝගික දෘෂ්ටියකිනි." පෞද්ගලිකව අනාගමික රාජ්‍යයකට කැමති වුවද වත්මන් ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ බුද්ධාගමට ප්‍රමුඛ ස්ථානය දෙන වගන්ති වෙනස් කිරීම ගැටුමකට හේතුවක් මෙන්ම එය සමස්ත ආණ්ඩුක්‍රම ව්‍යවස්ථා සම්පාදන ක්‍රියාවලියටම බලපෑ හැකිය යන බිය නව ව්‍යවස්ථාවක් සම්මත කර ගැනීමට උනන්දුවක් දක්වන පිරිස් තුළ පවතී.

සැබෑ ලෙස ප්‍රජාතන්ත්‍රවාදී ව්‍යවස්ථාවක්, සැබෑ සාමය සහ ප්‍රතිසන්ධානය ගොඩ නැඟිය හැක්කේ සැමට සමානාත්මතාව සහ යුක්තිය, අන්‍යෝන්‍ය ගරුත්වය, සියලු පුරවැසියන් එක හා සමාන කොටස්කරුවන් ලෙස සැලකීම යනාදී ප්‍රතිපත්ති මත මිස අසමානත්වය මත නොවේ. එලෙස ව්‍යවස්ථාව අසමානත්වය නිදන් කරන නමුත් අධිකරණය විසින් එය අනාගමික ව්‍යවස්ථාවක් ලෙස අර්ථ දක්වා තිබීම සහනයක් ලෙස පිළිගන්නට එයින් ව්‍යවස්ථාව තමන්ට අසමාන ලෙස සලකන්නේ යැයි විශ්වාස කරන ජනයා සූදානම් ද යන්න අප විමසිය යුතුය. රාජ්‍යය අනාගමික ලෙස ප්‍රකාශ කරන්නට ව්‍යවස්ථාව අපොහොසත් වීම අසමානතාව පිළිබඳ අනෙකුත් සියලු කරුණු නිරාකරණය කළ නොහැකි අන්දමට බලපාන කරුණක් ලෙස සලකන්නට සිංහල බෞද්ධ නොවන ජන කොටස්, විශේෂයෙන් දෙමළ ජනයා පෙළඹීමට ඉඩ තිබේ. බුද්ධාගමට රාජ්‍යයේ ප්‍රමුඛත්වය දීම යුද්ධ සමය තුළ අත්දැකීම් පසුබිමෙහි රාජ්‍යය මිලිටරිකරණය සමඟ බැඳී ඇත යන්න සමඟ ඇති සම්බන්ධය අපට අමතක කළ නො හැකිය.

ජනවාර්ගික, ආගමික අනන්‍යතා වෙනුවෙන් කරන ඉල්ලීම දිගින් දිගටම පැවතීම පිළිබිඹු කරන්නේ බහුවිධතාව හා විවිධත්වයට ගරු කරන පොදු ශ්‍රී ලාංකික අනන්‍යතාවක් ගොඩ නැඟීමට අප අසමත්වීම බව සැබෑය. නමුත්, ප්‍රජාතන්ත්‍රවාදය ශක්තිමත් කිරීම හා යුක්තිය හා සමානත්වය සහතික කිරීම මඟින් පමණක් දෙමළ ජනයා අත් විඳින බිය සහ සැක සංකා බොහෝ දුරට අඩු කර ගැනීමට හැකි වනු ඇති ද? යන්න බරපතල ගැටළුවකි. මෙය දේශපාලන බලය බෙදීමට විකල්පයක් ලෙස දෙමළ ජනතාවට පිළිගැන්විය හැකි ද යන්න සැක සහිත ය.

රාජ්‍යයේ ස්වභාවය

රාජ්‍යයේ ස්වභාවය පිළිබඳ මහජන නියෝජනයන්හිදී (19-21) සිංහල ජනයා ෆෙඩරල් නැතහොත් සන්ධීය ක්‍රමයට - එනම් මධ්‍යම රජයට ඒකපාර්ශ්විකව වෙනස් කිරීමට හෝ සංශෝධනය කිරීමට හෝ නොහැකි ලෙස එක්සත් රාජ්‍යයක් තුළ පළාත් හෝ ප්‍රාන්ත වලට - බලය බෙදීමේ යෝජනාවට එරෙහිව ඒකීය රාජ්‍යයකට ඇති කැමැත්ත ප්‍රබල ලෙස ප්‍රකාශ කර තිබුණි. බොහෝ අය ෆෙඩරල් ක්‍රමයට විරුද්ධ වන්නේ එය 13 වැනි ව්‍යවස්ථා සංශෝධනය මඟින් ඉන්දියාව විසින් ලංකාව මත බලෙන් පැටවූ යැයි විශ්වාස කරන නිසා සහ බෞද්ධවාදය පිළිබඳ අදහසට ප්‍රබල ලෙස සම්බන්ධ කොට බව පැහැදිලිය. මෙහිදී, ඒකීය රාජ්‍යය යනු නොබෙදිය හැකි රටක් ලෙස සලකනු ලැබෙයි.

ෆෙඩරල් රාජ්‍යයක් පිළිබඳව සිංහල ජනතාව අතර ඇති බියට හේතුව අවසානයේ රට දෙකඩවීමට එය හේතු විය හැකිය යන විශ්වාසයයි. දකුණු ඉන්දියාවේ වෙසෙන අතිවිශාල දෙමළ ප්‍රජාව සමඟ එක්වී ලාංකේය දෙමළ ප්‍රජාව සිංහලයන්ට තර්ජනයක් එල්ල කළ හැකිය යන උපකල්පනය මත ඇති කර ගත් බිය හා අනාරක්ෂිත හැඟීම මෙය පසුබිමෙහි තිබේ. මේ හා සම්බන්ධ කොට, රටේ ත්‍රස්තවාදය වැළැක්වීම පිළිබඳ ප්‍රශ්න ආමන්ත්‍රණය නොකොට ත්‍රස්තවාදය වැළැක්වීමේ පනත අහෝසි කිරීමටද සිංහල බෞද්ධ මතවාදය විරුද්ධ වනු ඇත.

මෙයට අමතරව පහත සාකච්ඡා කරන පරිදි ජාතික ධජය, ජාතික ගීය, පාර්ලිමේන්තුව උත්තරීතර කිරීම වෙනුවට ව්‍යවස්ථාව උත්තරීතර කිරීම, විධායක ජනාධිපති ක්‍රමය අහෝසි කිරීම, බලය බෙදාහැරීම සහ බලය බෙදාහැරීමේ ඒකකය, පොලිස් හා ඉඩම් බලතල පළාත් සභාවට පැවරීම, පළාත් ආණ්ඩුකාරවරයාගේ විධායක බලතල අහිමි කිරීම, සහ මධ්‍යම ආණ්ඩුව සහ පළාත් සභාව අතර විෂය පථ සම්පූර්ණයෙන්ම දෙකට බෙදීම යනාදී මාතෘකා බලය බෙදීම පමණක් නොව ව්‍යවස්ථා ප්‍රතිසංස්කරණ පිළිබඳවම පවා සිංහල බෞද්ධයන්ගේ බිය සහ සැක සංකා මතු කරන කරුණු වෙයි.

ජාතික ධජය

ජාතික ධජය, අනාගමික රාජ්‍යයක් හෝ සියලු ආගම් වලට සමානව සලකන රාජ්‍යයක් බව සංකේතවත් කරන ලෙස වෙනස් කිරීමට කෙරෙන කුමන හෝ යෝජනාවකට සිංහල බෞද්ධ ජාතිකවාදී දෘෂ්ටියෙන් ප්‍රබල විරෝධතා එල්ල වනු ඇත යන්න කමිටු සැසි වාර වලදී ඉදිරිපත් වූ නියෝජන වලින් (11) මෙන්ම කමිටු වාර්තාව පළ වීමෙන් පසු ඒ ගැන පළ වන මහජන අදහස් වලිනුත් පෙනී යයි.

ජාතික ගීය

ජාතික ගීය සම්බන්ධයෙන් කමිටු වාර්තාවේ සඳහන් වන්නේ (12) "ගීය ගායනා කළ යුත්තේ සිංහල භාෂාවෙන් පමණක්ය, යන්න එක් මතයක් වූ අතර තවත් විකල්ප මතයක් වූයේ එය භාෂා දෙකෙන් ම ගායනා කළ යුතු" බවයි.

ජාතික ගීය සිංහලෙන් හා දෙමළෙන් ගැයීමට මනාපයක් ඇත්තේ ඉන් සිංහලයන් මෙන්ම දෙමළ කථා කරන ජනතාවත් යන දෙපිරිසට පිළිගැනීමක් ලැබෙන බැවිනි. ඉන් රටේ සිටින ප්‍රධාන ජනවාර්ගික කණ්ඩායම් තුනටම සමානත්වයක් ලැබෙයි. 'ජාතික ගීය සිංහලෙන් පමණක් ගායනා කළ යුතු ය' යන ස්ථාවරය සිංහල නොවන අයට සමානත්වයක් ලබා දීමෙන් සිංහල අනන්‍යතාවට තර්ජනයක් එල්ල විය හැකි බව විශ්වාස කරයි. 2000 ව්‍යවස්ථා පනත් කෙටුම්පතෙහි සඳහන්ව ඇති ජාතික ගීය පිළිබඳ වගන්තියේ සඳහන් වන්නේ සිංහල බසින් ලියැවුණු ජාතික ගීයේ සංගීත රචනය පමණි. නමුත් 1978 ව්‍යවස්ථාවේ දෙමළ පිටපතෙහි

ජාතික ගීයේ සංගීත රචනය දෙමළ භාෂාවෙන් ද දක්වා තිබේ. එමෙන්ම වත්මන් රජය යටතේ ජාතික ගීය සිංහලෙන් හා/හෝ දෙමළෙන් ගායනා කිරීම දැනටමත් ක්‍රියාත්මක කොට තිබේ. එහෙයින් ජාතික ගීය දෙබසින්ම ගායනා කිරීම ව්‍යවස්ථාවට ඇතුළු කිරීම බරපතළ ගැටළුවක් ඇති කරනු ඇතැයි සිතිය නොහැකිය.

පාර්ලිමේන්තුවේ උත්තරීතරත්වය

පාර්ලිමේන්තුව උත්තරීතර විය යුතු යැයි ද, එය ස්වෛරී ආයතනයක් විය යුතු යැයි ද, කෙරෙන යෝජනාවද හුදෙක් ජනාධිපතිගේ බලතල සමඟ සංසන්දනය කරමින් ජනාධිපති තනතුරට ප්‍රතිව්‍යතිරේකයක් ලෙස ද (26), ඉදිරිපත් කෙරෙනවාට වැඩි දෙයක් ලෙස සිංහල බෞද්ධ ජන කොටස් දකිති. මෙය පාර්ලිමේන්තුව සතු ව්‍යවස්ථාදායක බලය පළාත් සභාව වැනි වෙනත් ආයතනවලට පැවරීමේ උපක්‍රමයක් ලෙස සිංහල බෞද්ධ මතවාදීහු දකිති.

විධායක ජනාධිපති ක්‍රමය අහෝසි කිරීම

දේශපාලන ස්ථාවරත්වය සහතික කිරීම සඳහා විධායක ජනාධිපති ක්‍රමය පවත්වා ගෙන යා යුතුය (31-32), යන්න ප්‍රධාන කොට ම සිංහල බෞද්ධ ජාතිකවාදී මතයයි. ජනාධිපති ජාතික වශයෙන් ඡන්දයෙන් තෝරා පත් කර ගැනීම මඟින් සුළු ජාතීන්ට ආරක්ෂාව සැපයෙන බවට සිංහල බෞද්ධ නොවන ජන කොටස්වල මතය සමඟද මෙය පැහීම උත්ප්‍රාසජනක ය.

බලය බෙදීම

බලය බෙදීම පිළිබඳ කරුණු පොදු එකඟතාව බිඳින මූලික කරුණක් වෙයි. "මධ්‍යගත පාලනය නිසා සිදුවූයේ යැයි සිතන කොන් කිරීම හා වෙනස් ලෙස සැලකීම නිසා පළාත් හා උප-ඒකකවලට ස්වයං-පාලනයක් හා බලය වැඩිපුර විමධ්‍යගත කිරීමක් අවශ්‍ය යැයි සමහර ප්‍රදේශවල ජනයා ඉල්ලා සිටි අතර, අනිත් අයගේ ඉල්ලීම වුයේ පර්යන්තයට වැඩිපුර බලතල විමධ්‍යගත කිරීමයි. රටේ ප්‍රජාතන්ත්‍රවාදය හා ඒකාබද්ධතාව ශක්තිමත් කිරීමේ මඟක් ලෙස ඔවුන් ඉදිරිපත් කළේ බලය බෙදාහැරීම හා විමධ්‍යගත කිරීමයි (8)."

මෙම ආස්ථාන දෙකෙන් පළමුවැන්න දෙමළ, මුස්ලිම් සහ මලයහ නොහොත් උඩරට දෙමළ ජනයාගේ සහ සංවිධානවල නියෝජනයන්හි ඉල්ලීම් මුල් කරගෙන ඉදිරිපත් වන අතර, දෙවැන්න විටෙක පළමුවැන්නට එරෙහිව යන්නක් ලෙසත් විටෙක එසේ නොමැතිව ජනවාර්ගික පදනමක් මත බලය විමධ්‍යගත කිරීමට අමතරව ගම් හෝ නගර මට්ටමට බලය විමධ්‍යගත කිරීමක් ලෙසත් සංකල්පගත කෙරෙයි.

මෙහිදී ජනවර්ග පදනම මත මෙයින් එක් කුමන හෝ ආකාරයකට පමණක් බලය විමධ්‍යගත කිරීම ජනවර්ග අතර බෙදීමක් ඇති කරන ආස්ථානයක් වන හෙයින් ව්‍යවස්ථායී එකඟතාවකට බාධා කරයි. මෙම යෝජනා දෙක එකිනෙකට පරස්පර හෝ විකල්ප ඒවා ලෙසින් ගන්නවාට වඩා අනුපූරක ලෙසින් ගැනීම යෝග්‍ය යැයි සිතමි.

රජයේ කේන්ද්‍රයේ ඇති බලය ජනවාර්ගික පදනමක් මත කුමන හෝ ආකාරයට බෙදීමට සිංහල බෞද්ධ මතවාදය විරුද්ධය. එය කේන්ද්‍රය දුර්වල කොට, රට බෙදීමට මඟ පාදන්නක් බව එම මතවාදයේ විශ්වාසයයි.

බහුතරය විසින් යටපත් කරනු ලැබේ යැයි බියක් ඇති අන් සුළුතරයන්ගේ අත්දැකීම් හා ඉල්ලීම් හා දෙමළ ජනයා සිංහල බෞද්ධ ආධිපත්‍යය ඇති රාජ්‍යය යටතේ විඳි අත්දැකීම් හා සමාන කිරීම ඔවුන් බලය බෙදීම සඳහා කරන ඉල්ලීම ලඝු කිරීමේ උත්සාහයක් බවට පෙරළීමට යොදාගැනීමට හැකිය.

බලය බෙදාහැරීමේ ඒකකය

බලය බෙදාහැරීමේ ඒකකය ලෙස පළාත සැලකීමටද, උතුරු නැගෙනහිර පළාත් සභා ඒකාබද්ධ කිරීමටද සිංහල බෞද්ධ මතවාදය එකහෙළා විරුද්ධ වන්නේ (44-48) එය වෙනම රාජ්‍යයක් පිහිටුවීමට දෙමළ ජනතාවට අයිතියක් ලබා දීමක් ලෙස දක්නා බැවිනි. එහෙයින් පළාත් සභා වෙනුවට බලය බෙදා හැරීමේ විකල්ප ඒකක යෝජනා කෙරෙයි.

එමෙන්ම, රාජ්‍යයේ බලය කේන්ද්‍රයේ රැඳී තිබිය යුතු අතර පළාත්වලට බලය පැවරිය හැකි නමුත් අවශ්‍ය විටෙක එම බලය යළි පවරා ගැනීමට මධ්‍යම රජයට හැකි විය යුතු යැයි යෝජනා කෙරෙයි. ඒ අනුව පළාත් වලට කිසිදු ආකාරයේ ඒකාබද්ධ වීමට ඉඩ නොදිය යුතුය. එයට ඉඩ දෙන වත්මන් ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 154 (අ) 3 වෙනි වගන්තිය ඉවත් කළ යුතුය. භාෂාව, ජාතිය, ආගම හෝ ජනවර්ගය මත පදනම්ව කුමන හෝ ඒකකයකට බලය නොපැවරිය යුතුය.

පළාත් සභාවලට පොලිස් හා ඉඩම් බලතල ලබා දීමට සිංහල බෞද්ධ මතවාදය තදින් විරුද්ධය (51-56). මෙම ප්‍රතිපාදන ඉවත් කර ගන්නා ලෙසත්, මෙම බලතල ක්‍රියාත්මක කිරීම මධ්‍යම රජයේ කාර්යයක් විය යුතු බවත් එය කියා සිටියි.

පොලිස් බලතල

අන්තවාදීන්ගේ ප්‍රයත්න අසාර්ථක වී ඇතත්, අනාගතයේ උතුරු නැගෙනහිර පළාත් ලංකාවෙන් වෙන් කිරීමට තැත් කරන කණ්ඩායම්වලට පළාත් සභා පරිපාලනය සහයෝගය දීමට ඉඩ ඇති නිසා පොලිසිය ඔවුන් යටතට පත් නොකළ යුතු බව කියා සිටින නියෝජනයන්ගේ ප්‍රධාන තර්කය (51-54) වූයේ විශේෂයෙන්ම උතුරු නැගෙනහිර පළාත්වලට පොලිස් බලතල දීම රටේ භෞමික අඛණ්ඩතාවට නිරන්තර තර්ජනයක් විය හැකිය යන්නයි.

රජයේ ඉඩම්

බලය පැවරීමට විරුද්ධ කණ්ඩායම්, බලය පවරන ඒකකයේ විෂය කරුණක් ලෙස ඉඩම්, ඇතුළත් කිරීමට සම්පූර්ණයෙන් ම විරුද්ධ වෙති (54-56). බලය පැවරීමට පක්ෂව කරුණු ඉදිරිපත් කළ සමහර අයගේ තර්කය වූයේ ද, රජයේ ඉඩම් මධ්‍යම රජයේ අයිතියක් ලෙස පවත්වා ගත යුතු බවයි.

"මේ සම්බන්ධයෙන් ඉදිරිපත් වූ තවත් මතයක් වන්නේ රටේ සම්පූර්ණ භූමියම රටේ ජනතාවට අයිති බවත් රටේ ඕනෑම කෙනෙකුට එය අයිති කර ගැනීමටත්, භාවිතයට ගැනීමටත්, ඉඩ තිබිය යුතු බවයි." ඒ අනුව "කිසිම කණ්ඩායමකට හෝ ප්‍රජාවකට රටේ භූමියෙන් කොටසක් ඔවුන්ට අයිති යැයි කීමට හෝ එය ඔවුන්ගේ වාසභූමි යයි කීමට හෝ අයිතියක් නැත. රටේ ඕනෑම කොටසක ජනයා පදිංචි කරවීම රජයේ නීත්‍යානුකූල කාර්යයකි."

ඉඩම් බලතල පැවරීමට විරුද්ධව ඉදිරිපත් වූ තර්ක වලදී රටේ භූමියෙන් කොටසක් ඓතිහාසික වශයෙන්, මානවවංශ විද්‍යාව අනුව හෝ පුරාවිද්‍යාත්මක වශයෙන් තමන්ට පමණක් අයිති යයි ප්‍රකාශ කිරීම ප්‍රශ්න කරන ලදී. දැන් දෙමළ ප්‍රජාවේ ඓතිහාසික නිජ භූමි ලෙස හඳුන්වන ප්‍රදේශ මුලදී සිංහල බෞද්ධයන් ජීවත් වූ ප්‍රදේශ බව පෙන්වා දෙන ලදී.

සංවර්ධනයට වඩාත් සුදුසු රජයේ නැවුම් ඉඩම් විශාල ප්‍රමාණයක් ඇති උතුරු සහ නැගෙනහිර පළාත්වල පළාත් සභා වලට "ඉඩම් බලතල පැවරීමෙන් අනිත් පළාත්වල ඉඩම් නැති ජනතාවට අවාසියක් වනු ඇතැයි ද, පෙන්වා දෙන ලදී. මෙවැනි ඉඩම් බලතල පැවරීමකින් රටේ ඉඩම් ප්‍රමාණයෙන් තුනෙන් එකක් පමණ ජනවාර්ගික සුළුතරයක පාලනය යටතට පත්වනු ඇතැයි ද, තර්ක කරන ලදී" (56).

ආණ්ඩුකාරවරයාගේ බලතල අහිමි කිරීම

ආණ්ඩුකාරවරයාගේ විධායක බලතල අහිමි කිරීමට සිංහල බෞද්ධ මතවාදය බලවත් සේ විරුද්ධ වෙයි (57). මධ්‍යම ආණ්ඩුව සහ පළාත් සභාව අතර විෂයය පථයන් සම්පූර්ණයෙන්ම දෙකට බෙදීම උග්‍ර ලෙස විවාදාත්මක උත්සාහයක් වනු ඇත. මන්දයත් පොලිස් බලතල, ඉඩම් බලතල, අන්තර්ජාතික ප්‍රදාන, සෘජු විදේශ ආයෝජන, ජාත්‍යන්තර සංවර්ධන ආධාර, ජාත්‍යන්තර ණය, යුක්තිය පසිඳලීම ආදී විෂයයන් ගණනාවක් පළාත් සභාවට පැවරීමට දැඩි විරෝධතා මතු කෙරෙනු ඇති හෙයිනි.

පුද්ගල නීති

එමෙන්ම ආගමික හා වාර්ගික කණ්ඩායම්වලට සුවිශේෂ චාරිත්‍රානුකූල හා සාම්ප්‍රදායික සියලුම පුද්ගල නීති ඉවත් කිරීම එම නීති නිසා පීඩා විඳින එම ජනවර්ග වලට අයත් සමහර සාමාජිකයන් සාමාජිකාවන් වෙතින් මෙන්ම සිංහල බෞද්ධ

ප්‍රජාවෙන් ද ඉදිරිපත් කෙරෙන යෝජනාවකි (107). එවැනි නීති පැවතීම ඒ ජනවර්ග වලට සුවිශේෂී වරප්‍රසාද සැලසීමක් ලෙස සිංහල බෞද්ධ මතවාදය දකියි.

ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ මූලධර්මවලට පටහැණි නීතිවලට පැවතීමට ඉඩ ලබාදෙන වර්තමාන ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙහි 16 වැනි වගන්තිය සංශෝධනයද (87) මූලික වශයෙන් අදාළ වන්නේ ඉහත ආකාරයේ නීති වලටය. එහෙයින් 16 වැනි වගන්තිය අහෝසි කිරීමේ යෝජනාව ද ඉහත යෝජනාවට සම්බන්ධය.

බලය බෙදීමට සිංහල බෞද්ධ විරෝධයේ පදනම

බලය බෙදීමට සිංහල බෞද්ධයන්ගේ විරෝධයේ පදනම් වන්නේ 'සිංහල බෞද්ධ අනන්‍යතාව යටපත් කිරීමේ ජාත්‍යන්තර සහයෝගය ලබන කුමන්ත්‍රණයක් ඇත. එය දෙමළ සහ මුස්ලිම් ජනයාට සිංහලයන් හා සමාන ස්ථානයක් ලබා දීමේ මුවාවෙන් සිංහල බෞද්ධයන්ගේ පැවැත්මට අනතුරු එල්ල කරන්නේ ය' යන බිය හා සැක සංකා ය.

මීට ප්‍රධාන හේතුවක් වන්නේ ගෝලීයකරණය යුගයේ නව ලිබරල්වාදී ආර්ථික සහ සංස්කෘතික වෙනස් වීම් හමුවේ සංඝ සමාජයේ පැවැත්මට එල්ල වී ඇති බරපතල තර්ජනයයි. එම අභියෝගයට මුහුණ දීම තමන්ගේ සාමූහික වගකීමක් කර ගන්නවා වෙනුවට සිංහල බෞද්ධ සමාජය යොමුව ඇත්තේ අතීතයේ සිට සිදු වූයේ යැයි ඔවුන් විශ්වාස කරන රජය විසින් සංඝ සමාජය රැක ගැනීම සඳහා, සංඝ සමාජය විසින් රජයට කෙරෙන බල කිරීමට අනුගත වීමයි. ගෝලීයකරණ යුගයේ නව ලිබරල් ආර්ථික සහ සංස්කෘතික වෙනස් වීම් හමුවේ සංඝ සංස්ථාව පමණක් නොව සිංහල බෞද්ධ සමාජය පොදුවේ ආර්ථික සහ සංස්කෘතික අර්බුදයකට මුහුණපා සිටියි. රාජ්‍යය වෙනුවට පෞද්ගලික ව්‍යවසාය සහ වෙළෙඳපොළ ආදේශ වීම රජයේ ආදායම මත යැපුණු මධ්‍යම පාන්තික සහ පහළ පාන්තික සමාජ කොටස් ආර්ථික සහ සමාජ අර්බුදයකට ඇද දමා ඇත. ගෝලීය ජනමාධ්‍යය සහ සමාජ මාධ්‍යය පිපිරීම හමුවේ ගතානුගතික සිංහල බෞද්ධයා සංස්කෘතික අර්බුදයකට මුහුණ පා ඇත. සිංහලයන්ට ඇති එකම රට ශ්‍රී ලංකාව පමණක් වන හෙයින් සිංහල භාෂාව, සංස්කෘතිය හා ආගම දුර්වල වීමේ තර්ජනයක් ද, ඇතැයි සිංහල බෞද්ධයෝ විශ්වාස කරති. මේ සියල්ලට පහසු විසඳුමක් ලෙස අතීත කාමය බොහෝ සිංහල බෞද්ධයන් විසින් තෝරාගෙන තිබේ.

බලය බෙදීමේ යෝජනාවට සිංහල බෞද්ධයන් එකඟ කර ගත හැක්කේ කෙසේ ද?

බලය බෙදීමට එරෙහිව ඇති සිංහල බෞද්ධ මතවාදය පිළිබඳ වත්මන් ආණ්ඩුවේ ආකල්පය වන්නේ එයට අභියෝග නොකොට, එයින් පැනවෙන මූලික සීමා යටතේ ද්‍රවිඩ සහ මුස්ලිම් දේශපාලන ප්‍රභූන් එකඟ වන ආකාරයේ බලය බෙදීමක් සඳහා පාර්ලිමේන්තුවේ තුනෙන් දෙකක ඡන්දය දිනා ගැනීමට උපාය යෙදීමයි.

ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණය පිළිබඳ මහජන අදහස් විමසීමේ කමිටු වාර්තාවේ නිර්දේශ කරන පරිදි රට පුරා ප්‍රජාතන්ත්‍රවාදය ශක්තිමත් කිරීම සඳහා පළාත් මට්ටමින් ඔබ්බට ගම්සභා සහ සුළු නගර සභා මට්ටමට බලය බෙදීම පුළුල් කිරීමේ යෝජනාව බෙහෙවින් වැදගත්ය. නමුත් ගැටළුව වන්නේ බලය බෙදීමේ යෝජනාවට සිංහල බෞද්ධ ජාතිකවාදීන් එකඟ කරවා ගැනීමට එය ප්‍රමාණවත් වේද? යන්නයි. ඒ සඳහා අවශ්‍ය මූලික කොන්දේසිය සිංහල, දෙමළ, මුස්ලිම් ජන කොටස් අතර විශ්වාසය ගොඩ නැඟීමයි. මේ සඳහා රට නොබෙදෙන පරිදි ෆෙඩරල් නැතහොත් සන්ධීය ක්‍රමයට පළාත් සභා වලට මෙන්ම ඉන් ඔබ්බට ගමට සහ නගරයටත් බලය බෙදීමෙන් ලංකාව එක්සත් තනි රටක් වශයෙන් පැවතිය හැකි බව සිංහලයන් බහුතරයකට ඒත්තු ගැන්වීමේ ව්‍යාපාරයක් දේශපාලනඥයන්, බුද්ධිමතුන්, සිවිල් සමාජ ක්‍රියාකාරියන් සහ පුරවැසියන් එක්ව රට පුරා ගොඩ නැඟිය යුතුය. මේ කර්තව්‍යය කෙටි කාලීන දේශපාලන අරමුණු උදෙසා හදිසියේ කුමන හෝ උපාය යොදමින් සම්මත කර ගන්නා ව්‍යවස්ථාවක් අරමුණු කොට සාක්ෂාත් කර ගත හැකි නොවේ.

புதிய அரசியல் யாப்பும் இலங்கை தமிழ் மக்களுக்கான அரசியல் தீர்வும்

சுவஸ்திகா அருளிங்கம்

அரசியலமைப்பு சீர்திருத்தம் தொடர்பான பொது மக்கள் கருத்தறி குழுவின் பரிந்துரை எவ்வளவு தூரம் தமிழ் மக்களின் அரசியல் அபிலாஷைகளை கருத்திற் கொள்கின்றன தொடர்பாக சுவஸ்திகா அருளிங்கம் ஆராய்கிறார். குறிப்பாக போரினால் பாதிக்கப்பட்ட வடக்கு கிழக்கு வாழ் மக்களின் உரிமைகள், அதிகாரப்பகிர்வு, அரசியல் தலைவர்களின் செயற்பாடுகள் ஆகிய விடயங்களை இக்கட்டுரையில் ஆராய்கின்றார்.

சட்டத்தரணி சுவஸ்திகா அருளிங்கம் கடந்த ஐந்து வருடங்களாக வட கிழக்கு மாவட்டங்களில் காணப்படும் சட்ட, சமூக, பொருளாதார விடயங்கள் தொடர்பாக செயலாற்றி வந்துள்ளார்.

இலங்கை வாழ் தமிழ் மக்களுக்கு தனி அரசியல் பிரதிநிதித்துவம் வேண்டும் என்ற கோரிக்கை முதலாவதாக 1920களில் ஆரம்பித்தது. காலனித்துவ அரசாங்கத்திடம் இருந்து விடுதலை பெற்று இலங்கை மக்களுக்கு ஆட்சி உரிமை வழங்க வேண்டும் என்று, ஒரு குரலில் கோரிக்கைகளை முன்வைத்த படித்த இலங்கையர்கள், ஆட்சி அதிகாரம் என்று வரும்போது தத்தமது அரசியல் பிரதிநிதித்துவத்தை பாதுகாப்பதில் முன்னுரிமை காட்டினர். தமிழ் பிரதிநிதிகள் பிரதேச அடிப்படையில் பிரதிநிதித்துவம் கொடுக்கவேண்டும் என்று கோரிய போது அதை செவிமடுக்காது சிங்கள தலைவர்கள் இருந்ததால் பொன்னம்பலம் இராமநாதன் தலைமையில் தமிழ் மாகாஜன சபை என்ற முதலாவது தமிழ் அரசியல் குழு, இலங்கை தேசிய காங்கிரஸ் என்ற தேசிய அரசியல் கட்சியில் இருந்து பிளவுபட்டது. தமிழ் மகாஜன சபையானது பின்பு தமிழ் காங்கிரசுக்கும் அதன் பின் இலங்கை தமிழ் அரசுக் கட்சிக்கும் வழிகோரிய முதல் அமைப்பு.

1930யில் இருந்து அடுத்தடுத்து வந்த தசாப்தங்களில் வந்த தமிழ் கட்சிகள் 50:50 வீதப் பிரதிநிதித்துவம், சமஷ்டி ஆட்சி என்றும், இறுதியில் தனி நாடு என்றும் கோரிக்கைகளை முன்வைத்து வந்தன. இவற்றின் அடிப்படையில் இக்கட்சிகள் அரசியல் தேர்தல்களில் வட கிழக்கு தமிழர்களின் அமோகமான வாக்குகளை பெற்று வெற்றி கண்டண. இருந்தபோதிலும் தமிழ் மக்களின் நிஜவாழ்க்கையை பார்க்கும் போது பொருளாதார சமூக வாழ்க்கைதரங்களிலோ அல்லது சிவில் உரிமைகளிலோ மேலும் மேலும் பின்னடைவுகளையே கண்டவண்ணம் இருக்கின்றது. இதற்கு காரணம் என்ன?

ஒரு நாட்டில் சிறுபான்மை இனமாக இருந்து கொண்டு ஆட்சி அதிகாரத்தையும் சுயநிர்ணய உரிமைகளையும் கேட்பதற்கு இதுவரை தமிழ்

அரசியல் தலைவர்களும், ஆயுத போராட்ட குழுக்களும் எடுத்த யுக்தியானது தமிழர்களின் உரிமைகோரல்களை தமிழ் பிரதிநிதிகள் மாத்திரமே பேச முடியும், பிரதிநித்துவப்படுத்த முடியும் என்றதாகும். எனினும் கடந்த எண்பது வருட வரலாறானது இத்தகைய யுக்தி ஒருபோதும் தமிழ் மக்களின் அரசியல் அபிலாஷைகளை அடைவதற்கு வழிவகுக்காது என்று நினைவுறுத்தி நிற்கிறது. இவ்வாறு இருக்கையில், இவ்வருடம் புதிய அரசியல் யாப்பு மூலம் அரசியல் தீர்வுக்கான வாய்ப்பு மீண்டும் கிடைக்கபெற்றுள்ளது. இதை தமிழ் அரசியல் தலைவர்களும் வட கிழக்கு தமிழ் மக்களும் எவ்வாறு பயன்படுத்தப்போகிறோம்?

அரசியல் யாப்பும் போரினால் பாதிக்கப்பட்ட வடக்கு கிழக்கு வாழ் மக்களின் உரிமை கோரல்களும்

வடக்கு கிழக்கு வாழ் சமூகங்களுக்கு போரினால் ஏற்பட்ட தாக்கங்கள், இச்சமூகம் மத்தியில் காணப்படும் ஏற்றதாழ்வுகள், விளிம்பு நிலையில் இருக்கும் மக்களின் உரிமைகள் போன்ற விடயங்களை எவ்வாறு தமிழ் அரசியல் பிரதிநிதிகளும் தமிழ் சமூகமும் அரசியல் தீர்வு என்ற கோரிக்கையினுள் உள்ளடக்கப்படப்போகிறது என்பதையும் நோக்கவேண்டும்.

கொக்கிளாய், கொக்குத்தொடுவாய், கருநாட்டு-கேணி என்று முல்லைதீவு மாவட்டத்தில் அமைந்துள்ள மூன்று கிராமங்களில் 1984ஆம் ஆண்டு தமிழ் விவசாயிகள் அரச படைகளினால் பலவந்தமாக விரட்டி அடிக்கப்பட்டனர். அதன் பின் சிங்கள இனத்தை சேர்ந்த விவசாயிகளுக்கு மகாவலி அபிவிருத்தி திட்டத்தின் கீழ் இக்காணிகள் வழங்கப்பட்டன. 2012ஆம் ஆண்டு மீள்குடியேறிய மக்களுக்கு இன்றுவரை அவர்களது காணிகளோ அல்லது மாற்றுக்காணிகளோ வழங்கப்படவில்லை. நிறைந்த அதிகாரங்களையும் மையப்படுத்தப்பட்ட நிர்வாகத்தையும் கொண்ட மகாவலி அதிகார சபையானது இவ்விவசாயிகளது நியாயமான கோரிக்கைகளை கருத்தில் கொள்ளாது மறுதளித்து வருகிறது.

இதேபோல் யாழ் மாவட்டத்தில் மருதெங்கேணி எனப்படும் கடலையண்டிய கிராமத்தில் உப்புநீரை நன்னீராக்கும் அபிவிருத்தி திட்டம் ஒன்று கொண்டுவருவற்கான ஆய்வுகள் செய்யப்படுகின்றன. இத்திட்டமானது அமுல்படுத்தப்பட்டால் கரையோரத்தை அண்டிய கடற்பகுதியில் உப்புத்தன்மை அதிகரித்து சுற்றுச்சூழல் பாதிக்கப்படும். இதனால் இக்கடலை நம்பி வாழும் நூற்றுக்கணக்கான மீனவர்கள் தமது வாழ்வாதாரத்தை இழக்கநேரிடும். இத்திட்டத்தை பற்றி கலந்துரையாடி முடிவுகள் சிலவற்றை எடுக்க மருதெங்கேணி சமாசத் தலைவர் ஒரு கூட்டத்தை கூட்டியபோது, தனது பதவி அதிகாரங்களுக்கு மீறி செயற்படுகிறார் எனக் குற்றஞ்சாட்டி, வடமாகான கூட்டுறவு அமைச்சினால் சட்டபூர்வமற்ற முறையில் பதவி விலக்கப்பட்டார். இதற்குக் காரணம் வடமாகான சபையும் இத்திட்டத்தை அங்கீகரிக்கிறது. மருதெங்கேணி மக்களை பயனளிக்கக்கூடிய வகையில் இன்றுவரை எந்தவிதமான அபிவிருத்தி திட்டங்களும் கொண்டுவரப்படாத பட்சத்தில் அம்மக்களிடம் இருக்கும் ஒரே சொத்தாகிய கடல் வளத்தையும் நாசம் செய்யும் வகையில் வடமாகாண சபை அங்கீகாரத்துடன் இத்திட்டம் கொண்டுவரப்படுகிறது. இதற்குக் காரணம் மருதெங்கேணி பிரதேச மக்களின் வாக்குப்பலம் குறைந்த அளவிலே காணப்படுகிறது எனவும், உயர் சாதியை பெரும்பான்மையாகக் கொண்ட வடமாகாண சபை மீனவர்களின் பிரச்சனையை ஒரு பொருட்டாகவே கொள்வதில்லை எனவும் மக்கள் மத்தியில் பலமான அபிப்பிராயம் நிலவுகிறது.

யாழ் குடாநாட்டில் வாழும் முஸ்லீம் சமூகத்துக்கும் இதே போன்ற ஒரு பிரச்சனை. 1990ஆம் ஆண்டு விடுதலை புலிகளினால் ஒட்டுமொத்தமாக விரட்டப்பட்டு, பல இடங்களில் இடம் பெயர்ந்த நிலையில், 2009ஆம் ஆண்டு மீண்டும் தமது சொந்த இடங்களுக்கு வந்து குடியமர முனைந்தனர். கிட்டத்தட்ட 2000 முஸ்லீம் குடும்பங்கள் மீள்குடியேறுவதற்கு பதிவு செய்திருந்தாலும் இன்று 500 குடும்பங்கள் மாத்திரமே யாழ் நகரில் வாழ்கின்றனர். அரச அதிகாரிகள் மத்தியில் காணப்படும் இனத்துவேசப்போக்குகள் காரணமாகவும், அரசினால் வாழ்வாதார வசதிகள் எதுவும்

செய்து கொடுக்கப்படாத பட்சத்திலும் இச்சமூகம் அடிப்படை வாழ்க்கையை நடாத்த முடியாத நிலையில் வாழ்ந்து கொண்டு இருக்கிறது. யாழ் முஸ்லீம் சமூகம் சனத்தொகையில் குறைந்த எண்ணிக்கை உள்ளதாக இருப்பதால் அரசியல் பலமற்ற ஒரு சமூகமாக தொடர்ந்தும் ஒதுக்கப்பட்ட நிலையில் காணப்படுகிறது.

இம்மூன்று சமூகங்களும் வடமாகாணத்தில் வாழ்ந்து, போரினால் பாதிக்கப்பட்டு, மீள் குடியேறி அடிப்படை வாழ்க்கையை கொண்டுசெல்ல முடியாது தவித்துக்கொண்டு இருகின்றன. இம்மூன்று சமூகங்களும் அதிகாரத்தில் இருப்பவர்களினால் பாதிக்கப்பட்டு உள்ளன. மத்திய அரசு, மாகாண அரசு, அரச அதிகாரிகள் என்று அதிகாரத்தில் இருக்கும் வர்க்கத்தினர் மக்களின் நாளாந்த பிரச்சனைகளையும் கோரிக்கைகளையும் கருத்தில் கொள்ளாது ஆட்சி செய்வது என்பது இம்மூன்று உதாரணங்களிலும் பொதுவாக உள்ளது. இவை அனைத்தும் ஒரு நாட்டின் ஆட்சி முறைமையை ஒட்டியதும், அதிகாரத்தை ஒட்டியதுமான பிரச்சனைகள்.

இதைக்கடந்து தமிழ் சமூகமும், தமிழ் அரசியல் பிரதிநிதிகளும் இம்மூன்று பிரச்சனைகளையும் எவ்வாறு அணுகுகின்றனர் என்பதும் கருத்தில் கொள்ள வேண்டியது. கொக்கிலாய், கொக்குத்-தொடுவாய், கருநாட்டுகேணி விவசாயிகளின் பிரச்சனையானது 1940களில் இருந்து சர்ச்சைக்கு உள்ளாகி இருக்கும் வட கிழக்கு பிரதேசங்களில் சிங்கள மக்களை குடியேற்றுதல் என்பதுடன் தொடர்புபட்டுள்ளது. ஆரம்ப காலங்களில் இலங்கை அரசாங்கமானது விவசாயத்துறையை முன்னேற்றுவதற்கு உலக வங்கியின் ஆலோசனையின்படி இக்குடியேற்ற திட்டங்களை ஆரம்பித்த போதும் நாளடைவில் இது ஒரு இனத்தை ஒடுக்க எடுக்கும் நடவடிக்கையாக பார்க்கப்பட்டது. சிங்கள அரசியல்வாதிகள் தமிழ் பிரதிநிதிகளின் ஆதங்கங்களை தொடர்ச்சியாக புறக்கணித்ததன் விளைவாக காணி அதிகாரப்பகிர்வு என்ற விடயம் தமிழ் தேசிய கோரிக்கைகளில் பிரதான இடத்தை பெற ஆரம்பித்தது. சிங்கள பேரினவாதம் சார்ந்த அரசியல் ஒரு புறம் இருக்க, தமிழ் அரசியல் பிரதிநிதிகளில் காணி அதிகாரப்பகிர்வை கேட்டவர்களும் தமது சமூகம் மத்தியில் காணப்படும் ஒதுக்கப்பட்ட சாதிகளை சேர்ந்த மக்களின் காணியற்ற பிரச்சனைகளை பற்றி ஒரு பொழுதும் பேசியதில்லை. இதன் அடிப்படையில் பார்க்கையில் காணி அதிகாரப்பகிர்வானது கிடைக்கப்பெற்றிருந்தால் ஒரு சிங்கள மேல் சாதி வர்க்கத்திடம் இருந்து தமிழ் மேல் சாதி வர்க்கத்தினரிடமே அதிகாரம் கைமாறப்பட்டிருக்கும். ஒதுக்கப்பட்ட தமிழ் சமூகங்களினது காணியில்லாமை பிரச்சனையானது தொடர்ந்தும் புறக்கணிக்கப்பட்டிருக்கும்.

இதை விட மருதெங்கேணி மீனவர்களின் பிரச்சனைகளோ அல்லது யாழ் முஸ்லீம் சமூகத்தின் பிரச்சனைகளோ தமிழ் அரசியல் பிரதிநிதிகள் பாரதூரமான விடயமாக எடுத்துப்பேசுவதில்லை. இதற்கு காரணம் இம்மக்கள் வாக்குப்பலம் அற்றவர்கள். ஒரு சிலர் இச்சமூகங்களுக்காக கதைக்க முன்வந்தாலும் ஏனைய அரசியல்வாதிகளும் அவர்களை சார்ந்த தமிழ் ஊடகங்களும் அவர்களை விமர்சித்து வாயை மூடிவிடுவார்கள். இவர்களின் கண்ணோட்டத்தில் இருந்து பார்க்கும் போது இன்று காணப்படும் மாகாண சபை கட்டமைப்பின் கீழ் அரசியல் அதிகாரங்களை பகிர்வதனால் இவர்களின் வாழ்க்கையில் முன்னேற்றம் ஏற்படுமா? எனவே அதிகார மையப்படுத்தலை எதிர்ப்பது எந்தளவிற்கு முக்கியமோ அதே அளவிற்கு அதிகாரப்பகிர்வானது யாருடைய கைகளுக்கு வரப்போகிறது என்பதை கவனிப்பதும் முக்கியமாகும்.

மக்களின் சமர்ப்பணங்களும் *PRCC* குழுவின் பரிந்துரைகளும்

அரசு, ஆட்சி, அதிகாரம், இவற்றால் அன்றாட வாழ்க்கையில் மக்கள் அனுபவிக்கும் பிரச்சனைகள், என்பவற்றை ஒட்டி இவ்வருடம் தை மாதம் பிரதம மந்திரியினால் நியமனம் செய்யப்பட்ட அரசியலமைப்பு சீர்திருத்தம் தொடர்பான பொதுமக்கள் கருத்தறி குழு (PRCC) முன்னிலையில் வடக்கு கிழக்கு வாழ் மக்கள் தமது கருத்துக்களை முன்வைத்தனர். அரசியல் யாப்பு உருவாக்கத்தில் மக்களின் கருத்துக்களை கேட்டு அறிவதற்கு PRCC இலங்கை பூராக அமர்வுகளை நடாத்தியது. இவ்வமர்வுகள் போர்க்காலத்திலும் போருக்குப் பிற்பட்ட காலத்திலும் அரசினாலும் விடுதலை

புலிகளினாலும் கருத்து சுதந்திரம் அற்று, அமைதியாக்கப்பட்ட மக்களுக்கு பேசுவதற்கு ஒரு கழமாக அமைந்தன.

இலங்கை பிராந்தியங்களாக பிரிக்கப்பட்டு வடகிழக்கு ஒரு பிராந்தியமாக கருதப்பட வேண்டும் போன்ற கருத்துக்களும், காவற்துறை அதிகாரங்களும் காணி அதிகாரங்களும், அதிகாரம் பகிர்வளிக்கப்பட்ட வடகிழக்கு அரசிற்கு வழங்கப்படவேண்டும் என்ற கருத்துக்கள் முன்வைக்கப்பட்டன. இவற்றுக்கு மாறாக காவல் மற்றும் காணி அதிகாரங்களை வடமாகாண சபை போன்ற ஒரு அரச உறுப்பிற்கு கொடுப்பதில் ஆட்சேபனை தெரிவித்தும் சமர்ப்பணங்கள் முன்வைக்கப்பட்டன. இதை விட ஜானாதிபதியின் அதிகாரங்களை குறைத்தல், பாரம்பரிய தனியார் சட்டங்களில் காணப்படும் பிற்போக்கான தன்மைகளை மாற்றி அமைத்தல், தேர்தல்களில் சாதி, பால் சார்ந்த பாகுபாடுகளையும் அடக்குமுறைகளையும் ஒழித்தல், சமூகபொருளாதார உரிமைகளை பாதுகாத்தல் போன்ற பலதரப்பட்ட சமர்ப்பணங்கள் முன்வைக்கப்பட்டன.

அரசியலமைப்பு சீர்திருத்தம் தொடர்பான பொதுமக்கள் கருத்தறி குழுவின் அறிக்கையானது அரசின் தன்மை, வடகிழக்கு மாகாணங்களின் ஒன்றிணைப்பு, அதிகாரப்பகிர்வு, தேசிய மதம் போன்ற சர்ச்சைக்குரிய விடயங்களை கையாண்டுள்ளது. இதைவிட மக்களை நேரடியாகப் பாதிக்கும் சமூக பொருளாதார விடயங்களாகிய பால், ஊழியம், வாழ்வாதாரம் போன்றவற்றிற்கும் இவ்வறிக்கை பரிந்துரைகளை முன்வைக்கின்றது. இருப்பினும் அரசியலமைப்பு சார்ந்த கேள்விகளில் குழுவின் அங்கத்தவர்கள் மத்தியில் கருத்துடன்பாடு இல்லாத காரணத்தால் மாற்றுப்பரிந்துரைகள் முன்வைக்கபடுகின்றன.

உதாரணத்திற்கு, "அரசின் தன்மை" என்ற அத்தியாயத்தின் கீழ், வடகிழக்கில் இருந்து பிரதான கருத்தாக சமஷ்டி ஆட்சி முறை முன்வைக்கப்பட்டுள்ளது என்று அறிக்கை கூறுகிறது. நாட்டின் வெவ்வேறு பகுதிகளில் வாழும் மக்களும் சிறுபான்மை இனங்களின் பிரச்சனையை தீர்ப்பதற்கு சமஷ்டி ஆட்சி உகந்த வழிமுறை என பரிந்துரை வழங்கியாதாகவும் அறிக்கை கூறுகிறது. ஒற்றையாட்சியை விரும்புவோர் சமஷ்டி என்பது நாட்டின் பிரிவினைக்கு இட்டுச்செல்லும் என்று நம்புவர்களாகவும், ஒற்றையாட்சிக்கு எதிரானவர்கள் இவ்வாட்சி முறை பெரும்பான்மையினரின் ஆட்சிக்கும், அதிகார மையப்படுத்தலுக்கும் இட்டுச்செல்லும் என்று கருத்துக்களை தெரிவித்தார்கள் என்றும் PRCC அறிக்கை கூறுகிறது.

அறிக்கையின்படி வடக்கு கிழக்கு வாழ் தமிழ் மக்கள் வைத்த சமர்ப்பணங்களில் வடக்கு கிழக்கு மாகாணங்கள் ஒருங்கிணைக்கப்பட்ட மாகாணமாக அமைக்கப்பட வேண்டும் என்ற கோரிக்கை இருந்துள்ளது. எனினும் கிழக்கு முஸ்லீம் சமூகத்தில் இருந்த வந்த சமர்ப்பணங்களில் வடக்கு கிழக்கு மாகாணங்கள் ஒருமிக்கப்படக்கூடாது என்ற கருத்தும், அவ்வாறு ஒருமிக்கப்பட்டால், முஸ்லீம்கள் செறிந்து வாழும் இடங்கள் முஸ்லீம் பிரதேசங்களாக ஒதுக்கப்பட வேண்டும் என்ற கருத்தும் முன்வைக்கப்பட்டுள்ளது. மேலும் இனத்தை மையப்படுத்தி வந்த சமர்ப்பணங்களை தவிர்ந்து சாதி, மொழி, மதம் மற்றும் இடம் போன்ற வேறு பாகுபடுத்தும் காரணிகளையும் பிரதானமாகக்கொண்டு கருத்துக்கள் முன்வைக்கப்பட்டுள்ளன என்று அறிக்கை கூறிகிறது.

PRCCக்கு முன்வைக்கப்பட்ட சமர்ப்பணங்களில் பொதுவாக, சிறுபான்மை குழுக்களை சேர்ந்த மக்களுக்கு தமது இடங்களில் காணப்படும் பெரும்பான்மை சமூகத்தினால் அதிகாரத்திற்கும் அடக்குமுறைக்கும் உட்படுத்தப்படுவோம் என்ற பொதுவான ஐயம் காணப்பட்டதாக அறிக்கை அவதானிக்கிறது.

இதன் அடிப்படையில் PRCC குழு பின்வருமாறு விதப்புரைகளை முன்வைக்கின்றது:

1) "இலங்கையானது அரசியலமைப்பில் ஏற்பாடு செய்யப்பட்டுள்ளவாறு அரசாங்கத்தின் கருவிகளைக் கொண்ட ஒரு சுதந்திரமான, சுயாதீனமான, இறைமையுள்ள குடியரசாக ...
2) இலங்கை குடியரசானது அரசியலமைப்பில் ஏற்பாடு செய்யப்பட்டுள்ளவாறு அரசாங்கத்தின் கருவிகளைக் கொண்ட ஒரு சுதந்திரமான, சுயாதீனமான, இறைமையுள்ள ஒற்றையாட்சி நாடாகவிருப்பதோடு...

3) ..தற்போது நடைமுறையில் உள்ள அரசியலமைப்பின் 2ஆம் உறுப்புரை மாற்றமின்றி தக்கவைத்தல் வேண்டும். அதாவது: "இலங்கை குடியரசு ஒரு ஒற்றையாட்சியாகும்"

இந்த மூன்று பரிந்துரைகளிலும் 'சமஷ்டி' என்ற சொல் ஒரு பொழுதும் பாவிக்கப்படாத பட்சத்தில், வடக்கு கிழக்கில் வாழும் தமிழ் மக்களின் பெரும்பான்மையினர் அரசின் தன்மையை பற்றி முன் மொழிந்த கருத்துக்களை இவ்வறிக்கை பிரதிபலித்துள்ளது என்று கூறமுடியாது. எனினும் முதலாவது பரிந்துரையில் 'ஒற்றையாட்சி' என்ற பதம் தவிர்க்கப்பட்டமைக்கு வடக்கு கிழக்கு தமிழ் மக்களின் சமர்ப்பணங்களும் செல்வாக்கு செலுத்தி இருக்கும் என்று கருதலாம்.

இந்தநிலையில் PRCC வெளியிட்டுள்ள அறிக்கை புதிய அரசியல் யாப்பிற்கான தெளிவான கொள்கைகளை வகுத்துள்ளது என்று கூறமுடியாது.

மேலும் இவ்வறிக்கையை வாசிக்கையில், வடக்கு கிழக்கு வாழ் தமிழ் மக்கள் மத்தியில் அரசின் தன்மை பற்றியோ அல்லது, அதிகார பேரளிப்பு தொடர்பிலோ ஒருமித்த அபிப்பிராயம் இருப்பதாக தென்படவில்லை. இன்று வடமாகணத்தில் சாதி பாகுபாடுகள் காணி பங்கீடுகளிலும், பாடசாலைகளிலும், அரச உத்தியோக நியமனங்களிலும் வெளிப்பட்டு நிற்கின்றன. இந்நிலையில் ஒதுக்கப்பட்ட சாதிகளை சேர்ந்த சமூகங்களுக்கு உயர்சாதியின் பண்புகளை பிரதிபலித்து நிற்கும் வடமாகாண சபை போன்ற ஒரு அரச உறுப்பிற்கு காணி, காவற்துறை போன்ற முக்கியமான அதிகாரங்களை வழங்குவதன் மூலம் தாங்கள் மேலும் அடக்குமுறைகளுக்கு உட்படுத்தப்படலாம் என்ற ஐயம் அவர்களின் சமர்ப்பணங்களில் வெளிப்படுகிறது.

மேலும் வடகிழக்கு ஒருங்கிணைந்த மாகாணமாக கருதப்பட வேண்டும் என்ற கருத்தை எதிர்த்து முஸ்லீம் சமூகத்தினர் சமர்ப்பணங்களை கொடுத்தனர். இன்றைய கிழக்கு மாகாணத்தில் முஸ்லீம் மக்களின் சனத்தொகை மொத்த சனத்தொகையின் மூன்றில் ஒரு பங்காக காணப்படுகிறது. இவ்வாறு பார்க்கையில் தமிழ் மக்களின் கோரிக்கையை மாத்திரம் முன்னுரிமைபடுத்த வேண்டும் என்று கேட்பதில் நியாயம் உள்ளதா? மேலும் 'தமிழ் மக்களின் பிரதிநிதிகள்' என்று தமிழ் தேசியவாதிகளால் இன்று வரை கூறப்படும் விடுதலை புலிகளின் கட்டுப்பாட்டில் வடக்கு இருந்த காலப்பகுதியில் முஸ்லீம் மக்கள் வடக்கு மாகாணத்தை விட்டு விரட்டி அடிக்கப்பட்டார்கள். பெரும்பான்மை ஆதிக்கத்திற்கெதிராக ஏற்பட்ட போராட்டத்தின் போது, தமிழ் மக்களிடையே வாழும் சிறுபான்மை சமூகத்தை பாதுகாக்க முடியாமல் போனது இன்று வரை எமது வரலாற்றில் கரும் புள்ளியாகவே இருக்கிறது. இவ்வாறு இருக்கையில் முஸ்லீம் சமூகம் வடகிழக்கு இணைந்த மாகாணத்தில் அடக்குமுறைகளுக்கு உட்படுத்தப்படமாட்டர்கள் என்பதில் நிச்சயம் இல்லை.

தமிழ் தேசியம் என்ற கோரிக்கையில் சமூகங்களுக்கு உள்ளே அமிழ்த்தப்பட்டு இருந்த அடக்குமுறைகள் மூடிமறைக்கப்பட்டதால், தமிழ் அரசியல் பிரதிநிதிகள் அதிகாரங்கள் சார்ந்த கோரிக்கைகளை மாத்திரமே இன்று வரை வடகிழக்கு வாழ் தமிழ் மக்களின் கோரிக்கைகளாக முன்வைத்துக்கொண்டிருந்தார்கள். அந்த வகையில் வடகிழக்கு வாழ் தமிழ் மக்களுக்கு ஓரிரு பிரதானமான அரசியல் அதிகாரம் சார்ந்த கருத்துக்கள் மாத்திரமே அரசியல் யாப்பை ஒட்டி உள்ளன என்ற ஒரு பரவலான அபிப்பிராயத்தை இந்த அறிக்கை ஓரளவு உடைக்கின்றது என்றும் கூறலாம்

புதிய அரசியல் யாப்பும் தமிழ் மக்களின் அரசியல் கோரிக்கைகளும்

இலங்கையின் சுதந்திரத்திற்கு பிற்பட்ட காலத்தில் உருவாக்கப்பட்ட அரசியல் யாப்புக்களில் மக்களின் கருத்துக்களை கேட்டறிய முனையும் முதலாவது அரசியல் யாப்பு இதுவாகும்.

2000ஆம் ஆண்டின் புதிய அரசியல் யாப்பு மசோதா பாராளுமன்ற வாக்கெடுப்புக்கு கொண்டுவருவதற்கு முன்னர் அரசியல் யாப்பு உருவாக்கத்தை பற்றியும், இதன் மூலம் இனபிரச்சனைக்கு தீர்வு காண வேண்டிய முக்கியத்துவம் பற்றியும் அன்றைய அரசாங்கம் பொது மேடைகளிலும் அரசியல் கூட்டங்களிலும் பகிரங்கமாக பேசியது.

அவ்வரசாங்கம் எடுத்த முயற்சிகளால் அதிகார பகிர்வாக்கலுக்கு ஆதரவாக பெரும்பான்மை மக்களின் அபிப்பிராயமும் காணப்பட்டது. இருந்த போதிலும் அந்த யாப்பு பாராளுமன்றத்தில் முறியடிக்கப்பட்டது. அதன் பின்னர், புதிய அரசியல் யாப்பு உருவாக்குவதற்கு எடுக்கப்படும் முதலாவது முயற்சி இதுவாகும்.

2000ஆம் ஆண்டின் அரசியல் போக்கிற்கும் இன்றைய அரசியல் யதார்த்தத்திற்கும் பெரும் வேறுபாடுகள் உள்ளன. தமிழ்தேசத்திற்கான போராட்டத்தை இலங்கை அரசு, இராணுவதின் உதவியுடன் முறியடித்த பின்னரான காலம் இது. போர் வெற்றியை பயன்படுத்தி சிங்கள பேரினவாதத்தை தூண்டி விட்ட ராஜபக்ஷ ஆட்சியின் பின் வந்த காலம் இது. பெரும்பான்மை மக்களின் சிந்தனையில் தமிழ் மக்களுக்கு தீர்வை பெற்றுக்கொடுக்கவேண்டும் என்ற எண்ணம் இன்றைய காலத்தில் இருக்கப்போவது இல்லை. இவ்வாறான ஒரு சூழ்நிலையில் இன்றைய அரசாங்கம் வடக்கு கிழக்கு தமிழ் மக்களுக்கு உண்மையான அரசியல் தீர்வை வழங்க முனைகிறது ஆனால் பெரும்பான்மை மக்களின் ஆதரவின்றி இதை செய்துவிட முடியாது. எனினும் அரசியல் யாப்பு தொடர்பில் மக்களின் கருத்துக்களை பரவலாக கேட்டறிய பொது அமர்வுகளை நடாத்தியதற்கு அப்பால் இவ்வரசாங்கம் அரசியல் யாப்பை பற்றியோ, சிறுபான்மை மக்களுக்கான அரசியல் தீர்வு பற்றியோ பொதுப் பிரச்சாரங்கள் வைப்பதாக தெரியவில்லை. மேலும் பொதுமக்களின் ஆலோசனையை கேட்டறியும் குழுவின் அறிக்கை வருவதற்கு முன்னரே பாராளுமன்றம் அரசியல் யாப்புப் பேரவையாக அமர்ந்து புதிய அரசியல் யாப்பைப் பற்றி கலந்துரையாட ஆரம்பித்தது. இதைப்போன்ற நிகழ்வுகளை அவதானிக்கும் போது அரசாங்கம் உண்மையிலேயே மக்களின் கருத்துக்களை அறிய விரும்பிகிறதா அல்லது, தென்னாபிரிக்கா நாட்டின் அரசியல் முறைமையை அச்சடித்தபடி பின்பற்றும் இன்றைய இலங்கை அரசியல் போக்கின் பண்புகளில் இதுவும் ஒன்றாக அமைகிறதா என்ற சந்தேகம் எழுகிறது. எது எவ்வாறாயினும் மக்கள் இச்சந்தர்ப்பத்தை பயன்படுத்தி PRCC முன்னிலையில் வலுவான கருத்துக்களை முன்வைத்துள்ளனர் என்று இக்குழுவின் அறிக்கையை வாசிக்கும் பொழுது அவதானிக்க முடிகிறது.

இதனோடு தொடர்புபட்டு, தமிழ் தேசியக்கூட்டமைப்பின் அரசியல் தலைவர்களின் அரசியல் யாப்பு செயன்முறை பற்றிய போக்கையும் சற்று நோக்கவேண்டும். அரசாங்கத்துடன் இரகசிய பேச்சுவார்த்தைகள் நடாத்தி தமிழ் மக்களின் உரிமைகளை பெற்றுக்கொடுக்கலாம் என்ற பாணியில் இவர்களது இன்றைய நடவடிக்கைகள் உள்ளன. தமிழ் அரசியல் பிரதிநிதிகள் மக்களிடையே புதிய அரசியல் யாப்பில் தாம் கேட்கும் கோரிக்கைகள் பற்றியோ, இப்போது வெளிவந்த PRCC அறிக்கை பற்றியோ பகிரங்க கூட்டங்களோ கலந்துரையாடல்களோ நடாத்துவதாக தென்படவில்லை. மக்களின் ஆதரவு இல்லாமல் அரசியல் யாப்பில் வடகிழக்கு தமிழ் மக்களுக்கென அதிகாரங்களை பெற முனைவதில் பயனேதும் உள்ளதா?

வேறு சந்திரிக்கா அம்மையாரின் காலப்பகுதியில் முற்போக்கான அரசியல் யாப்பு சீர்திருத்தங்களை அரசு முன்வைத்த பொழுதும், தமது சொந்த பிடிவாதத்திற்க்காகவும் தமது இயக்கத்தை பாதுகாப்பதற்காகவும் விடுதலை புலிகள் இதனை உதறித் தள்ளினர். இவ்வாறான தீவிரமான அரசியல் போக்கு 2009ஆம் ஆண்டு ஆயிரக்கணக்கான தமிழ் மக்களை முள்ளிவாய்க்கால் பலி கொடுக்க வழி கோரியது. இன்றைய அரசியல் கால கட்டத்தில் தமிழ் சமூகம், என்றும் இல்லாத அளவிற்கு நலிவடைந்து காணப்படுகின்றது. இந்த நிஜத்தில் தமிழ் மக்களின் பலத்தை திரட்டுவதால் மாத்திரம் தமிழ் மக்களின் கோரிக்கைகளை அரசு கேட்கப்போகின்றது என்றும் கூறமுடியாது. எனவே இதுவரை காலமும் தமிழ் சமூகத்தின் உரிமைகளை பெற்றுக்கொடுப்பதில் தோல்வி கண்ட தமிழ் மக்களின் அரசியல் பிரதிநிதிகள் வருங்காலத்தில் கடைபிடிக்க வேண்டிய யுக்தி என்ன?

இதற்கு பதிலளிக்கும் விதத்தில் 1963யில் வெளிவந்த வி.காராளசிங்கம் அவர்களின் 'தமிழ் பேசும் மக்களின் விமோசனப்பாதை' என்ற ஆங்கில கட்டுரையில் கூறிய சில கருத்துக்களை நாம் மீண்டும் புரட்டிப் பார்ப்போம். அதில் அவர், தமிழ் பேசும் மக்களின் அடிப்படை பலவீனமானது நாம் சிறுபான்மை இனத்தவர்கள் என்பதாகும் என்று கூறுகிறார். எனவே எமக்கு எதிராக

இருக்கும் சக்திகள் எப்போதுமே பெரும்பான்மை சமூகத்தில் இருந்து எழுவதால் அச்சமூகத்தின் ஆதரவையும் கொண்டுள்ளது. மேலும் ஆரம்ப காலங்களில் இந்தியாவை பின்பற்றி சத்தியாகிரக வழிமுறையானது அரசியல் போராட்டங்களுக்கு பயன்படுத்தப்பட்டாலும் அவை இந்தியாவின் சுதந்திர போராட்டதிற்க்கு ஈட்டிய வெற்றியை தரவில்லை. இதற்கு காரணம் இரண்டு போராட்டங்களிலும் காணப்படும் அடிப்படை வித்தியாசங்கள். இந்திய போராட்டமானது மேலிருந்து திணிக்கப்பட்ட ஒரு அந்நிய ஆட்சிக்கு எதிராக நடாத்தப்பட்ட ஒன்றாகும். எனவே அந்நாட்டின் அனைத்து மக்களும் போராட்டத்திற்கு அணிதிரண்டனர். பெரும்பான்மை மக்கள் பலம் இந்திய சுதந்திர அமைப்பிடம் காணப்பட்டது. ஆனால் தமிழ் மக்கள் போராடுவது பெரும்பான்மை மக்களின் வாக்கெடுப்பினால் தேர்ந்தெடுக்கப்பட்ட அரசிற்கு எதிராக. எனவே சரி பிழை என்ற வாதத்திற்கு அப்பால் பெரும்பான்மை மக்களின் ஆதரவை பெற்ற அரசாங்கத்திடமே தமிழ் மக்கள் தமது கோரிக்கைகளை முன்வைகின்றனர். எனவே தமிழ்பேசும் மக்களின் போராட்டமானது தென் இலங்கையில் வாழும் சமூகங்களின் புரிந்துணர்வையும் ஆதரவையும் பெற்றால் அன்றி வெற்றியளிக்காது என்றும் எழுதியுள்ளார்.

வரலாறு நமக்கு கற்பித்த பாடங்களை நாம் புரட்டிப்பார்த்தால் காராளசிங்கதின் வார்த்தைகளில் வெளிப்படும் உண்மைகள் நமக்கு தெளிவாகிறது. தமிழ் அரசியல் தலைவர்கள் தமிழ் மக்களுக்கு உரிமைகளை பெற்றுக்கொடுப்பதாயின் மற்றைய சிறுபான்மை இனங்களுடனும் முற்போக்கான சிங்கள சமூகங்களுடனும் இணைந்து செயற்பட முயற்சிக்க வேண்டும். எனவே முஸ்லீம் சமூகத்தின் கோரிக்கைகளையும், மலையக தமிழ் மக்களின் உரிமை கோரல்களையும் தமிழ் அரசியல் பிரதிநிதிகள் உள்வாங்கி பேச்சுவார்த்தை நடாத்துவதன் மூலம் மாத்திரமே தமிழ் மக்களின் உள்ளார்ந்த கோரிக்கைகளை அரசியல் ரீதியாக நிலைநிறுத்த முடியும்.

மேலும் அரசியல் யாப்பானது வெறுமனே சட்ட வல்லுனர்களினாலும் சட்டத்தரனிகளினாலும் வரையப்படும் ஒரு ஆவணமன்று. இது மக்கள் தாம் எவ்வாறு ஆட்சி செய்யப்படவேண்டும் என்று தீர்மானிக்கும் ஒரு உடன்படிக்கை. மக்கள் தமது கருத்துக்களை ஆணித்தரமாக இந்த அறிக்கையின் மூலம் வெளிப்படுத்திவிட்டார்கள். இவற்றை அரசாங்கமும் அரசியல் பிரதிநிதிகளும் எவ்வளவுக்கு உள்வாங்கி அரசியல் யாப்பை உருவாக்கப்போகின்றார்கள் என்பதை பொறுத்திருந்து பார்க்கவேண்டும். அது வரையும் வடக்கு கிழக்கு வாழ் தமிழ் மக்கள் தொடர்ந்தும் யாப்பு பற்றிய தமது கருத்துக்களையும் கோரிக்கைகளையும் பத்திரிகைகள் மூலமும், பொதுக்கூட்டங்கள் மூலம் பகிரங்கப்படுத்திக்கொண்டு இருக்கவேண்டியது முக்கியமாகும்.

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From a Presidential to a Parlimentary State:

Some Conceptual Questions for Institutional Design

ASANGA WELIKALA

Drawing extensively on concepts on Constitutional theory, Asanga Welikala's article is an incisive examination of Sri Lanka's reformist conception of the parliamentary state from the perspective of the foundations of the Westminster model. Welikala also questions the faith in legal mechanisms for the protection of rights and constitutionalism, and urges the consideration of political mechanisms for this purpose.

Asanga Welikala is a Lecturer in Public Law, University of Edinburgh, Associate Director, Edinburgh Centre for Constitutional Law, Research Associate, Institute of Commonwealth Studies and Research Fellow, Centre for Policy Alternatives (CPA).

Introduction

The 2015 elections were remarkable for any number of reasons but one of the most noteworthy aspects of the campaigns was the prominence of the constitution in general, and the nature and shape of the executive in particular. The political and civil society forces behind the candidacy of Maithripala Sirisena placed the reform of the executive presidency square and centre of the common opposition campaign. Writing in *The Sunday Times* in the run-up to the presidential election, the then Leader of the Opposition and now Prime Minister Ranil Wickremesinghe called for a 'new constitutional order' based on popular sovereignty and popular consensus, which would, *inter alia,* abolish the executive presidency and establish a Cabinet responsible to Parliament. The article drew inspiration from both Western comparative examples as well as South Asian history and political theory, including the model of the Lichchavi Republics, the Vinaya Pitakaya, the Asokan Rock Edicts, and the policies of the Mughal Emperor Akbar.[1] Sirisena's victory on this platform, however, was only the latest in a long line of electoral precedents in which the public had endorsed candidates promising the abolition, or at least the reform, of the executive presidency since 1994.

While the UNP obtained a majority of votes and a five-sixth majority in Parliament in the 1977 general elections on a promise to introduce a semi-presidential form of government, it can fairly be argued that presidentialism has never sat comfortably in the landscape of Sri Lankan constitutional politics once the electorate

experienced its severe democratic cost. At the time of its promulgation, the executive presidency was eloquently critiqued by those such as Dr N.M. Perera and Dr Colvin R. de Silva: two Sri Lankan politicians whose constitutional erudition and foresight have not been surpassed before or since, notwithstanding their involvement in the disastrous first republican constitution.[2] Their contemporaneous prognostications of impending Caesarian authoritarianism were quickly fulfilled when President Jayewardene used his referendum power to evade parliamentary elections in 1982.

The downhill path for democracy and civil liberty since then has been directly linked to presidentialism, and the corresponding formation of a left-liberal article of faith in constitutional politics about the need to abolish the institution and return to parliamentary democracy.[3] While the formation of this constitutional consensus was precipitated by presidentialism, it also involved an examination and critique of the pre-presidential history of post-independence parliamentary governance, in particular majoritarian excesses like the Citizenship Acts and the Sinhala Only Act.[4] However, that the argument in favour of a restoration of parliamentary democracy is primarily connected to the experience of presidential authoritarianism has a number of implications for the exact form of the parliamentary state that is in contemplation by the left-liberal reformists who drive or support constitutional reform under the Sirisena-Wickremesinghe national government. As the reform impulse is more about constitutionalism, rights, and democratisation than it is about the preferred form of executive power, the Sri Lankan reformist conception of the parliamentary state is heavily imbued with two other principles – the belief in the expansion of constitutional rights and the protection of constitutionalism through a very strong judicial power – that are not historically part of the Westminster tradition. But these beliefs are so strongly held, because they have been forged and re-forged on the crucible of tiresomely repetitive presidential abuses of the past four decades, that it is now often assumed that there is nothing more to say about them, except to act with alacrity in getting them enacted before the current constitutional moment is over.

It might be added that the expansion of the number and scope of constitutional rights and their protection through a strengthened judiciary are not merely the cherished dream of a left-liberal academic and civil society elite. As was seen in Wickremesinghe's newspaper article, the country's main centre-right political party has embraced it, and there is some indication that many people at large support this. In its analysis of public submissions, the Public Representations Committee on Constitutional Reforms (PRCCR) observed that "On the whole, the submissions on Fundamental Rights (FR) (political, civil, social, cultural and economic rights) and group rights *unanimously* requested for [*sic*] the *strengthening and broadening* of the FR section…"[5] The PRC's report reflects all the main tenets of the left-liberal position. It recommends not only the extension of the scope of existing civil and political rights and the addition of socioeconomic rights, but also strongly judicial forms of enforcement of the future bill of rights.[6] Two normative rationales underpin these recommendations: democratisation and counter-majoritarianism (and the latter's close relation, non-discrimination), both of which, as we shall see, were primary concerns motivating Sri Lankan left-liberalism's turn to 'legal constitutionalism' (I will explain this term more fully below) from the mid-1970s.

Just like the older iterations of this approach in the scholarly work of left-liberal constitutionalists, however, there is evidence in the PRC report itself that the popular consensus about (the expansion of) constitutional rights is superficial and conceals a number of deep disagreements. Thus for example,

in relation to the Buddhism clause,[7] presumably because there was no consistency or consensus in the public submissions they received, the PRC members were so divided that they have proposed six different options, none of which enjoy the support of a majority of members.[8] It is difficult to see how the clamour for the recognition of more and more human rights, underlying which in this context ought to be a commensurately wide commitment to equality expressed as secularism, sits with what seems to be a continuing commitment to a key majoritarian symbol like the Buddhism clause. To me this reveals deep social divides on major constitutional questions that have not been adequately addressed by those who think these matters can be mediated and resolved through courts adjudicating on constitutional rights, as if there were in fact constitutional consensus on them.

Thus my focus here is not a comparative evaluation of presidentialism and parliamentarism, but rather, an interrogation of the assumptions underlying the Sri Lankan reformist conception of the parliamentary state from the perspective of the traditional conceptual foundations of the Westminster (or Commonwealth) model.[9] The aim is to critically shed light on these distinctive reform rationales and institutional proposals, not so much to reject them outright as to ensure that these major constitutional choices are made with proper consideration for all their implications. In particular, my objective is to question the faith in *legal* mechanisms for the protection of rights and constitutionalism, and in so doing to urge the consideration of the *political* mechanisms that are much more the tradition in the parliamentary model of government for achieving these ends.[10]

The issue, however, is not either/or: in applying the Westminster model to the specificities of our political context, we need both legal as well as political forms of accountability, in a hybrid model that has recently been theorised as the 'New Commonwealth Model of Constitutionalism',[11] or elsewhere, the 'dialogic model of constitutionalism'.[12] But the current state of the debate, it seems to me, is inordinately weighted towards legal constitutionalism and exalts its abstract virtues, thereby ignoring the considerable strengths and practical advantages of political constitutionalism.[13] The point therefore is, first, to draw attention to legal constitutionalism's costs as well as dangers when seen against its proponents' idealist expectations of constitutional reform, and second, to highlight some of the practical strengths and normative virtues of political constitutionalism that are deserving of serious consideration by Sri Lankan constitution-makers but which are nowadays routinely disregarded when they are not being vilified.

The Parliamentary State as a Normative Model of Democratic Government

We know well the basic institutional difference between presidential and parliamentary states, but often less is said about the values that underpin each of these politico-constitutional models.[14] So let us begin by outlining the idea of the parliamentary state as a normative model.[15]One of the most recognisable features of the parliamentary model of government is its subjection of the executive to political accountability by the legislature. This rule is variously known as the 'responsibility principle', the 'confidence principle', the 'doctrine of responsible government', or the 'convention of ministerial responsibility'. The rule requires that the government is only able to continue so long as it enjoys the support of Parliament (usually defined as a majority of its members), and that the government is required to resign the moment that support is withdrawn. Developing in the Parliament at Westminster in the seventeenth century, it has become the essential characteristic of parliamentary representative democracies everywhere where the Westminster model has taken root. The core

normative value at the heart of this constitutional rule of the parliamentary state is the value of accountability, or more specifically, the political accountability of government to Parliament. The rule of law, the independence of the judiciary, and other such mechanisms of legal accountability are also important and indispensable elements of any modern democratic parliamentary state, but the model's defining feature is the rule and value of political accountability.[16]

That rule is so central to the ideal of parliamentary government that it is not only in the exceptional situations of a loss of parliamentary confidence when a government as a whole must resign that its operation is seen in practice. The government has to obtain parliamentary support, on a daily basis, for every one of its legislative and budgetary proposals and of its administration of the country in general, and every minister from the Prime Minister down must enjoy Parliament's support. Without that support, individual ministers have to resign, the government's proposals may be defeated, and if the Prime Minister loses confidence or if the government's annual budget is defeated, then the whole government stands dismissed. Thus, rituals like Prime Minister's Questions are not merely a piece of amusing political theatre, but a striking demonstration of the chief executive's regular political accountability in action, in a way that is nowhere seen in a presidential system. In this way, the parliamentary state has as its central idea the notion that the government must be constantly accountable to the elected representatives of the people. The constitutional rationale of this form of political accountability is deeply democratic. It is the means by which, in between the elections in which the people have their direct say, that the people through their elected representatives ensure that the government not merely carries out the programme for which it was elected, but which ensures that the government acts constitutionally, i.e., accountably.[17]

In this constitutional arrangement, Parliament is the key institution of democratic representation and accountability. The courts' role is to ensure the rule of law, that is, to ensure that the government acts according to laws of general application, so that legality, reasonableness, and procedural fairness characterises governmental behaviour. Subject to parliamentary confidence and this form of procedural judicial oversight, the executive is enabled to carry out its programme until such time that its performance is endorsed or rejected by the people themselves at elections. In the pursuit of peace, order, and good government, this framework assigns a particular role for each of the three organs of state, and while in the orthodox version the Westminster model considers Parliament to be supreme due to certain historical specificities in the UK, there is no reason that should be so in a more generalised conceptualisation of the parliamentary state.[18] What is crucial is not parliamentary supremacy, but the idea of political accountability as outlined above, and accordingly, legal accountability through the courts while important and indispensable, is not the central mechanism by which constitutional democracy is secured. This is why it is argued that the inherent institutional logic of the parliamentary state demands a form of constitutionalism that is more political than legal in nature. It is founded on a realist understanding of governmental behaviour that governments will always try to do whatever they can politically get away with, and as such, the best way of holding them to account is through the political process of parliamentary scrutiny itself, rather than any judicial process through the courts (or at least, a balanced combination of the two).[19]

Because of the association of parliamentarism with the political history of Westminster, it is often assumed that it carries with it a commitment to parliamentary supremacy rather than constitutional supremacy. This is moreover believed to be undesirable, because Parliaments as majoritarian institutions can become captive to authoritarian

and illiberal political forces, which would, in turn, endanger liberal values like the rule of law and especially the rights of minorities. In Sri Lanka, the credence that can be attached to this argument from the experience of parliamentary government and discriminatory legislation between 1948 and 1977 is the reason why it is felt by many liberal constitutionalists that legal controls through bills of rights, constitutional supremacy, and the courts are necessary to tame the wilder tendencies of our political culture.[20]

It is important to stress in counterpoint that political constitutionalism is a theory of constitutional democracy, and as such, it does not regard Parliament as something that is necessarily a danger to liberal democracy. But neither does it believe that supreme constitutions or courts can satisfactorily address this danger to which any democratic society is exposed. If the polity is influenced by contra-constitutional ideologies like ethnonationalism that aggravate majoritarianism by the ethnicisation of politics, then that is more a question of political culture than about the institutional form of government. Rather than addressing the difficult issue of political culture and its reform or improvement at source, legal constitutionalists believe in domesticating politics through law. This approach of legal constitutionalism is premised on two related claims: first, that we can, and ought to, come to a rational consensus on the substantive (as opposed to the procedural) nature of a democratic society, and that these outcomes are best expressed in terms of human rights which are in turn enshrined in a fundamental constitution that is beyond the ordinary reach of transient political majorities represented in legislatures; and secondly, that the judicial process rather than the political process is the better way of articulating and enforcing the substantive outcomes articulated in the constitutional bill of rights.[21] As we will see, both these claims are theoretically questionable or at least not as watertight as safeguards as most legal constitutionalists assume they are to deliver the outcomes they desire. But why was it that in Sri Lanka that this model of constitutionalism gained such currency, and what are its main theses?

The Rise of Legal Constitutionalism in Sri Lanka

Even though its present proponents come from a variety of ideological orientations – from classical liberals to social democrats to Trotskyites to liberal conservatives to minoritarian nationalists – the left-liberal consensus on legal constitutionalism reflects a number of distinctive analytical and normative assumptions. In addition to the two mentioned above, these can be summarised as: that the weaknesses of political culture and the failures of elected institutions in respect of human rights protection can, at least to some extent, be remedied through a stronger bill of rights; that fundamental rights must be strongly constitutionalised and placed beyond the reach of transient political majorities; that the courts (ideally an American-style Supreme Court or a Kelsenian Constitutional Court[22]) must have strong powers of constitutional review including to invalidate primary legislation; that universal human rights are indivisible and therefore socioeconomic rights must be afforded the same level of protection and enforcement as civil and political rights; and that group rights also be justiciable.

These perspectives are heavily informed by the dominant discourse of international human rights law and comparative experiences of transformative constitutionalism such as South Africa and India, as much as by specific challenges in Sri Lanka's own less than ideal experience with regard to human rights protection. And it is no coincidence that its leading advocates from the 1970s onwards were educated at American law schools such as Harvard, Yale, Columbia, and Berkeley, then under the shadow of the Warren court and the dominant influence of theorists such as John Rawls, Ronald

Dworkin and John Hart Ely.[23] As South Asians, they were also no doubt inspired by the activism of the Indian Supreme Court in holding Indira Gandhi's emergency abuses to account. This was a brave new liberal world in comparison to the tepid instructions of British constitutionalism in relation to the counter-majoritarian requirement and the timidity of the Sri Lankan courts against rampant political institutions. When seen against spectacular examples of democratic failure such as the Sinhala Only Act (1956), or the 1972 Constitution under parliamentarism, or the 1982 referendum, the 1983 pogrom, or the Eighteenth Amendment to the Constitution (2010) under presidentialism, it is tempting to agree that this set of propositions contains at least a plausible response to our constitutional problems. These examples of mindless majoritarianism have only been exacerbated by the pervasive growth of the cancer of corruption in our political life, both of which our political culture seems powerless to curtail. But we must ask if at a more rigorous theoretical level, whether these claims of legal constitutionalism stand up to scrutiny. The claims as outlined above are many and so are the counterarguments from the perspective of political constitutionalism. Here I only deal with two of the most fundamental normative claims: the 'substantive consensus' on the ideal society and the 'superiority' of the judicial process as a forum and method of democratic decision-making.

Substantive Consensus on the Ideal Society

As noted before, legal constitutionalism is premised on the notion that a rational consensus about the substantive ideal of a democratic society is not only desirable but also possible. That possibility is expressed in the universal values reflected in the discourse of human rights, which ought to form the fundamental basis of the constitutional order. As a leading theorist of political constitutionalism Richard Bellamy concedes, the "desire to articulate a coherent and normatively attractive vision of a just and well-ordered society is undoubtedly a noble endeavour" which has "inspired philosophers and citizens down the ages."[24] However, the fundamental problem with attempting to articulate the one true ideal for a society is that no one who has tried it from Plato to Rawls has ever succeeded in convincing everyone that their position is universally acceptable. This does not mean that no theory of justice is true, or that a democracy should have no constitutional commitments to rights and justice. What it does mean is "that there are limitations to our ability to identify a true theory of rights and equality and so to convince others of its truth. Such difficulties are likely to be multiplied several fold when it comes to devising policies that will promote our favoured ideal of democratic justice."[25]

This difficulty – and modesty of expectation with regard to realising ideals in the real world – leads the political constitutionalist to conclude that in a democratic society, we have legitimate disagreements about the substantive outcomes that we seek to achieve. Therefore, even where we can agree about the existence of specific rights – and this is by no means a frequent occurrence in a democracy – rights are better achieved through a political process of representative democracy which allows for the full play of these legitimate disagreements and for reasonable compromises, rather than through a near-untouchable constitution the interpretation of which is the preserve of an exclusive priesthood of judges and lawyers.[26] This is why Parliament –together with other sub-state legislatures if there is devolution – is the incomparable political institution in the parliamentary state.

Let me illustrate this with an example I cited above. It was seen through the PRC process that there is some widespread support for the expansion of constitutional rights, while at the same time the PRC was confronted with views that demanded the continuation of the Buddhism clause. There is a

major theoretical inconsistency here to the extent that this seems to support both a majoritarian nativist-nationalist as well as an egalitarian human rights view of the new constitutional order.[27] If the new constitution constitutionalises both views, and provides a court with the constitutional authority to definitively settle the ensuing dispute, how likely is it that a satisfactory answer would be given from a human rights point of view? If the constitution only constitutionalises the human rights perspective, how likely is it that the constitution itself would be accepted by the majority community? Where does either of these scenarios leave the legal constitutionalist project?

The Desirability and Superiority of the Judicial Process over the Political Process

The closely related second claim made by legal constitutionalism is as to the general desirability and indeed the superiority of the judicial process as a form of democratic decision-making and as a type of public reason.[28] Law is not only separate from politics, but the latter has potentially alarming consequences that must be tamed and constrained by law. As Roberto Unger put it vividly,

> "...the ceaseless identification of restraints on majority rule...as the overriding responsibility of jurists...in obtaining from judges...the advances popular politics fail to deliver; in the abandonment of institutional reconstruction to rare and magical moments of national refoundation; in an ideal of deliberative democracy as most acceptable when closest in style to a polite conversation among gentlemen in an eighteenth-century drawing room..."[29]

The implicit elitism of this approach is the least of our concerns. The more serious problem is that a judicial process can never be as legitimate and as effective as a political process through representative institutions in dealing with, however imperfectly, the deep social divisions that democracy regards as legitimate disagreements. The political constitutionalist view on this is best stated by Bellamy:

> "It is only when the public themselves reason within a democracy that they can be regarded as equals and their multifarious rights and interests accorded equal concern and respect. A system of 'one person, one vote' provides citizens with roughly equal political resources; deciding by majority rule treats their views fairly and impartially; and party competition in elections and parliament institutionalises a balance of power that encourages the various sides to hear and harken to each other; promoting mutual recognition through the construction of compromises. According to this political conception, the democratic process is the constitution. It is both constitutional, offering a due process, and constitutive, able to reform itself."[30]

There are two points worthy of stress here. The first is the procedural vision of democracy that is at the heart of political constitutionalism that is also characterised by modesty of ambition as to outcomes and a certain realism with regard to how both rights and government work in practice. The main purpose of a democratic constitution in this view is to provide the institutions and procedures through which citizens "decide their common affairs and settle their disputes".[31] Such a constitution therefore seeks a constitutional balance between the bill of rights and the courts on the one hand, and on the other, those provisions that set out the structure of government, the relationship between the three organs, and the electoral system.[32]

The second point is a partial concession: Bellamy, Tomkins, and others like them make amply clear that they have in contemplation mature democracies like the UK which have evolved

their democratic practices over many centuries. It is easier in these societies to make the political constitutionalist argument, because Parliament much more than the courts has so often been the agent of political progress and constitutional development.[33] Nonetheless, the theoretical criticisms I have just articulated based on their work against an exclusively legal constitutionalist approach to constitution-making remain entirely valid. The problem of political culture that legal constitutionalists seek to address through the shortcut of constitutional review is unlikely to succeed in the presence of an unreformed political culture. A political culture that disrespects and violates liberal-constitutional values is unlikely to be chastened by judicial strictures or by written constitutions. It can only be reformed from within, and would take much time.

But what seems, to the legal constitutionalist, the counterintuitive proposal of political constitutionalists to place more responsibility on politicians to behave better (i.e., constitutionally and accountably) is what is more likely to succeed. This is not merely the cynical application of the adage that an old poacher is the best gamekeeper. It represents, in fact, the fundamental empowerment of citizens through placing on them the responsibility for improving the quality of democratic self-government. It is not as if we are without any precedent for democratic change through the political process. Sri Lanka is Asia's oldest electoral democracy; it was the first in the post-colonial world to manage a change of government through the electoral process in 1956. That election perhaps exemplifies our dilemma with political constitutionalism: from what had been the exclusive activity of a rich elite, that election marked the broadening and deepening of political participation and democracy, but of course it also signalled the deep ethnic division the legacy of which we have yet to resolve today. But at the same time, this is also an electorate that has voted for progressive change, for example, in the elections of 1994 and most recently in 2015 twice. Even at the height of repressive regimes, there have been things that autocratic governments have felt unable to do, and this has been largely determined by a political calculation as to what they can get away with rather than any fear of the judiciary or the law.

Moreover, our Supreme Court has enjoyed an explicit set of constitutional jurisdictions since 1978 and the record of its exercise of those powers is at best mixed.[34] To give only one of the more infamous examples under the 1978 Constitution, that such a deleterious measure as the Eighteenth Amendment passed constitutional muster in the Supreme Court[35] does not seem to me to inspire the sort of faith and confidence that legal constitutionalists place in the judicial institution, and even they are critical of the diffident and unimaginative manner in which the Supreme Court used its constitutional jurisdiction under the independence constitution.[36]

In a place like Sri Lanka, then, historical experience and current challenges require a more nuanced response that looks to striking an appropriate balance between the best features of legal and political constitutionalism, rather than putting all our eggs in either basket.

Ideals Tempered by Reality: The Appropriate Balance between Legal and Political Constitutionalism in Sri Lanka

The preceding discussion establishes, I hope, the argument that the shift from presidentialism to a parliamentary state brings with it commitments to particular forms of accountability, specifically an emphasis on political forms of accountability albeit without losing sight of important legal controls. It has been my view that the Sri Lankan debate has been dominated by a focus on legal accountability to the exclusion of the political dimension. I have tried to show that the exclusive emphasis on legal

constitutionalism can be misplaced, especially where undertaken without adequate attention to its inherent theoretical weaknesses as well as the inadequacy of its empirical assumptions. At the same time, I have accepted that, unlike in the mature Westminster-style democracies, we would in Sri Lanka need a greater measure of legal-constitutional controls on the political process. If this analysis is accepted then it would seem the following propositions must inform constitutional design as we transition to a parliamentary state:

1. The only type of rights that are appropriate for constitutional protection are the negative rights reflected in civil and political liberties. These serve to define the relationship between citizens and the state, and to protect an essential sphere of private autonomy from excessive governmental action.[37] There is widespread consensus about them in society, derived from society's long experience of them from the nineteenth century under British colonial rule. Likewise, confining the courts' constitutional jurisdiction to these rights protects the judiciary's legitimacy, impartiality, and independence by not politicising it through involvement in the controversies of adjudicating on positive rights.

2. The expansion of the constitutional bill of rights to include socioeconomic rights engenders unrealistic expectations, they are often unaffordable in a developing society, they involve policy decisions by unelected judges, and they assume social consensus on deep moral and political choices that is very often non-existent. It is accordingly inappropriate to place them above political negotiation and compromise through representative institutions, by constitutionalising their content and judicialising decisions over them.

3. In relation to the design of the relationship between the three organs of the state, a parliamentary state in Sri Lankan demands a dialogic approach that balances the best features of legal and political constitutionalism rather than privilege one over the other. Dialogic constitutionalism brings the three branches into a principled constitutional conversation with each other, so that they are encouraged to work in cooperation to further the agreed political goods and goals enshrined in the constitution, and those other changing public sentiments and demands that are reflected in the legislature through elected representatives. Dialogic constitutionalism gives appropriate weight to the role, function, nature, and normative expectations of each branch; it does not assume that a constitution can or should reflect a permanent social consensus on the good life or that judges are superior to legislators in reasoning through to acceptable compromises on these issues.

4. The dialogic design of institutions avoids the pitfalls of the inherent teleology of legal constitutionalism, straightjacketed by the constitutionalised telos of human rights.[38] In both forcing institutions to work together in the realisation of the common good rather than affording one or the other supremacy, and in accepting the reality of legitimate disagreement in a democratic society, it has the capacity to address both the democratic deficit of judicial supremacy as well as the discipline deficit of legislative supremacy. This is the ethos of the emergent, modern, constitutional-parliamentary state throughout the Commonwealth.

5. Institutionally, the constitution of a parliamentary state must provide for pre-enactment political review of legislation (although pre-enactment judicial review is not necessarily excluded), and weak-form constitutional review.[39] Mechanisms in the

first category include requiring public bills to be accompanied by ministerial statements of constitutionality, and/or Speaker's and Provincial Council Chairs' certificates of constitutionality, as part of the legislative process; and for the provision of strong human rights and constitutional scrutiny through legislative committee systems.[40] Weak-form constitutionalism means that the courts will be able to judicially review all executive and administrative action, policy, conduct, and subordinate legislation, but they will not be empowered to strike down primary legislation. Instead, they can be empowered with a rule of consistent interpretation (i.e., to attempt reading down legislation to be consistent with rights according to ordinary canons of interpretation) and in extremis the power to issue a declaration of incompatibility. The responsibility for remedying such defective legislation shifts back to the executive and to Parliament (and this can be suitably structured through the constitution so that it is done without undue delay). These institutional arrangements reflect the proper separation of powers within the framework of a parliamentary-constitutional state.[41]

NOTES

1 R. Wickremesinghe, '*The New Republic*', *The Sunday Times*, 9th November 2014 available at:http://www.sundaytimes.lk/141109/news/the-new-republic-126724.html

2 N.M. Perera (2013) *A Critical Analysis of the 1978 Constitution of Sri Lanka* (2nd Ed.) (Colombo: Dr N.M. Perera Memorial Trust) and C.R. de Silva, '*Foreword*' in ibid.

3 See the essays in A. Welikala (Ed.) (2015) *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Colombo: Centre for Policy Alternatives): esp. Chs.1 and 28 available at: http://srilankanpresidentialism.org/chapters/

4 R. Edrisinha, '*Sri Lanka: Constitutions without Constitutionalism – A Tale of Three and a Half Constitutions*' in R. Edrisinha & A. Welikala (Eds.) (2008) *Essays on Federalism in Sri Lanka* (Colombo: Centre for Policy Alternatives): Ch. I.

5 Public Representations Committee on Constitutional Reform, *Report on Public Representations on Constitutional Reform*, Colombo, May 2016: p.101, available at: http://www.yourconstitution.lk/PRCRpt/PRC_english_report-A4.pdf. Emphasis added.

6 Ibid: pp.136-137.

7 Buddhism has been given a 'foremost place' and a duty placed on the state to foster and protect it since 1972: see Section 6 of the 1972 Constitution and Article 9 of the 1978 Constitution.

8 Ibid: pp.18-19.

9 H. Kumarasingham (2013) *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka* (London: I.B. Tauris); S. Gardbaum (2013) *The New Commonwealth Model of Constitutionalism: Theory and Practice* (Cambridge: CUP).

10 D. Oliver, '*Parliament and the Courts: A Pragmatic (or Principled) Defence of the Sovereignty of Parliament*' in A. Horne, G. Drewry & D. Oliver (Eds.) (2013) *Parliament and the Law* (Oxford: Hart): Ch.12.

11 Gardbaum (2013), although as I have argued elsewhere, the model is really not that new: A. Welikala, *''Specialist in Omniscience'? Nationalism, Constitutionalism, and Sir Ivor Jennings' Engagement with Ceylon*' in H. Kumarasingham (Ed.) (2016) *Constitution-making in Asia: Decolonisation and State-building in the Aftermath of the British Empire* (London: Routledge): Ch.6.

12 R. Gargarella, *''We the People' Outside of the Constitution: The Dialogic Model of Constitutionalism and the System of Checks and Balances'* (2014) *Current Legal Problems* 67(1): pp.1-47.

13 For a useful recapitulation of the concepts of legal and political constitutionalism, see A. Tomkins (2005) *Our Republican Constitution* (Oxford: Hart): Ch.1. Authoritative expositions of political constitutionalism include J.A.G. Griffith (1997) *The Politics of the Judiciary* (5th Ed.) (London: Fontana), J. Waldron (1999) *Law and Disagreement* (Oxford: Clarendon), J. Waldron (1999) *The Dignity of Legislation* (Cambridge: CUP), and R. Bellamy (2007) *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy* (Cambridge: CUP), and for legal constitutionalism, J. Laws (2014) *The Common Law Constitution* (Cambridge: CUP), T.R.S. Allan (1993) *Law, Liberty and Justice: The Legal Foundation of British Constitutionalism* (Oxford: Clarendon), T.R.S. Allan

(2001) *Constitutional Justice: A Liberal Theory of the Rule of Law* (Oxford: OUP) and A. Kavanagh (2009) *Constitutional Review under the UK Human Rights Act* (Cambridge: CUP).

14 For a useful literature review, see P. Ganga, '*Presidents versus Parliaments: The Dynamics of Political Regime Shift in Croatia, Moldova, Mongolia and Turkey*', Rumi Forum Research Fellowship Paper (undated), available at: http://rumiforum.org/presidents-versus-parliaments/. See also A. Galyan, '*The Nineteenth Amendment in Comparative Context: Classifying the New Regime Type*' in A. Welikala (Ed.) (2016) *The Nineteenth Amendment to the Constitution: Content and Context* (Colombo: Centre for Policy Alternatives): Ch.12 available at: http://constitutionalreforms.org/2016/05/10/chapter-12-the-nineteenth-amendment-in-comparative-context-classifying-the-new-regime-type/; S. Ratnapala, '*Failure of Quasi-Gaullist Presidentialism in Sri Lanka*' in Welikala (2015): Ch.18 available at: http://srilankanpresidentialism.org/wp-content/uploads/2015/01/26-Ratnapala.pdf

15 In what follows I rely heavily on Tomkins (2005): Ch.1.

16 See introduction to the Judicial Power Project at: http://judicialpowerproject.org.uk/about/

17 Tomkins (2005): pp.1-10.

18 Cf. Oliver (2013).

19 Tomkins (2005): pp.2-3.

20 Edrisinha (2008); R Edrisinha, '*Constitutionalism and Sri Lanka's Gaullist Presidential System*' in Welikala (2015): Ch. 28 available at: http://srilankanpresidentialism.org/wp-content/uploads/2015/01/36-Edrisinha.pdf

21 Bellamy (2007): p.3, Chs.1, 2 and 3.

22 C. Bezemek, '*A Kelsenian Model of Constitutional Adjudication – The Austrian Constitutional Court',* SSRN, 3rd October 2011, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1937575

23 In such works as J. Rawls (1971) *A Theory of Justice* (Cambridge, MA: Belknap Press), R. Dworkin (1977) *Taking Rights Seriously* (London: Duckworth), and J.H. Ely (1980) *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard UP). See also Bellamy (2007): p.10; R. Edrisinha, '*In Defence of Judicial Review and Judicial Activism*' in C. Amaratunga (Ed.) (1989) *Ideas for Constitutional Reform* (Colombo: Council for Liberal Democracy): pp.457-80.

24 Bellamy (2007): p.3.

25 Ibid.

26 Ibid: Ch.5; Tomkins (2005): Ch.3.

27 The history of this issue in Sri Lankan constitutional debates is recounted in B. Schonthal & A. Welikala, '*Buddhism and the Regulation of Religion in the New Constitution: Past Debates, Present Challenges, and Future Options*', CPA Working Papers on Constitutional Reform No.4, July 2016.

28 Edrisinha (1989).

29 R. Unger (1996) *What Should Legal Analysis Become?* (London: Verso): p.72.

30 Bellamy (2007): pp.4-5.

31 Ibid: p.6.

32 Ibid: Ch.6.

33 Ibid: p.2; Tomkins (2005): p.13.

34 See e.g., R.K.W. Goonesekere (2003) *Fundamental Rights and the Constitution: A Case Book* (Colombo: Law & Society Trust and the Open University).

35 R. Edrisinha & A. Jayakody, '*Constitutionalism, the 18th Amendment and the Abdication of Responsibility*' and N. Anketell, '*A Critique of the 18th Amendment Bill Special Determination*' in R. Edrisinha & A. Jayakody (Eds.) (2011) *The Eighteenth Amendment to the Constitution: Substance and Process* (Colombo: Centre for Policy Alternatives): Chs. III and IV available at: http://constitutionalreforms.org/the-eighteenth-amendment-to-the-constitution-substance-and-process/

36 Edrisinha (2008); R. Coomaraswamy (1984) *Sri Lanka: The Crisis of the Anglo-American Constitutional Tradition in a Developing Society* (New Delhi: Vikas), R. Coomaraswamy (1997) *Ideology and the Constitution: Essays on Constitutional Jurisprudence* (Colombo: International Centre Ethnic Studies).

37 In adopting this limited legal constitutionalist position on civil and political rights, I depart from Bellamy and Tomkins on whom I have relied so far: see Bellamy (2007): Ch.4 and Tomkins (2005): pp.17-25.

38 M. Loughlin (2000) *Sword and Scales: An Examination of the Relationship between Law and Politics* (Oxford: Hart): p.5.

39 Gardbaum (2013): Ch.2; J. Colon-Rios (2012) Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power (London: Routledge). Again, these institutional prescriptions depart from the republican theory of political constitutionalism as enunciated by Bellamy and Tomkins.

40 The reforms to the parliamentary committee system undertaken in 2015 through the establishment of Oversight Committees are a positive step in the strengthening of political accountability mechanisms in Sri Lanka.

41 Cf. Gargarella (2014).

Vanishing Victims, Eroding Expectations:
The Office of Missing Persons Bill

DEANNE UYANGODA

Post war Sri Lanka today finds itself at a crossroad where it must decide its future. The ongoing process of constitutional reform is a result of this effort. In order to truly move forward however, Sri Lanka's peoples must not only secure their future, but also face their past. The Office of the Missing Persons Bill is an attempt to do so. The Bill confronts the long time scourge of disappearances that Sri Lanka has struggled with all throughout its war and post war period. In this article Deanne Uyangoda presents a critique of the Bill, primarily from the point of view of how far the Bill fulfills – and fails to fulfill - expectations of victims and their families. This analysis is of the bill and not of the final Act that passed.

Deanne Uyangoda is an Attorney-at-Law

On 18th May 2009, Saraswathie's daughter, son-in-law and three grandchildren aged three, five, and eight, were taken away in military buses from Mullivaikkal along with at least a hundred other LTTE surrendees and their families. Minutes before the bus left, Saraswathie's daughter tried to push her three year old son out of the bus to safety, but the military forced the child back in. The family had entered government-controlled territory earlier that day and Saraswathie's son-in-law, a mid-level LTTE cadre, surrendered to the military with his family in response to the promise of amnesty.

Saraswathie has not seen or heard from her family ever since. There is also no trace of the other hundred or so surrendees who were taken away by the military on the final day of the war. Since then, Sarawaswathie has filed numerous complaints with national and international bodies. In 2009 she filed a complaint with the local police. She has also filed a Habeas Corpus Application which is still pending before the High Court, complained to the International Committee of the Red Cross (ICRC) and the UN Working Group on Enforced Disappearances and many national and international commissions of inquiry. None of these complaints have given her the redress she seeks -at a minimum, information of the fate and whereabouts of her family and accountability for those responsible.

In 2011, I met Suba, a single mother and the wife of a disappeared fisherman living in Mannar. Her husband was taken away by unidentified men believed to be Navy officers in 2008, and has not been seen or heard from since. In 2010, an ex-detainee who had been released from a secret detention center informed Suba that her husband

had been detained with him at the same location but that he was unwilling to come forward due to the fear of reprisal. During our meeting, Suba spoke of her attempts to find her husband, which included numerous complaints to the local police, and other national and international bodies and the endless traveling from one army camp and detention center to another. She spoke of the sexual abuse and harassment she suffered at the hands of the military while trying to locate her husband but also the challenges of surviving as a single female-headed household in a militarized environment.

The names of the two women above have been changed to protect their privacy, but their stories are not exceptional. One thing they all have in common is the lack of redress. None of the complaints and representations they have made over the past several years, often out of desperation rather than any real hope, have resulted in the return of their loved ones nor secured for them information, let alone the truth, regarding the fate or whereabouts of those disappeared. This record speaks badly of how we as a country have dealt with victims and their families, during and in the immediate aftermath of the war, but sadly also in the past one and half years, following the change of Government.

The setting up of the Office of Missing Persons (OMP), by the Government – the first among at least four transitional justice mechanisms to be established - and the ratification of the UN Convention against Disappearances are steps in the right direction. The political will to address the past as a nation is now evident whereas previously it was non-existent. In the past few months alone, relatives of the disappeared have begun speaking openly (with less fear of reprisal) about the loss of their loved ones, and demand truth and justice from the State in public forums.

But good intentions and piecemeal initiatives aside, the proposed OMP has the challenge of delivering on its promises of providing families with the truth about the fate or whereabouts of missing persons and the circumstances of their disappearance without further delay, and enabling rather than hindering the rights of families to other forms of redress, particularly justice and accountability. It is also battling a crisis of confidence among affected persons and civil society, partly a problem of its own making (in terms of process and transparency) but also an inherited malaise stemming from the utter failure of previous mechanisms.

This article will analyze aspects of the proposed OMP Bill, for what it practically offers relatives such as Suba and Saraswathie following the setting up of the Office and some of the key concerns of the families, as articulated over the past several years.

A Role for the Families: the Demand for Representation and the Purpose of 'Consultation'

The process to set-up the OMP has been deeply flawed in that it has lacked transparency and adequate consultation with affected persons and civil society from the outset. The outline for the OMP was presented to select civil society members and later to around 60 relatives of the disappeared at a time when the Consultation Task Force on Transitional Justice Mechanisms, set up precisely for the purpose of seeking the views of the public and especially victim-survivors on all the four mechanisms, was still ironing out the preliminary details of its zonal task forces.

Bearing in mind the practical demands by families, the need for consultation must be balanced and understood in light of the need for speedy redress. Frustration at the failure to set in place the promised transitional justice mechanisms and fulfill the commitments made under the 2015 UN Human Rights Council Resolution on Sri Lanka must be balanced against complaints that the process

underlying the establishment of the OMP, the first mechanism to see the light of day, has been rushed and failed to consult those most affected.

Reconciling these apparently conflicting interests require us to think of consultation not as part of a checklist of transitional justice good governance, but as something that is meaningful to the end objective of, i.e. addressing the relatives' need for truth and justice and other forms of redress for all victims. In May 2016, the Government held a briefing for a few families of the disappeared, on the OMP at the foreign ministry. A day prior to the government briefing, civil society groups organized a preparatory meeting in Colombo with families of the disappeared to clarify their demands. In addition to truth and justice, the families consistently demanded a need for them to be represented on the OMP.

Fulfilling this demand requires a broader, more long-term and meaningful engagement with families, including but not limited to setting up the OMP itself. Such engagement must include active participation of victim's families and their representatives in the working of the OMP including on among the 7 member high office holders. Once the OMP is operationalized, there must be a mechanism for families to communicate their concerns on the practical working of the OMP and for these concerns to be considered and internalized. Especially on the tracing function, and the investigators used, family members' views must be checked periodically in order to ensure that OMP is delivering, not only on the mandate of its office, but also the related promises built in a transitional justice process.

It is a grave mistake to dismiss victims and family members, as being incapable of providing input into this 'technical exercise' on account of their lack of knowledge or a heightened level of emotional involvement that would compromise their ability to effectively engage. Arguably, victims and families may not have specific input on, for example, whether or not foreign experts should be involved in certain technical aspects of the OMP, but they bring what none of us can to the table – years of experience in engaging state mechanisms in a hostile and challenging environment on the issue of disappearances.

The need for representation must be considered against the repeated disappointment of victims and their families by the failure of state agencies to provide truth and justice to these families. While the OMP is a step in the right direction, there have been other mechanisms before this with the power to provide redress, which have been unable/unwilling to do so. From the point of a first information report or police complaint, to the more limited instances where courts have been moved in habeas corpus cases, state structures with the power to provide answers have consistently delayed and/or refused to provide one. Families care little for the good intentions of the members of this government or the informal working group that was responsible for drafting the OMP Bill. Their response to the establishment of the OMP is influenced by their painful history of engaging with the state.

The only way to ensure confidence amongst victims and families – and thus the legitimacy of the OMP - is through representation. A purely state led top-down initiative, is alienating, and distressingly reminiscent of the failure of previous state/government initiatives to inspire confidence amongst families of the disappeared. The very name-'office of missing persons' and the refusal to respond to demands by families to include the term 'disappeared' in the title of the office, is a reflection of the battle for recognition and representation by families from the outset.

Representation, or the lack thereof, must also be viewed not only from the prism of what victims and

families have to offer, but also from the perspective of citizen-state relations. This is crucial at a time when the country is undergoing an attempt to transform aspects of the conflict, but crucially, methods of governance. A high-handed approach to victims would undermine the essence of the democratic politics that was promised or at least wished for following the political transformation in January 2015.

The Right to Truth: Tracing the Fate/ Whereabouts of the Disappeared

The primary purpose of the OMP is to provide families with the truth regarding the fate or whereabouts of the disappeared or missing person.

The OMP has no prosecutorial powers or functions and only a flimsy link with any relevant justice or accountability mechanism, as will be discussed further below. Therefore for Suba or Saraswathie, the OMP offers mainly the opportunity to learn the truth about what happened to their family members who were disappeared, their fate and whereabouts (subject to certain limitations set out below) and the circumstances of their disappearance.

Complaints procedure: The procedure of the OMP can be triggered by a fresh complaint but can also be on the basis of previous complaints to national commissions of inquiry (vide Clause 12 (a) and (b) of the Bill). The recognition of past commissions of inquiry is a welcome move. However it may be improved significantly by also taking into account complaints made to other bodies and organizations including the police, the National Human commission, redress in Court by way of Habeas Corpus applications and potentially, even the ICRC.

Powers of Investigation: In tracing a missing or disappeared person, the OMP enjoys wide powers, provided for under Clause 12(c)-(g) of the OMP Bill,including the power to take oral or written testimony of persons, to summon persons to be present before the OMP, to admit material that would be inadmissible as evidence under the Evidence Ordinance before a Court of Law, to require assistance and cooperation from any state authority including to provide information and documents available to the authority notwithstanding the provision of any other law and conduct search and seizure of any suspected place of detention with or without a court warrant.

Confidentiality Procedure: In terms of Clause 12(c)(iv)&(v), the OMP has the power to accept information on the basis of confidentiality. This confidentiality will extend even in cases where there is material to suggest that a crime has been committed and the case is referred for prosecution. It would apply to all witnesses who seek the cover of confidentiality including perpetrator witnesses.

The purported justification for keeping the confidentiality procedure, despite calls for its removal by civil society groups, is that it would serve as an incentive for more people to come forward with information thereby facilitating the families' right to truth. This logic is at best untested and it remains to be seen whether, without the stick of prosecution hanging over their heads, persons would come forward in response to the promise of confidentiality.

As clauses 12(c) (iv) and (v) stand, they are vague in terms of the scope and ambit of operation. The Bill must provide clear guidelines and limitations to the operation of the confidentiality clause, if it chooses to retain the procedure.

Right to Truth: Full Disclosure of Information and Findings to Families

The entire purpose of the OMP is to provide family members with the truth regarding the fate, whereabouts and circumstances of disappearance of

the disappeared person. It is therefore of outmost importance that all available information be provided to families. Any limitations on the right of families to access all information relating to the disappearance must be clearly set out in the law, including guidelines on how such limitations operate and in every such case, reasons must be provided to the family for why such information is not forthcoming.

Clause 13(b) and (c) provide that family members shall be provided certain information as to the whereabouts of the missing person (13(b)) and the status of the ongoing investigation (13(c)) while the investigation is ongoing. Such updates on the status of the investigation and any information uncovered regarding the fate/whereabouts of the missing person are vital, given the fact that most families have waited upwards of 6 years for any information on their loved ones. Many of them are not accustomed to receiving any response to their complaints from state authorities.

There are however, several problems with the procedure set out under Clauses 13(b) and (c) above, linked mainly to the level of discretion vested in the OMP.

Firstly, there is no duty to provide regular updates under Clause 13(c). A better approach would have been to mandate that the OMP provide updates to families every 6 months and provides reasons where no progress is made. Its also important, especially where the OMP takes cognizance of complaints made to former Commissions of Inquiry (COIs) that family members be given a start date – a date on which the OMP takes up investigations on their complaint. At present, Suba and Saraswathie, both of whom have made submissions to COIs, will not even know whether their case has been taken up and investigations commenced by the OMP. There is also no way to predict or hold the OMP accountable to provide information or updates on the investigations to them.

Communication and outreach is a huge task, given the number of complaints the OMP will be dealing with. The best approach would be to appoint a dedicated unit of professionals who are sensitized to the needs of families to carry out this function.

Secondly, there is concern regarding the level of discretion vested in the OMP regarding what information to provide and whether to provide any information at all. According to Clause 13(c) the OMP may refrain from providing information if it considers that it would hinder the investigation or not be in the interests of the missing person. This limitation is vague and unclear as to how this discretion will be exercised. At the very minimum, there must be a duty to provide reasons to family members where information is withheld.

Clause 13(b) provides that information as to the whereabouts of the person, where the person is found alive, can only be disclosed with the consent of the missing person. This limitation applies even at the conclusion of an investigation except that under Clause 13(d) family members will at least be provided information regarding the circumstances of the disappearance.

It is imperative that families are able to verify that a person is in fact alive; are capable of making free and independent decisions; and that they are not being held in detention or under any form of duress. An individual's right to privacy, especially where they do not wish to be reconnected with their family, is not in doubt. However, this must be balanced against the rights of families to know the truth and to ensure that the person is in fact alive and well.

The significance of this clause and the concern it has caused families can only be understood in the context that the Sri Lankan state's stock response to allegations of enforced disappearances, has been to allege that the missing/disappeared person has sought asylum abroad or is living elsewhere in Sri

Lanka and does not want to contact his family. This was the state's response to the disappearance of journalist Prageeth Ekneligoda and human rights defender Pattani Razeek. The latter's body was found over a year after his disappearance and investigations into the disappearance of Prageeth, indicate state culpability in his disappearance.

If the OMP is to fulfill its mandate to provide the truth to families of the disappeared, the families' right to know must be fully respected. Full disclosure must be the norm and any deviation should be subject to strict guidelines and the reasons for failing to provide information must be given to family members.

Right to Justice - Facilitating or Obstructing Prosecutions

Under the scheme of the proposed Bill, the mandate of the OMP does not include criminal investigations and/or prosecutions. This task has been reserved to the office of the special prosecutor, a further transitional justice mechanism contemplated by this Government in fulfillment of commitments made under the UN Human Rights Council Resolution on Sri Lanka. A complaint made to the OMP does not preclude it being considered by the office of the special prosecutor or any other relevant authority.

Although the bill makes every effort to distance the OMP from the task of prosecutions, in practice there is a clear link between the OMP and criminal investigations and prosecutions. Depending on how it handles the evidence and material made available to it or uncovered in the course of its tracing inquiries, the OMP will pay a crucial role in facilitating or hindering prosecutions and the victims right to justice.

Firstly, the OMP has the power to receive witness statements on the basis of confidentiality. As aforesaid, the aim is to provide an incentive for more persons to come forward with information, without risk of reprisals, but – crucially - also without risk of prosecution. Even in the case of non-perpetrator witnesses, where information is passed on the basis of confidentiality, the identity of the witness cannot be revealed to the prosecutor's office (without consent), even where there is evidence of a crime.

Further, where in its discretion, the OMP decides that there is evidence of a crime, the office is only mandated to share minimum information with the prosecutor's office. Clause 12(i) provides that the OMP shall provide information relating to the civil status of the victim and the places or locations where he or she was last seen. In the course of its tracing inquiry the OMP is bound to unearth a large amount of evidence and background information that could be of use to prosecutors, not only in seeking justice in an individual case but also in establishing patterns of conduct which are crucial for accountability. The language of the proposed law should be amended to provide for the fullest disclosure and sharing of information with the prosecutor's office, subject to the confidentiality procedure.

There is also serious concern that in the course of its own inquiry the OMP may tamper with or render inadmissible crucial evidence for prosecutions. Since the OMP will not engage in criminal investigations and the office of the special prosecutor has yet to be set up, it is unlikely that inquiries by the OMP will happen alongside criminal investigations. This raises concern regarding the proper handling of evidence. Not enough safeguards are in place to ensure the proper handling of evidence to ensure that it does not compromise prosecutions, forcing families to make an impossible choice between truth and justice.

Time Frame: How Long Will it Take for the OMP to Deliver?

At present no one can predict how long it will take for individual cases to be resolved by the OMP. The proviso to Clause 12(b) provides that the OMP may give priority to recent incidents of disappearances, incidents on which substantial evidence is available, and incidents which are in the opinion of the OMP of public importance.

It has been over seven and eight years respectively since Saraswathie and Suba lodged the first complaint regarding the disappearance of their family members. Successive complaints and submissions since then have failed to yield results. Under the proposed Bill, Saraswathie, whose case took place in 2009, is fairly high profile and includes hundreds of eye witnesses to the incident is likely to obtain redress, earlier than Suba's complaint.

On the one hand, families are frustrated about the lack of progress in individual cases and also cynical about what form of relief the OMP will provide families. On the other, this Government has been in an incredible rush to pass the OMP Bill in parliament, even compromising its own consultation process in order to do so.

This urgency would only make sense if it were driven by a desire to provide speedy redress to families. Other doomsday theories of the precarious nature of the national government and the impending return of the previous regime to power don't seem to hold much water. If in fact the latter were true, passing the OMP Bill would hardly be at the top of this Government's order paper.

Despite the urgency, the OMP Bill does not contain any provision as to when the law will come into effect. In terms of Clause 1(2) the law will come into effect on a date set by the Minister. This is in contrast to the recently passed Right to Information Act (RTI Act), which is set to come into effect within 6 months of being passed by Parliament. Unlike the OMP which has been described by the present Government as 'low hanging fruit', and involves a group of relatives desperate for implementation, RTI is a relatively new concept to Sri Lanka, the benefits of which are yet to be fully understood by the populace and therefore perhaps, carries a different degree of urgency for implementation than the OMP.

Setting a start date for the coming into operation of the OMP, would be a more consistent approach, and signal a genuine intention to provide relief to families as quickly as possible. Any such start date must, however, take into account the need for consultation and the need to pass laws criminalizing disappearances and granting legal status/recognition to certificates of absence.

Facilitating Certificates of Absence

One of the functions of the OMP is to facilitate the issue of Certificates of Absence (CoA) to families of the disappeared. Clause 13(1)(a)(i) provides that pending an ongoing investigation, where the OMP has sufficient material to suggest that the person to whom the complaint relates is a missing person, the OMP may issue an interim report on the status of the missing person to enable a CoA to be issued by the registrar general. At the end of the inquiry/ investigation the OMP shall issue a final report, confirming or amending the finding of the interim report as to the status of the missing person.

The issue of CoA to families is contingent on the passing of a new law to amend the Registration of Deaths (temporary provisions) Act No.19, 2010. At present, the law provides only for the issue of death certificates for missing persons. Families have been pressured to obtain death certificates in order to overcome practical difficulties in dealing with the disappeared persons property, guardianship

of children and to access certain welfare benefits. While responding to the specific problems faced by families, the issue of death certificates denies the victims and families' broader rights to truth and justice.

Certificates of Absence are a more victim friendly approach towards resolving some of the practical difficulties faced by families while holding the state accountable for truth, justice, and reparations at a minimum.

Reparations - Right to Economic Justice

The OMP does not make provision for reparations or even interim reparations to families of the disappeared. Clause 13(1)(f) provides that the OMP shall be charged with the function of recommending "that the relevant authority grant reparations to missing persons and/or relatives of missing persons, including but not limited to compensation…"

The above provision indicates that reparations will not be handled by the OMP. The Government working group, in a briefing on the OMP to some civil society members stated that reparations are meant to be handled by a separate office, whenever it is set up. This is problematic since there is no timeline for the setting up of such an authority and it ignores the needs of families of the disappeared for even interim reparations to be granted by the OMP at a minimum.

Most families of the disappeared have lost a bread winner or a key contributor to the family income. Women have been forced to balance livelihood needs, and the duty to care for children and dependents while searching for their loved ones. The very act of complaining to state and non-state bodies, and traveling to various detention centers and army camps is itself a huge drain on their resources. It is imperative that the OMP not only acknowledge but also take immediate steps to provide, at the very least, some form of interim reparations to families - relief which is already long overdue. Families should not have to wait until another office is set up for this purpose in the indeterminate future. Any monies paid out in the interim, may be set off against the final amount determined as due by the office of reparations.

Conclusion

The OMP Bill is a definite step in the right direction and the first expression of political will to tackle the issue of disappearances and provide relief to families. What is unclear is how and to what extent families will be treated and included in the process; what relief they will eventually receive; and how much time it will take. A benevolent but top-down approach to families and victims is unlikely to set the correct tone for future engagement. To succeed, the OMP must function within the context of a broader project of reconciliation and transitional justice, which necessarily requires linkages with other mechanisms and/or existing state structures as well as with families of victims.

Report of the Public Representations Committee on Constitutional Reforms:

Summary of Submissions and Recommendations on Socio-Economic Rights

Introduction

The report of the Public Representations Committee on Constitutional Reforms (PRCCR), handed over to the Prime Minister in late May 2016, covers a number of themes and issues. The report draws on over 3600 written and oral submissions made at public sittings or through other means from across the country. This document summarizes the discussion on submissions and the recommendations pertinent to social and economic justice and rights contained in different chapters of the report of the PRCCR.

1. Socio-Economic Justice and Directive Principles (Chapter 11, Pg. 82-90)

The report of the PRCCR proposes that state policy be guided by the following Directive Principles:

- The state must pledge to ensure an adequate standard of living, a continuous and sustainable improvement of living conditions, and inclusive, integrated and sustainable development. This, the PRCCR recommends, must be underpinned by the pursuit of a just social order in which the means of production, distribution and exchange are fairly distributed among the State, the cooperative, and private enterprises.

- The State shall eliminate economic and social privilege, disparity, and exploitation; and the economic system should not result in the concentration of wealth and the means of production to the common detriment.

- The state shall ensure social security and welfare; maintain free education and healthcare; and include public transport as a public service. Privatisation or sale of assets cannot take place without Parliamentary approval.

- The state shall ensure that development does not result in environmental and social harm and in undermining the rights of people including rights to land, due process, compensation, and integrity of the natural environment.

- The state shall prioritise the national manufacturing economy as well as agriculture.

- The state shall recognize the Cooperative System as an alternative to Market and State.

- The state shall protect all labour rights and secure an adequate livelihood for all citizens. The state shall also ensure a guaranteed minimum wage and equal wage for equal work for both men and women.

- The state shall ensure it safeguards the rights of all vulnerable and marginalized groups and ensure non-discrimination in all respects.

- The state shall ensure that all economic treaties, agreements and covenants proceed through a mandatory process that involves the parliament prior to ratification.

2. Socio-Economic Justice and the Bill of Rights or Fundamental Rights (Chapter 12, Pg. 91-128):

The PRCCR report proposes that a number of specific and broad social and economic justice rights be granted the status of Fundamental Rights, including:

- Equality and non-discrimination, including the need for specific measures necessary to redress past marginalisation and discrimination of specific groups.
- Right to health.
- Right to food, water and social security.
- Right to education.
- Right to safe and just conditions of work, collective bargaining, and free choice of occupation.
- Right to land, freedom from forced evictions and displacement, and the right to judicially supervised compensation when land is acquired.
- Equality of opportunity in public employment.
- Access to information and justice.
- Right to sustainable development and the well-being of individuals and groups.

3. Provisions Relating to Public Finance Affecting Socio-Economic Justice and Development (Chapter 16, Pg. 176-186)

Several recommendations in this section of the PRCCR report are pertinent to various dimensions of socio-economic justice and distribution of national wealth and development. These include:

- A Finance Commission appointed by the President on the recommendation of the Constitutional Council that will determine the allocation of funds to be distributed across Provincial Councils and submitted to Parliament.
- Provincial Councils (PCs) and the Local Government (LGs) guaranteed a minimum share of 25% of state revenue. The proposed ratio is 18% for PCs and 7% for LGs. The report also notes that some members of the PRCCR proposed a minimum allocation to the PCs to be 40% of the State revenue (30% to the PCs and 10% for LGs).
- Establishment of Internal Audit Divisions with Provincial Councils that are free from the interference of the Governor and the Chief Secretary of the respective province.
- Eradication of the President's power to remove the Auditor General and creation of an Independent Audit Commission appointed by the President on the recommendation of the Constitutional Council.
- Mandate a committee comprising of the Auditor General and Members of Parliament to monitor the disbursement of funds by Secretaries to Ministries, Department Heads, and Heads of Corporations.
- Vest the Auditor General with powers to take action against public officers involved in the misappropriation of public funds or report to the Attorney General to prosecute them.
- A mandatory requirement for Ministers to submit to the Auditor General a white paper on programmes utilising public funds. This should also be available for public appraisal.
- Strengthen existing mechanisms to eradicate bribery and corruption as well as enact laws

enabling the Committee on Public Enterprises (COPE) to monitor companies in which monies from the Provident Fund and the Employees Trust Fund are invested.

4. Land, Environment and Development (Chapter 19, Pg. 195-203)

In this chapter the PRCCR makes the following recommendations:

- Land, environment, and development be included in the Fundamental Rights chapter and separate chapters be devoted to each of them detailing how they will be operationalized. These chapters should include provisions to ensure:
  - Sustainable use and participatory management of land and natural resources
  - Equitable sharing of benefits from use of natural resources
  - Legal protection and monitoring mechanisms to safeguard the environment as well as rights of local communities and individuals.
- Establish mechanisms to prevent development-related displacement and ensure a commitment to sustainable, equitable and socially just socio-economic development solutions for the country.
- Establishment of a Commission to address people's grievances in connection with economic development projects.

Report of the Public Representations Committee on Constitutional Reforms:

Summary of Submissions and Recommendations on Women's Rights

Introduction

The report of the Public Representations Committee on Constitutional Reforms (PRCCR), handed over to the Prime Minister in late May 2016, covers several themes and issues. The report draws on over 3600 written and oral submissions made at public sittings or through other means from across the country. This document summarises the discussion on submissions and the recommendations pertinent to women's rights and gender contained in the report of the PRCCR. In doing so it draws attention, in summary, to different parts of the PRCCR report that contain references or are pertinent to women's rights, gender or sexuality.

1. **Women's Representation in Different Tiers of Government (Chapter 7, Pg. 38-39) and Local Government (Chapter 10, Pg. 76-78)**

The PRCCR report notes that a number of submissions called for greater inclusion and representation of marginalized and excluded groups and communities, such as Up-Country Tamils, Ādivāsi communities, women, local minorities, youth and low caste groups, in local government including through special measures such as quotas.

The report recommends that the roles, powers, and functions of local government to be expanded and empowered to make them effective, inclusive and democratic institutions with greater participation of marginalized interest communities and groups (including women).

2. **Women's Representation in Power Sharing at the Centre (Chapter 8, Pg. 42-57)**

The PRCCR report calls for a second chamber of Parliament. Taking note of submissions calling for equitable representation for women who have been historically under-represented in the first chamber, the report proposes that not less than one-third of members of the second chamber be women.

3. **Women's Rights in Directive Principles of State Policy (Chapter 11, Pg. 83-88)**

A number of the Directive Principles proposed by the PRCCR are directly pertinent to safeguarding women's rights. These include the following:

- No person or group shall be discriminated against on the basis of race, ethnicity, caste, class, religion, language, belief, gender, sexual or gender orientation and identities, marital status, mental or physical disability, political opinion or affiliations, occupation, past conduct including insurrection against the State, excluding conviction for grave offences. It should be the responsibility of the State to accord due protection to all vulnerable groups including persons with diverse sexual and gender orientations.

- The State shall ably assist its citizens to secure an adequate livelihood ensuring a guaranteed minimum and equal wage for equal work for both men and women.

- The State shall ensure that all forms of punishment should be reformative and shall be

proportionate to the offence, except in the case of grave crimes and especially those committed against women, children and those with physical and mental disabilities.

- The State shall recognize and act in accordance with its international treaty commitments in economic, social, cultural, civil and political rights, in particular the human rights of women, children and people with disabilities.

4. Women, Sexual Orientation and Gender Identity in the Bill of Rights/Fundamental Rights (Chapter 12, Pg. 91-126)

The PRCCR report notes that several submissions made by citizens' groups called for broadening of Fundamental Rights to protect the rights of groups vulnerable to exclusion and discrimination. It also echoes concerns in submissions regarding individual freedoms being at risk of infringement by dominant groups and their ideologies through coercion and imposition of authority especially in the cultural sphere that particularly affects women, minor ethnic groups and indigenous peoples' groups.

The PRCCR report proposes the recognition of a number of Fundamental Rights that directly or indirectly have a bearing on safeguarding rights of women as well as rights to sexual orientation and gender identity.

4.1 Right to Equality

This includes a number of specific and general recommendations:

- A prohibition on discrimination of persons or groups on the grounds of race, religion, caste, marital status, maternity, age, language, mental or physical disability, pregnancy, civil status, widowhood, social origin, sexual orientation, or sexual and gender identities.
- A recognition of past marginalization and discrimination in response to which the State shall undertake specific measures necessary to achieve equality for marginalized and discriminated groups such as women, people with disabilities, the poor, illiterate and members of oppressed caste groups or any other specially identified group.
- A prohibition on laws, cultures, customs, or traditions that are against the dignity, welfare, or interest of women or those that undermine their status.
- Recognition of equal rights to men and women and the extension of this equality, both in law and in practice, to include the family, education, health, shelter, ownership of property, livelihoods, employment and the workplace as well as political representation.
- Revision of current Article 16 as it enables the continuation of discriminatory laws that contravene principles of equality in the Constitution. The PRCCR calls for a Commission that would recommend revisions to personal laws based on wide-ranging consultations.

4.2 Right to Privacy and Family Life

The report recommends the recognition of the right all persons of full age, without any limitation due to race, nationality or religion, gender identity or gender and sexual orientation, to marry and to found a family with equal rights to and within marriage and its dissolution.

4.3 Citizenship

The report recommends that there should be no discrimination in citizenship status on the grounds of race, religion, caste, marital status, maternity, age, language, mental or physical disability, pregnancy,

civil status, widowhood, sexual orientation, or sexual and gender identities.

4.4 Rights of People with Diverse Sexual and Gender Identities

The report calls for the explicit recognition of rights of LGBTIQ persons to equality, dignity and nondiscrimination and the specific inclusion of 'sexual and gender orientation' as ground for non-discrimination. In addition, the report stresses on the recognition of the following specific rights:

- freedom from torture,
- fair trial,
- privacy,
- freedom of expression and association,
- education,
- employment,
- and social security.

The PRCCR also calls for the repeal of Articles 363 and 365A of the Penal Code and the Vagrants Ordinance.

4.5 Women's Rights

The report makes the following recommendations in terms of recognising the Fundamental Rights of women:

- Women shall have the right to:
  - equal pay for work of equal value;
  - autonomy and bodily integrity;
  - live free from violence and in dignity;
  - seek the employment they want;
  - the right to livelihoods and a living wage;
  - food security and food sovereignty;
  - social security, housing, education and health;
  - equal representation in decision making;
  - Freedom from violence, torture and degrading and cruel and inhuman treatment in private and public places.
- The law shall ensure equality in law and in practice, most particularly in the private sphere of the family and in the public domain.

The report also calls for laws or legal provisions that discriminate against women to be declared null and void. The report also calls for the language of the Constitution to be gender neutral and for a committee of gender experts to be appointed to advise the drafting committee.

4.6 Rights of Children and Young People

The PRCCR makes several recommendations in this regard. Those most relevant to girls and women include the following:

- The right to protection from abuse, neglect, violence, maltreatment or degradation;
- The right to protection from early marriage and early pregnancy;
- The right to free education including age-appropriate reproductive and sexual health education;
- The right to free sexual and reproductive health care;
- The right to protection from messages that promote violence, racial and/or gender-based violence;
- The right to protection in times of armed conflict and disasters;
- The right to marry (or not marry) and found a family with equal rights for women and men.

4.7 Rights of People with Disabilities

The recommendations of the PRCCR cover three main spheres of rights with respect to persons with disabilities:

- the State shall protect persons with disabilities from all forms of exploitation and abuse, including gender-based violence, both within and outside the home as well as in public and private institutional settings.
- the right to affirmative action with specific measures necessary to achieve the de facto equality of persons with disabilities, and in particular of women and girls with disabilities who suffer multiple discrimination.
- the report calls for protection of the following specific rights: freedom from exploitation, education, health and social protection as well as protection from institutionalization and exploitation, especially of women and girls with disabilities.

5. Women in the Electoral System and Process (Chapter 15, Pg. 167-173)

The PRCCR recommends that the nominations on the National List should alternate between women and men. Moreover it also recommends that women should account for at least one-third of the total candidates nominated to contest seats from each party under the First Past the Post system. For the Proportional Representation System, the PRC recommends a closed zippered list with alternating male and female candidates.

6. Independent Commissions (Chapter 18, Pg. 193)

The PRCCR report calls for the establishment of an Independent Commission on Women.

6.1 Commission on Anti-Discrimination (Chapter 21, Pg. 206)

The PRCCR also calls for an Equal Opportunities Commission or Commission on Anti-Discrimination that is representative of different socio-cultural and ethno-religious groups to initiate dialogue and recommend legal and policy reforms through discussion, negotiation and mediation.

7. Land, Environment and Development (Chapter 19, Pg. 195-196)

The PRCCR calls for ending discrimination against women in existing land laws as well as in regulations and mechanisms governing possession, ownership, transfer and inheritance of land.

Supported by

Contributors

This issue of the Review focuses on Sri Lanka's ongoing process on Constitutional Reform, particularly recommendations in the recently released report of the Public Representations Committee on Constitutional Reforms (PRCCR).This issue of the Review is the first to include articles written in Sinhala and Tamil. In his article, written in Sinhala, Kumudu Kusum Kumara discusses the concerns of the Sinhala majority and the likelihood of reaching consensus on issues of power sharing and state structure. Writing in Tamil, Swasthika Arulingam examines how far the recommendations of the PRCCR addresses long time Tamil aspirations. This issue also includes an article by Asanga Welikala focusing on Sri Lanka's shift from a Presidential to a Parliamentary state, drawing extensively on Constitutional theory. Radhika Coomaraswamy writes focusing on the life and work of one of Sri Lanka's greatest contributors to the constitutional reform process and the founder of the Law & Society Trust, Neelan Tiruchelvam. The issue also provides insight into the Bill on the Office of Missing Persons, with a critique by Deanne Uyangoda which analyses the Bill from the perspective of victim expectations. The issue also includes summaries of the PRCCR recommendations on socio-economic justice and women's rights.

මෙම සඟරා කලාපය තුළ ශ්‍රී ලංකාවේ දැනට ක්‍රියාත්මක වන ආණ්ඩුක්‍රම ව්‍යාවස්ථා ප්‍රතිසංස්කරණ ක්‍රියාවලිය කෙරෙහි, විශේෂයෙන් මෑතකදී නිකුත් වූ ආණ්ඩුක්‍රම ව්‍යාවස්ථා ප්‍රතිසංස්කරණය පිළිබඳ මහජන අදහස් විමසීමේ කමිටු වාර්තාවේ එන නිර්දේශ කෙරෙහි අවධානය යොමු කරනු ලබයි. සිංහල හා දෙමළ බසින් ද ලිපි ඇතුළත් වන ප්‍රථම අවස්ථාව මෙය වේ. කුමුදු කුසුම් කුමාර විසින් ලියන ලද සිංහල ලිපිය තුළින් බහුතර සිංහල ජනයාගේ අපේක්ෂාවන් මෙන්ම බලය බෙදාහැරීම සහ රාජ්‍යයේ ව්‍යුහය සම්බන්ධව පොදු එකඟතාවක් කරා ලඟා වීමට ඇති හැකියාව සාකච්ඡා කරන අතර, මහජන අදහස් විමසීමේ කමිටුව කෙතරම් දුරට දෙමළ ජනතාවගේ දීර්ඝ කාලීන අපේක්ෂාවන් ආමන්ත්‍රණය කර තිබේද යන්න පිළිබඳව ස්වස්ථිකා අරුලිංගම් දෙමළ ලිපිය තුළින් පරීක්ෂා කරනු ලබයි. අසංග වැලිකල විසින් සවිස්තරාත්මකව ව්‍යාවස්ථාමය න්‍යාය පදනම් කොට ගෙන, ශ්‍රී ලංකාව ජනාධිපති ක්‍රමයක සිට පාර්ලිමේන්තු ක්‍රමයක් දක්වා පරිවර්තනය පිළිබඳ විශ්ලේෂණ ලිපියක්ද අන්තර්ගතය. රධිකා කුමාරස්වාමි විසින් ආණ්ඩුක්‍රම ව්‍යාවස්ථා ප්‍රතිසංස්කරණ ක්‍රියාවලියට දායකවූවන් අතර ශ්‍රී ලංකාවේ සිටි ශ්‍රේෂ්ඨයන්ගෙන් කෙනෙක් මෙන්ම නීතිය හා සමාජ භාරයේ නිර්මාතෘවරයා වන නීලන් තිරුචෙල්වම් මහතාගේ ජීවන මඟ සහ ඔහුගේ කාර්යයන් පිළිබඳව අවධානය යොමු කරමින් මෙම කලාපයට ලියනු ලබයි. එමෙන්ම මෙම කලාපය තුළින් අතුරුදහන්වූවන් පිළිබඳ වන කාර්යාලය සඳහා වන පනත් කෙටුම්පත වින්දිතයන්ගේ අපේක්ෂාවන්ගේ දෘෂ්ටිකෝණයේ සිට විග්‍රහ කරනු ලබන ඩියුන් උයන්ගොඩගේ විචාරයක්ද සමඟ පනත් කෙටුම්පත සඳහා අවබෝධයක් ද සපයනු ලබයි. තවද මෙම කලාපයෙන් සමාජ ආර්ථික යුක්තිය සහ කාන්තාවන්ගේ අයිතිවාසිකම් සඳහා වන ආණ්ඩුක්‍රම ව්‍යාවස්ථා ප්‍රතිසංස්කරණය පිළිබඳ මහජන අදහස් විමසීමේ කමිටු වාර්තාවේ නිර්දේශ පිළිබඳ සාරාංශද අන්තර්ගතය.

இந்த சஞ்சிகையில் இலங்கையில் தற்போது நடைமுறையில் இருக்கும் அரசியலமைப்பு சீர்திருத்த செயன்முறை தொடர்பாகவும் விசேடமாக அண்மையில் வெளியிடப்பட்ட அரசியலமைப்பு சீர்திருத்தம் தொடர்பாக மக்கள் கருத்தறி குழுவின் அறிக்கையில் உள்ள பரிந்துரைகள் தொடர்பாகவும் கவனம் செலுத்தப்பட்டுள்ளது. சஞ்சிகையின் இந்த வெளியீட்டில் தான் முதன் முதலாக சிங்களம் மற்றும் தமிழ் ஆகிய இரு மொழிகளிலும் கட்டுரைகள் வெளியிடப்படுகின்றது. குமுது குசும் குமார அவர்களினால் எழுதப்பட்டுள்ள சிங்கள் கட்டுரையில் பெரும்பான்மையான சிங்கள் மக்களின் அபிலாஷைகள், அதிகாரப்பகிர்வு, அரச கட்டமைப்பு தொடர்பான பிரச்சினைகள் ஆகியன தொடர்பாக பொது உடன்பாடொன்றிற்கு வரமுடியுமா எனும் விடயம் கலந்துரையாடப்பட்டுள்ளது. மக்கள் கருத்தறி குழு, மற்றும் தமிழ் மக்களின் நீண்ட நாள் அபிலாஷைகள் தொடர்பாக சுவஸ்திகா அருளிங்கம் தனது தமிழ் கட்டுரையில் கலந்துரையாடி உள்ளார். இந்த வெளியீட்டில் அசங்க வெலிக்களவின்னால் அரசியலமைப்பு சித்தாத்தங்கள் தொடர்பாக விரிவாக கவனம் செலுத்தப்பட்டு இலங்கை ஜனாதிபதி முறையிலிருந்து பாராளுமன்ற முறைமைக்கு மாற்றமடைதல் தொடர்பான கட்டுரையும் உள்ளடக்கப்பட்டுள்ளது. ராதிக்கா குமாரஸ்வாமி அவர்களினால் அரசியலமைப்பு சீர்திருத்த செயன்முறைக்கு பங்களிப்பு செய்தவர்களில் இலங்கையில் இருந்த பெரிய மனிதர் ஒருவரும் சட்டம் மற்றும் சமூக நம்பிக்கை பொறுப்பு சபையின் ஸ்தாபகருமாகிய நீலன் திருச்செல்வம் அவர்களின் வாழ்க்கை வழி மற்றும் அவருடைய செயற்பாடுகள் தொடர்பாக கவனம் செலுத்தி இவ்வெளியீட்டில் கட்டுரையொன்று எழுதப்பட்டுள்ளது. அதேபோல் இந்த வெளியீட்டில் காணாமல் போனோரின் காரியாலயத்திற்கான சட்டமூலம் பாதிக்கப்பட்டவர்களின் அபிலாஷைகளின் பார்வையிலிருந்து பகுப்பாய்விற்குற்படுத்துகின்ற டீஎன் உயன்கொடவின் விமர்சன கட்டுரையும் அடங்கும்.

மேலும் இந்த வெளியீட்டில் சமூக பொருளாதார நியாயம் மற்றும் பெண்களின் உரிமைகள் தொடர்பாக அரசியல் சீர்தீருத்த மக்கள் கருத்தறி குழுவினுடைய பரிந்துரைகளின் சுருக்கமும் உள்ளடக்கப்பட்டுள்ளது.

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