

Sri Lanka: The Impeachment And The Independence Of Judiciary

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Many are trying to interpret the attempt by the UPFA members of the Parliament to impeach the Chief Justice as a blow for the independence of judiciary, a highly valued element of democracy. Judiciary if operates independently, is posited as the last bastion of democracy in which people can seek justice when the two branches of the government, the legislature and the executive, wittingly or unwittingly, take unjust decisions affecting the citizens. Since the impeachment motion was presented to the Speaker of the Parliament, almost all have argued that it has been an attempt to scotch the independence of judiciary as some of the determinations of the Supreme Court affected adversely some of the bills the UPFA government wanted to pass quickly. It has also been mentioned that powerful politicians were unhappy over some of the decisions of the Judiciary Service Commission. The Secretary of the JSC was attacked by an unidentified gang in Sunday morning just prior to the handover the impeachment motion. The Sri Lankan police that are highly efficient in uncovering cases of non-political nature have so far failed to arrest or to identify the perpetrators. So I shall agree fully and unconditionally with the argument that the impeachment is undoubtedly an attempt to attack the judiciary. Nonetheless, I beg to differ in using the adjective, independent. Was the Sri Lankan judiciary independent of the legislature and the executive in the past? Was it independent, at least in relative sense, from the dominant social forces that include hegemonic Sinhala nationalist as well as economically dominant rich? Hence I would suggest that the impeachment discourse should be broadened if we really seek to understand the inner logic that operate beneath the surface. As my friend, journalist Kusal Perera (the Editor of Subhavitha), puts it in a private conversation, we should distant ourselves from 'Hulsdorf Mentality' in our attempt to theorize what is happening today.

Let me begin with my conclusion that is in fact an extension of the argument advanced in my previous article, 'Systems are Collapsing, So What?'. Then I will try to substantiate it. My submission is that the systems and institutions that have been created and modified by the Second Republic Constitution of 1978 have now evolved and transformed into parts of totally undemocratic, unjust and exploitative machine. Judiciary is no exception. It is also another decadent rotten and moribund institution that has been constantly making an attempt to negotiate with the executive in order to reach a 'better deal'. It showed a semblance of independence when it had failed to reach such an agreement. One may say that the pre 1978 history was relatively better as far as the relationship between the legislature, the executive and the judiciary was concerned. Three branches of the government enjoyed relative independence from each other. However, even then, judiciary was not independent from the dominant and hegemonic social forces. As Selvakumaran and Edrisinghe have argued, post-independence judiciary acted with strong Sinhala nationalist bias in giving its views and verdicts. I do not here intend to harp on how the Supreme Court and lower courts made their determinations when it comes to laws and regulations affecting workers and other poor masses.

Focusing on the recent past, let me pose some questions that would help in unraveling the true nature of the judiciary. Was the appointment of Dr Shirani Bandaranayake as a supreme court a result of a political decision? Was the appointment of Sarath Nandasiri Silva as Chief Justice a political decision? Was the SC determination to imprison S B Disanayaka a political decision? Was Sarath Fonseka given a fair and just trial following the due process? Was the decision to reverse SC

decision on P B Jayasundara an independent one? One may add many questions of similar nature to the above list and come to his or her own conclusion.

To witness the decadence of the system in its worst form, one may see what is happening in lower courts. How many years do people have to be under remand custody before cases were filed against them? How Tamil prisoners are waiting in prisons/ open camps to know what would be the charges eventually filed against them? As far as I am concerned these are much more important issues. It is totally unwarranted to put the issue independence before these issues since those issues have serious impact on poor, marginalized people. Once again journalist Kusal Perera reminded me of budgetary allocation of some 600 mn rupees in 2011 to improve court condition to make the execution of justice expedient. What happened to this money? Were there any follow-up actions? Was there a mention of this in 2012 budget?

It is absurd to portray this rotten system as independent and the guardian of 'final' justice. Of course, one may quote some of the decisions that were given by the judiciary as independent verdict. When a large number of Tamil prisoners were forcefully and arbitrarily transported to Vavunia somewhere in 2007, the Supreme Court gave a verdict that action was illegal and ordered those people should be brought back to Colombo. When I filed petition against the non-appointment of Constitutional Council set up by the 17th Amendment, the SC even declared that none is above the law so that petition can be filed making even the President a respondent. How do we explain these phenomena? These things happen when the SC especially the Chief Justice had engaged in a battle with the executive branch of the government. However, it is incorrect to portray these decisions as a result of the Judiciary exercising its independence. The system of bribe does not always run smoothly. It faces fissures and contradictions that should not be depicted as positive aspects of the system although outcome may be beneficial to the people. What we are witnessing to days is not an attack on pure and clean branch of the system by a dirty and authoritarian branch of the government. It is a conflict between two parts of the same corrupt and rotten machine. All the parties involved seem to have vested interests created by the system. Hence this reminds me a saying by Spinoza that Leon Trotsky prefers to quote many a time: "not to laugh, not to cry, but to understand". Only such understanding will assist us to build a system that is just, democratic and humane.

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P.S.

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