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பாராளுமன்றம்
PARLIAMENT

2016 August 18

Honourable Speaker,

The Parliament of the Democratic Socialist Republic of Sri Lanka,

Sri Jayawardanapura Kotte,

Sri Lanka,

Honourable Sir,

Parliamentary Proceedings of 11th August 2016, in reference to the Bill* titled “Office on Missing Persons (Establishment, Administration and Discharge of Functions) (OMP)”

We, the members of the Joint Opposition, representing 51 Members of Parliament, wish to bring to the attention of the Speaker that Parliamentary proceedings of 11th August 2016 on the passing of the Bill*, titled as above, were inconsistent with Article 78 (2) of the Constitution, which requires that “the passing of a Bill or resolution by Parliament shall be in accordance with the Constitution and Standing Orders of Parliament”.

We hold that such proceedings were inconsistent with the Constitution (*inter alia*) on the following grounds;

I. Articles 78(2), 79 and 152 of the Constitution

- (a) Clauses 19 and 20 impose direct charges upon the Consolidated Fund. There are other clauses causing indirect charges on the consolidated fund.
- (b) Article 152 of the Constitution makes it mandatory for such bills to obtain the approval of the Cabinet of Ministers prior to being introduced to Parliament. The same to be signified by the Minister to Parliament at the time of introduction of the Bill in terms of Clause 133 of the Standing Orders.

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- (c) The Cabinet of Ministers had not given approval to the OMP Bill* and Hon. Prime Minister, when presenting the same to the Parliament on 22nd June 2016, did not signify that the Cabinet had approved the OMP Bill*.
- (d) Hence, the OMP Bill* is inconsistent with Article 152 of the Constitution (and clause 133 of the Standing Orders) and (by application of the Supreme Court Determination on Value Added Tax (amendment) Bill) the OMP Bill* is a nullity.
- (e) Therefore, there was no “Valid Bill” placed before Parliament on 11th August for the 2nd Reading and passed into law; and there was ‘no Bill’ which could be ‘duly endorsed’ by the Hon. Speaker in terms of Article 79 of the Constitution. Such an absolute nullity (*ab-initio*) shall defeat the legal immunity that any other law would enjoy under Article 80(3) of the Constitution.

II. Articles 3, 4, 30, 41A, 41B, 41(G) (and other related Articles).

- (a) Clause 4 of the OMP Bill* provides for the appointment of members to the OMP on the recommendation of the Constitutional Council established under Article 41A of the Constitution.
- (b) Articles 41 B and 41C specifically restrict the powers of the Constitutional Council to appoint members of the Commissions and Officers specified in the respective schedules of the said Articles.
- (c) Hence, unless the OMP is included in the Constitution, the Constitutional Council shall have no power to make any appointment to OMP.
- (d) Article 41(G)(2) cannot be construed as authorising Parliament to pass laws contravening Articles 41B and 41C, particularly for the reason that the words “other duties and functions” do not include powers to recommend to appoint to any other commission or office, than those “specified in the Constitution”.



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(e) Therefore, the Bill* usurps the executive power of the people entrusted upon the President (manner in which sovereignty is exercised) and therefore inconsistent with Articles 3, 4 and 30 of the Constitution.

III. Article 77 of the Constitution

(f) Several amendments, purportedly moved on the 11th August (28 in number) were not examined by the Attorney General as required by Article 77, read with Standing Orders as explained hereafter.

We hold that the Parliamentary proceedings of 11th August 2016 violate the Standing Orders, particularly in the backdrop of the following sequence of events.

- (a) With agreement of all parties represented {including Joint Opposition –(JO)} at the Party Leaders’ Meeting (PLM) held on 21st July 2016, it was decided to place the OMP Bill for the 2nd Reading for the 3rd week of August.
- (b) At the PLM held on 4th August, the 2nd Reading of the Value Added Tax (Amendment) Bill* (VAT Bill*) was decided to be taken up on 11th August 2016.
- (c) On 9th August 2016, a Special PLM was summoned by the Speaker and notwithstanding the strong objection and resistance of the JO and JVP, other leaders (unexpectedly) insisted on advancing the debate (2nd Reading) on the OMP Bill* to 11th and 12th of August 2016. This was by replacing the already agreed debate on the VAT Bill*. The voting was to be taken up on the 12th August.
- (d) On 10th August 2016, another Special PLM was summoned where the speaker notified that the JVP had also agreed at a meeting held with the Prime Minister, to have the debate on the OMP Bill on 11th and 12th August 2016. Hence only the JO was opposed to having a debate so haphazardly, on such an important Bill*, affecting the National Security and Sovereignty of the Country - (which unreasonably curtailed the initial time agreed, on until the 3rd week of August, for the preparation for the debate).

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Proceedings of 11th August 2016 (Before Lunch break)

(e) In spite of the objections of the JO, the OMP Bill* was placed on the order paper for the 2nd Reading for the 11th August 2016.

(f) The Order paper of 11th August 2016 carried the following motion by the Leader of the House of Parliament under item 1 of “At the Commencement of Public Business”:-

“The Leader of the House of Parliament,— Sittings of the Parliament (No.1) ,— That notwithstanding the provisions of the motion agreed to by Parliament on 08.03.2016, the hours of sitting on Friday, 12th August, 2016 shall be 9.30 a.m. to 12.30 p.m. and 1.30 p.m. to 6.30 p.m.. At 11.30 a.m. Standing Order No. 7(5) of the Parliament shall operate. At 6.30 p.m. Mr. Speaker shall adjourn the Parliament without question put.”

(g) By operation of Standing Order No.7(5) the Proceedings of the following day (12th August) was to be interrupted at 3.30 p.m. This would further limit the time allocation to debate the OMP Bill*.

(h) When the motion was moved, the Leader of the Joint Opposition, Hon. Dinesh Gunawardena, expressed his distress at the studied mysteries and continuous measures instrumented in Parliament denying the democratic rights of the members of the Joint Opposition, and moved for a division on the motion.

(i) Notwithstanding such call for division, the Hon. Speaker decided to proceed with adoption of the motion by disregarding the call of the Joint Opposition, and being distressed by such an undemocratic decision of the Hon. Speaker, some members of the parliament rose from their seats and started to demonstrate their disagreement with the arbitrary decision of the Speaker.

(j) Hon. Speaker adjourned Parliament for the Lunch.

Party Leaders Meeting (During Lunch Break)

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(k) Hon. Speaker summoned an urgent PLM to resolve the differences, but failed.

Proceedings of 11th August (After Lunch Break)

(l) Proceedings resumed at 1.30 p.m. No formal order was delivered by the Hon. Speaker granting (at-least) an extended and sufficient time for the JO to debate the OMP Bill*; either on the 11th or the 12th of August. The interruption to be operative at 3.30 on the 12th remained unchanged on record.

(m) Notwithstanding the continuous opposition expressed by the members of the JO on the arbitrary and capricious manner in which the proceedings were conducted, Hon. Speaker commenced the Committee stage by calling the Minister of Foreign Affairs to move the OMP Bill*.

(n) As the parliament now shifted into a process of dictatorship, through which an arbitrary law detrimental to the National Security and Sovereignty of Sri Lanka was to be passed, the members of the JO had no alternative but to demand the Speaker to interrupt the proceedings in order to re-commence the same in a democratic manner.

(o) In the meantime the Leader of the JO, Hon. Dinesh Gunawardena, called for a division on the OMP Bill*.

(p) The call of the Leader of JO was disregarded, and Parliament proceeded in the midst of disturbances where most of the members of both sides were moving (walking) haphazardly across the Parliament.

(q) The proceedings were not recorded accurately and systematically.

Proposed Amendments to OMP Bill*

(r) 2 amendments had already been placed by the oversight committee, which was in order.

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- (s) JVP moved 2 amendments, which were heard to be read distortedly in the midst of disturbing noise.
- (t) 17 Amendments were tabled by the Government, 4 by Hon. Sumanthiran and 3 by Hon. Mangala Samarasinghe; **None of those amendments were moved and recorded in the proceedings according to Standing Orders.**
- (u) The call of Hon. Wimal Weerawansa to speak was arbitrarily turned down by the Hon. Speaker.
- (v) Notwithstanding the calling for the division by Leader of JO on the OMP Bill*, NO 'division bell' was rung and none of the proposed amendments were placed before the house for vote. The Proceedings were not recorded accurately in an orderly manner. None of the amendments were examined and approved by the Attorney General as provided by Article 77 of the Constitution (STO 38).
- (w) Strangely, the Hon. Speaker was heard to announce that the Bill* had been passed, although the vote was scheduled to be taken on the following day (12th August). This announcement was in defiance of the Ruling of the Hon. Speaker given previously to the effect that voting ought to be taken only on the scheduled day and time.
- (x) Hence the proceedings of the Parliament on 11th August 2016 were conducted violating Standing Orders, particularly Nos. 7(5), 38, 41- 44, 52, 53, 62, 63, 66, 71 and 133 (and other relevant orders).**

In the circumstances we hold that;

- (a) There had been NO VALID Bill (OMP Bill) placed before Parliament on 11th August 2016 for the second reading as the purported OMP Bill had already become a nullity by operation of law (caused by the unconstitutional procedure adopted in presenting the Bill* for the First Reading);
- (b) Even upon the assumption of the validity of the Bill*, nevertheless the Parliamentary proceedings on 11th August 2016 were conducted violating Articles in the Constitution and contravening the Standing Orders;

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- (c) Therefore the OMP Bill* cannot be treated as proceeding in accordance with the Constitution and Standing Orders as provided by Article 78(2) of the Constitution.
- (d) Hence, Hon. Speaker is not entitled or authorised by law to place his endorsement on the purported OMP Bill with the form that it 'had been duly passed by Parliament', as provided by Article 79 of the Constitution.

In the light of the unconstitutionality imbedded in the OMP Bill*, we observe that;

- (a) In spite of endorsement by Hon. Speaker of the purported OMP Bill, it cannot give rise to a "law" as defined in the Constitution, and due to its inability to attract the immunity under Article 80(3) of the Constitution, such law would be liable to be nullified and become inoperative in the future;
- (b) The OMP Bill* contains several clauses that would give rise to a draconian law which is detrimental to the sovereignty of the people and national security of the country; and would usurp the judicial and executive power of the people. This law shall pave convenient legitimate ways for the foreign investigators and unpatriotic elements to penetrate into highly sensitive and confidential information relating to national security and implement systematic mechanisms to victimise and paralyse national heroes. Finally this law would support the vicious cause of anti-Sri Lankan forces to establish a separate state in the territory of Sri Lanka, in collusion with, and with the assistance of, unpatriotic and anti-nationalist leaders of the Government.

Therefore we very earnestly state that the Hon. Speaker may not proceed with endorsing the purported OMP Bill*.

Sincerely,

Dinesh Gunawardena

Member of Parliament

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