RANDOM REFLECTIONS
ON
CONSTITUTIONAL
AND
PARLIAMENTARY MATTERS

BY
DHARMAPALA SENARATNE

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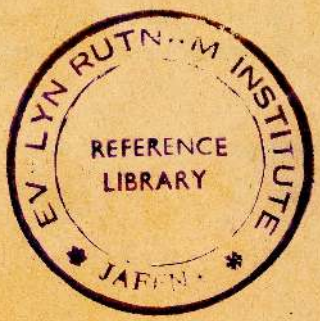

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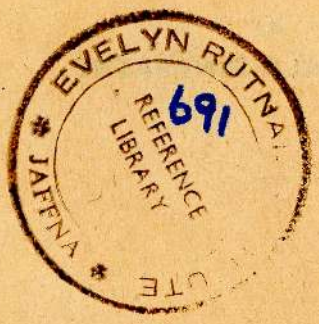

These essays are not claimed to be original ones since they appeared in newspapers from time to time in the course of the year 1982.

It appears that they give the impression that I am politically biased. Truthfully, I am not. This appearance has resulted from editorial work at newspaper offices.

You first deal with one facet of the theme and towards the end of the essay with another facet. Newspaper editors who are concerned about space sometimes indiscriminately delete the end part and your essay assumes a slanted look.

Therefore, please do not try to see my political views in between the lines. I am politically uncommitted and critical of any party where such attitude is warranted.

Do you, by the way, have any comments on the contents here Please?

Thank you.

Dharmapala Senaratne

1st January 1983
144, Veluwana Place,
Dematagoda,
Colombo 9.

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GETTING SET FOR ELECTIONS

(A constitutional analysis)

The President has reportedly told his party men to reckon 1983 to be the Election Year. Indeed, all the political parties, recognised for the purpose and otherwise, appear to be as busy as bees making arrangements for the next general election.

While that is the state of affairs prevelant in the country on the political front at present, arrangements are being busily made at an official level to conduct the elections in a lawful, legal and constitutional manner. Readers will recall that 'SUN' reported on February 9 in a front-page news item that Sri Lanka's next Parliament will comprise of 196 MPs, according to a recent Gazette notification by Elections Commissioner M. A. Piyasekare.

The Constitution tells us that unless sooner dissolved, the first Parliament, i. e. the present one, shall continue for six years from 4 August 1977 and no longer, and the expiry of the aforesaid period shall operate as a dissolution of Parliament. (Article 161 (e))

This means that by 5 August 1983, this being the latest at any event, Parliament stands dissolved and not even the President, the Head of the State and the Executive exercising unprecendented powers in our country, can prevent it.

It would thus be seem that no person or a group of persons acting in any capacity can extend the life of Parliament beyond the stipulated lifespan without running the risk of acting against the Constitution.

One would recall with an excited emotion that the last Parliament, then known as National State Assembly, by resolution extended its life by two years - in accordance with the then Constitution.!

Any utterence that such an act was unconstitutional was declared and construed to be illegal and thus punishable. Any such utterence or expression was declared to be an act against the constitutionally established Government.

It was, indeed, a logic that would make any extention of the life of Parliament, either by any number of years or indefinitely, quite constitutional and the criticising of such an act unconstitutional.

To come back to the present Parliament, in actual fact, elections could come even earlier than the above-mentioned date if the President decides to dissolve Parliament earlier. For instance, he can do so if Parliament rejects the annual Appropriation Bill of the Cabinet. (Article 70 (d))

What is the constitutional position once Parliament is dissolved? The Prime Minister and other Cabinet Ministers and Deputy Ministers and other Ministers continue to function up to the conclusion of the general election even when Parliament, having been dissolved, is no more in existence. In any case, the President is there to look after the affairs of the country. (Article 48 (1))

And if at any time after the dissolution of Parliament, the President is satisfied that an emergency has arisen of such a nature that an earlier meeting of Parliament is necessary, he may by Proclamation summon Parliament which has been dissolved and such Parliament shall stand dissolved upon the termination of emergency or the conclusion of the general election, whichever is earlier. (Article 70 (7))

On the dissolution of Parliament, the President is required to make a Proclamation fixing a date or dates for the general election to be held. (Article (70) (5) (b)) The constitutional provision is that such Proclamation should be made "forthwith". The new Parliament comprising new members chosen at the general election should be summoned within three months by the President.

The details of procedure as to how the general election should be conducted are given in the Constitution. For one thing, "Voting shall be free, equal and by secret ballot". (Article 93) Further details of procedure are given in the Parliamentary Elections Act No. 1 of 1981.

Much has been talked and discussed but the electors have had no experience previously of the mode of election that has been introduced for the first time to Sri Lanka by the present Constitution. It is called proportional system of representation as against the territorial system of representation that has been in existence is our country since universal franchise was granted to us more than half of a century ago.

One of the salient features of the new system is that elections are held on a district basis, the districts being much larger in extent than the constituencies hitherto known to us.

Furthermore, the electors would be voting for a political party or a recognised group of Independent candidates rather than for an individual candidate. This, no doubt, is again a feature we are not used to.

The number of members to be elected for each electoral district has been calculated in accordance with constitutional provisions and gazetted recently. There will be 196 MPs in all representing the 24 districts of the country.

In all our earlier general elections - held under the system of territorial representation - any ordinary citizen would have been able to know who the MP would be by a mere glance at the polling statistics. But this will not be possible at the next general election.

To determine from the polling figures who have won and who have lost, one has to be fairly conversant in arithmatical and statistical acrobatics. Hence, the Commissioner of Elections will have to do a fairly tough job of calculations before results are announced.

Sun - February 1982

FROM COLOMBO TO SRI JAYAWARDENEPURA

(The transition)

One would recall that there was once a planned project to build a new Parliamentary building facing the present one just a few yards away and that in persuance of this project, a certain amount of digging was done making the Galle Face Green look like a Gall Face Brown. The project was, however, abandoned and left at that.

But the present attempt, unlike the earlier one, of shifting Parliament from Colombo to Sri Jayawardenepura Kotte is going to materialise to all appearances and if it does, it would be an event of much historical and national significance.

Historians have based the division of the history of Sri Lanka into different periods or eras on the consideration as to what the administration centre of the country has been at a given time. Thus, we allude to the Anuradhapura period when Anuradhapura was the capital city and the administrative centre of Lanka. This applies to other historical periods, too.

Colombo was first made the capital city and administrative centre of Lanka in the early part of the 16th century by the Portuguese when the maritime provinces of our country were under their rule. When, subsequent to this, the Dutch captured these provinces, they did not change it for several reasons. Nor did the British make any suchattempt when they undertook the rule in 1796 of the coastal regions of Ceylon (as it was then known).

While these western nations were ruling the maritime provinces, there was simultaneously another kingdom in Ceylon under the Sinhala kings, first in Jayawardenepura (or Kotte) and subsequently in Sitawaka and Kandy, in that order. Such a dual rule, or more appropriately a divided rule, prevailed until 1815, that is some 165 years ago, when the British became the supreme rulers of the whole of Ceylon.

Thus, it would be seen that Colombe has been the administrative centre of Sri Lanka for an uninterrupted and unbroken period of over 475 years. In the earlier part of this period, Colombo was one of a duo and in the latter part, the undisputed capital city.

This being so, the shifting of Parliament, which means the shifting of the administrative centre, to Jayawardenepura has to be treated as a turning point, an outstanding landmark, in the history of our country. It is the end of one era and the emergence of another in its place.

Just as we talk of Anuradhapura period or Polonnaruwa period so we also talk of the Colombo period, particularly in the context of Sinhala Literature. All that is going to be no more. It will henceforth be the Jayawardenepura period of the history of Sri Lanka.

Since there has previously been another Jayawardenepura period, the future historians will, perhaps, find it necessary to designate the two as the First and the Second Jayawardenepura periods in order to distinguish one from the other. The first existed in the 15th and 16th centuries while the second would be from 1982 onwards - until the future rulers decide to make it otherwise.

At this juncture, it would be pertinent to reflect for a while on the First Jayawardenepura period. "It was the best of times" to borrow an expression from Charles Dickens. The whole of Ceylon was unified and brought under one ruler after a long period of internal turmoil and strife and warfare.

The country was prosperous in every sense of the world and the people were happy and content. Peace and Order was the order of the day. Several institutions of higher education, somewhat analogous to present day University Campuses and students from foreign lands seeking and receiving admission to, were flourishing in different parts of the country.

As such, historians call it the Golden Era of the history of Sri Lanka.

And then the shifting of Parliament to this historic city will no doubt, cause a heavy impact on many aspects of Sri Lankan life. The congestion in Colombo will ease in a large measure, for instance.

One of the biggest problems the City Fathers of Colombo encounter today is congestion, caused by a multitude of factors. Colombo today is the centre of Commerce and Industry, Business and External Relations, of transportation and distribution of imported commodities, the collecting centre of exports and the leading harbour in the island, in addition to being the administrative centre with all the Ministerial, departmental and Corporation offices as well as private sector offices concentrated within the city.

To make matters worse, this state of affairs causes mass migration of people from rural areas to the city of Colombo for a variety of purposes.

All this has resulted in multifarious socio-economic problems. slums and shanties, health problems, traffic congestion, vices such as prostitution, dealing in narcotics, etc. and an everincreasing demand for residential houses, being but a few of them.

There is little doubt that a well planned decentralisation program spread over a long period of time (as opposed to an 'accelerated' program such as the Mahaveli project) is the only meaningful remedy. Shifting of Parliament should be reckoned as a part of such a program.

The administration centre of a country need not necessarily be the centre of Commerce and Business. There are many countries such as the US and Australia where the two are distinct from each other. Sri Lanka will be one of such countries with the Parliament in Jayawardenepura.

Jayawardenepura literally means 'City of Victor'. Legend has it that the origin of this city was the building of a fortress (Kotte in Sinhala) by the Army Chief Alakeshwara on being informed of a strange event, namely, that a Cobra, the prey and arch-foe of the Mongoose under natural circumstances, was once seen killing the latter in a dual and emerging victorious at this place.

Sun – 8 March 1982

WOMEN AND POLITICS

(Women in politics since 1931)

It is said that the human mind, the faculty of thinking in particular, functions through a process of association of thoughts. My mind is by no means an exception for the simple reason that I am a human.

So, on hearing that Prince Phillip, Duke of Edinburgh, visited Sri Lanka again, the thought-associations in my mind began to run thus: his first visit here last year - Queen Elizabeth - her visit here in connection with the 50th anniversary of universal adult franchise - women in politics in our country with the first woman Prime Minister in the world.

The first woman to be elected to the legislature of Sri Lanka after the universal franchise was granted was Lady Mollamure, the wife of Sir Francis Mollamure who was the first Speaker of the first State Council in 1931. The father of Lady Mollamure, namely, J. H. Meedeniya Adigar, was elected to the Ruwanwella seat at the first State Council elections in 1931. However, not long after, his death occurred resulting in rendering the Ruwanwella seat vacant. At the by-election held thereupon, Lady Mollamure tendered her nomination for election and having won made her historic entry to the State Council on 20 November 1931.

Later on in her career, she had the distinction of being the first woman Senator as well as the first woman Deputy President of the Senate. By the way, her husband Sir Francis who at the time represented the Dedigama seat had the honour of being the first Speaker of the first State Council in 1931.

Thereafter, he was also elected the first Speaker of the first House of Representatives in 1947. At the time the country gained Independence in 4 February 1948, he was still the Speaker of the House and remained so until his death on 23 January 1951.

The members of the fair sex would perhaps be happy to hear that ever since Lady Mollamure's entey into the Lagislature, every subsequent Legislature up till now has been amply graced by the presence of woman members.

The first woman Minister of Sri Lanka happened to be Mrs. Wimala Wijewardene (Mirigama) who was appointed Minister, (or, shall I say Ministress?) of Health in 1956 by the then Prime Minister Mr. S. W. R. D. Bandaranaike.

The first woman Deputy Minister, then known as Parliamentary Secretary, was Mrs. Vivienne Gunawardene who was so appointed in 1964. It is significant she was appointed Parliamentary Secretary by no other person than Mrs. Sirimavo Bandaranaike, the first woman Prime Minister in Sri Lanka, nay, of the whole world who also commanded the distinction of being the first woman Leader of the Opposition having been so chosen in 1965.

Going through the list of members of all the Legislatures in the past, that is, since the right to vote and seek election to the Legislature was granted to women (imultaneously with men unlike in the U. K.), I note that there have been 20 woman MPs in all. The last three were, of course, nominated and not elected.

Significantly, a fair number of them have been spouses of men MPs. Does it mean that their husbands' reputation as politicians gave them a helping hand in obtaining a foot-hold in the sphere of politics? The answer appears to be in the affirmative though such male support may not be indispensable.

And that is perhaps why in his book 'The Past Masters', Mr. Harold Macmillan, an ex - Prime Minister of Great Britain, states thus: "A high proportion of the few women who became Members of Parliament relied on the ability, popularity and general influence of that least attractive figure in feminist circles- a mere man and a mere husband!" Which reminds me of another British Prime Minister Sir Winston Churchill who, when a woman MP in the Opposition declared to him in Parliament "If you were my husband, I would give you a cup of poison", retorted "If you were my wife, I would willingly swallow it!"

Sun - 16 March 1982

TRILINGUALISH IN PARLIAMENT

(The story of evolution)

There is little doubt that the opening ceremony of the new Parliament building by the side of Diyawanna Oya must have brought back to the minds of many senior citizens sweet memories and reminscenses of a similar event, namely, the opening of the old Parliament building beside the Beira Lake precisely 627 months ago by Governer Sir Herbert Stanley.

Thanks to the TV, the second event was witnessed by the whole nation unlike the earlier one. This is symbolic of Sri Lanka coming under the influence, during the intervening period, of scientific and technological progress of the world.

The contrast, however, does not end there. Equally or perhaps more significant are the changes in the social and sociological sphere in our country. Take the language, for example. In 1930, it was a case of the colonial language dominating the scene. In glaring contrast, we noted that Parliamentarians made speeches in all the three languages at the recent event.

The transformation from "the language that Shakespeare spake" to trilingualism - two national languages inclusive of one official language plus a global language - over period of about a half of a century is an interesting story that signifies a gradual process of evolution.

During the Legislative Council days i. e. prior to 1931, no member felt a need nor was allowed to address the House in any language other than English. Nor did the constitutional reforms in 1931 which created a State Council reform the language policy of the legislature.

With the inauguration of the House of Representatives in 1947, provision was made for the first time in the Standing Orders for members to speak in Sinhala or Tamil. Accordingly, the MP for Dandagamuwa, Mr I. M. R. A. Iriyagolla sought the Speaker's permission to speak in Sinhala on 27 November 1947.

The Speaker, however, informed the Member that the necessary arrangements such as reporting facilities were not yet complete but would soon be made available.

On 20 July 1948, the Speaker announced that Members may speak in Sinhala – but not in Tamil – provided that such speeches were restricted to 15 minutes, the number of such speeches were limited to two per day, Members desirous of speaking in Sinhala give twenty four hours notice and proceedings other than speeches be not permitted in Sinhala.

Just eight days later, it was an historic occasion when, subject to the aforesaid provisos, Mr S. W. R. D Bandaranaike, the then Leader of the House, spoke in Sinhala for the first time in the history of the Legislature of Sri Lanka. It took some eight more months for the first Tamil speech in the House to be made by Mr. G. G. Ponnambalam, the Ministor of Industries and Fisheries.

However, the restrictions remained intact until the Standing Orders were amended after the passage of the Official Language Act in 1956.

The Island – 18 May 1983

THAT FAMOUS MOCK SESSION*

(Two MP's taken to Supreme Court)

At this juncture when the building that housed our Legislature for a period of more than half of a century has given way to an ultra-modern Parliamentary Complex in Sri Jayawardenepura Kotte, it would be both interesting and instructive to recall a certain unique event and so an outstanding landmark in the history of Parliamentary Government in our country. My allusion is to that well-known 'mock session' of our Parliament.

It was way back in 1955 – April 6 to be exact – when the then Minister of Home Affairs A. Ratnayaka rose to reply at the conclusion of the debate on a Supplementary Estimate, Somaweera Chandrasiri (Moratuwa) rose to speak and insisted on his right to do so.

The Speaker, Sir Albert Pieris, ordered Mr. Chandrasiri to resume his seat as the estimate had by then been fully discussed. The youthful, militant MP refused to comply with the Speaker's order whereupon he was 'named' and ordered to be suspended from the services of the House. The Speaker thereafter suspended sittings and left the Chair as is customary on an occasion of this nature.

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* Any discussion on the Privileges and Immunities of our Parliament would be absolutely incomplete without reference to the case of these two MPs being charged for the breach of privilege (57. New Law Reports 412.) This is the story of how it all began and culminated.

At this stage, Dr. W. Dahanayaka (Galle) proposed that the MP for Dehiowita, Edmund Samarakkody, do take the Chair. Robert Gunawardene, the then MP for Kotte, 'duly' seconded the motion.

Mr. Samarakkody then gracefully took the Chair and called upon the MP for Moratuwa to address the House which the latter willingly and gladly did. In the meantime, however, the Sergeant-at-Arms entered the Chamber and removed Mr. Chandrasiri and thus ended the much talked of 'mock session' of our Parliament.

At the time, the Leader of the House was none other than J. R. Jayawardene who is reputed as a strict disciplinarian and who has always insisted that law is no respector of persons. On the day of the incident itself, he complained to the Speaker that Edmund Samarakkody was guilty of disrespectful conduct in the precincts of the House and Dr. Dahanayaka of aiding and abetting the offence, an offence created by the Parliament (Powers and Privileges) Act.

Acting on this complaint, the Speaker made an inquiry and forwarded the details to the Attorney General for report. The Attorney General, after a study, reported to the Speaker that there were sufficient grounds to warrant the taking of further steps according to law. Incidentally, the Attorney General at the time was T. S. Fernando.

Thereafter, the Attorney General on the request of the House made an application to the Supreme Court that Dr. Dahanayaka and Mr. Samarakkody be called upon to show cause why they should not be punished for breach of privilege of Parliament.

TV viewers will recall that in a programme televised recently, Dr. Dahanayaka triumphantly declared in passing reference that both of them were discharged by the Supreme Court. The opinion of the court was that if their conduct was disrespectful of

Parliament, it was a matter for Parliament to take cognizance of and not for the Supreme Court. It was before Justice H. N. G. Fernando that the matter was argued.

Section 3 of the Parliament (Powers and Privileges) Act No. 21 of 1953 states "There shall be freedom of speech, debate and proceedings in the House and such freedom shall not be liable to be impeached or questioned in any court or place out of the House." Section 4 states, "No member shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any matter or thing which he may have said in the House . . . ."

Sun Special Supplement - 29 April 1982

COLVIN - LAWYER OR SCIENTIST?

(A reply to his declaration of Presidential dictatorship)

Those of us who undisputedly accept the lawyer-cum-historian of the first rank, Colvin R. de Silva's expertise in constitutional matters cannot help wondering whether he has conveniently forgotten or wilfully suppressed certain factual aspects in writing the article captioned "Constitutional Position of Parliament" which appeared in 'SUN' of 22 May 1982 when, incidentally, he was being felicitated for having completed fifty years at the Bar.

I simply call him Colvin without the honorific 'Dr.' as the authorship of the said article was indicated in the same manner.

Contrasting the mode of argument of lawyer with that of scientist, it has been said that a lawyer suppresses material facts not favourable to his case, attaches undue weightage to favourable ones, is passionate and involved in the presentation of his thesis in order to arrive at his pre-judged conclusion whereas a scientist is dispassionate and indifferent to facts, open-minded, more concerned about factual truth than about views and viewpoints and unmindful of the outcome of his investigation.

In this sense, Colvin in this article shows himself to be a top-notch lawyer rather than a scientist-historian.

Here, his main contention and complaint is that "1978 Constitution provides for near dictatorship" as "the executive power is completely taken away from Parliament and vested in the President."

This is by no means an original contention because over the past half a decade or so, he has spent much energy to propagate this idea among the people.

Very strangely, the fact that the 1978 Constitution expressly provides that "The President shall be responsible to Parliament for the due exercise, performance and discharge of his powers, duties and functions" in terms of Article 42 has slipped his attention. Or, has he purposely suppressed and overlooked it in a true lawyer-like manner?

Nor should it be forgotten that the President has to go before the people at the end of his term and this in itself and by itself is an inescapable restraint on him. After all, he is elected by, and a representative of, the people.

Our learned and beloved comrade, this die-hard anti-colonial Marxist was unable, for some reason or other, to deviate from the Westminster pattern in framing the 1972 Constitution, the only significant change made by it being the change of designation Governor General to President.

Hence, what Sir Ivor Jennings, as competent an expert as Colvin, said of the British Prime Minister was 100 per cent applicable to our Prime Minister under the 1972 Constitution. Sir Ivor says that a Prime Minister is a virtual dictator for a specific period of time - until the next elections. (See 'The Queen's Government').

No, our Prime Minister was even more than that. She was a virtual dictator for two more years than was specified by the people at the 1970 elections!

We recall that at that time, by a process of hair-splitting, dedicated Colvin strove to show the constitutional validity of prolonging the Parliament's life. Yes, this is a fact of history.

Thus, it would seem that, hair-splitting apart, the constitutional position as regards the powers of the present President is not significantly different from that of the constitutional powers of the then Prime Minister, whatever Colvin says.

Sun - 3 June 1982.

PROPORTIONAL REPRESENTATION

A great deal has been talked, less has been thought and still less understood of this thing called proportional representation, the subject of solemn discussion at various forums at the present time, as it seems to me.

However, as the PR system of election of MPs is no longer merely a matter of debate and speculation but is firmly enshrined in the present Constitution, the likelihood is that the next general election will be conducted on this basis. Although insinuations of amendments to it have come from miniterial declarations from public platforms and other sources, they refer only to mere amendments and not a total reversion to the earlier system known as territorial representation as against PR.

We in Sri Lanka are total strangers to the new system although it has been in existence in different countries in different forms for quite some time. Indeed, we have only copied it! During the period of over fifty years when we have been enjoying adult suffrage, we got used to the territorial system of representation (TR) only.

It is only human that whatever new appears on the horizon, people entertain an uncertainty and an apprehension. It is my considered view that this is the sole reason why some criticise the new system, the 'stranger'.

And then there are always people among out comrades and bretheren and so among the political parties, too, who would criticise anything and everything under the sun for the mere sake of criticism. They find slogan-shouting an amusement and an excitement in itself and an outlet for their inner aggressive propensities and thus indulge in it without any target in aim.

We, in a democratic country only have to put up with them though they are a veritable headache. Let us have the consolation that they find a form of occupation in it and a psychological satisfaction. Still others criticise the scheme of PR with ulterior motives.

I do not intend to be understood, nay, misunderstood, as suggesting that PR is definitely advantageous over TR. No form of representation is perfect and hundred per cent satisfactory. Each of these two systems has its own inherent weaknesses and defects as well as advantages and so we have to strike a balance instead of striving to be perfectionist.

Under the earlier system, one could be elected an MP without having to command an absolute majority of the electorate one is to represent. This is so because the contending contestants at an election are almost invariably more than two in number under our multy-party political system.

Likewise, the party that comes into power may not have the support of an absolute majority of the country and so what is carried into implementation by way of government policy may not be the wish of the majority.

Thus, representation in Parliament could be wholy unproportionate and out of proportion. This is undebatedly undemocratic. And we cry hoarse that we cherish democracy under which the wish of the majority is held sacred! Going through the polling statistics of past elections, one cannot fail to notice that this is not only a mere possibility but has happened in actual fact.

I believe, it is in the hope of rectifying this sort of 'democratic anamoly' which glares in one's eye that the present rulers have thought of introducing this thing called PR under which the anamoly is got rid of.

But there is another side of the story, too.

Under the new scheme of PR, the electorate or the constituency hitherto known to us will disappear and electoral districts, very much bigger in extent and size, will take their place. Except in two instances, they will, indeed, be the same as present administrative districts which are twenty four in number.

We would be voting for not an individual but an inanimate list of names prepared by the party hierarchy. Those on the list, particularly those at the top, are pre-destined to become MPs. The choice on your behalf is made in advance by the party-as if you are not intelligent enough to do it! Thus, the voters can determine the party which their MPs should belong to but not who their MPs should be.

We will no longer be able talk of 'my MP'. Instead, there will be 'our MPs' (in the double plural). If you go to an MP asking for a permit to buy clothing for your wedding suit or a bag of cement (as you were once wont to) or that all-important Job Card, the MP can turn and say 'Why not go to the other MP. He is your MP as much as I am'. The second in his turn can quite meaningfully say the same and you will be driven from pillar to post and back from post to pillar and from MP to MP.

That is another advantage of the PR system!

Sun - 17 March 1982

THE LEGAL BATTLE OVER HECTOR

While the mounting Presidential election fever has engulfed the entire nation, some no doubt, find some secondary issues arising from the election campaign more interesting and absorbing.

The legal position of the S.L.F.P. candidate as regards his qualifications to be such candidate is one such issue.

Those in the audience must have stood aghast to listen to Dr. Colvin R. de Silva when he raised the matter for the first time at a public meeting a few days ago.

According to Dr. de Silva, the S.L.F.P. candidate is disqualified by reason of being nominated by a political party undeniably headed by a person on whom civic disabilities have been imposed.

On the top of it, Colvin at a subsequent meeting further pointed out that a certain election poster of the S. L. F. P. had a similar effect in law. Many many voters were certainly startled and taken aback by this statement.

And then the whole question developed into polemics with the S.L.F.P. General Secretary refuting this assertion.

Those who watched the nomination proceedings on the TV will recall that an objection was raised to the nomination of the S.L.F.P. candidate on the same grounds. The Commissioner of Elections, however, rejected this objection.

It is obvious that neither Colvin (in spite of his being a radiant star in legal circles) nor the S. L. F. P. Secretary is competent to adjudicate the matter nor are election platforms the proper forum to argue it.

Lawyers generally put forward seemingly convincing arguments but what the actual position in law is a question only a competent court of justice can decide.

Under the Republican Constitution (Article 130) and the Presidential Election Act. No. 15 of 1981, it is the Supreme Court of Sri Lanka which has jurisdiction to decide matters of this nature.

It is quite likely that some contender or some other competent person will take up this question by way of an election petition in due course as provided for by law. It may be pertinent to mention here that an election petition where it relates to a Presidential Election is required to be heard by five judges of the Supreme Court. They should include the Chief Justice unless the Chief Justice otherwise directs. (Section 92).

To come back to the matter at issue, Colvin is a lawyer whose eminence is undisputedly recognised even by his political opponents. One is therefore justified in attaching heavy weight to his views on questions of law. He should certainly know what he is talking about.

Certain contradictions in the S.L.F.P. General Secretary's reply give more weight to Colvin's contention. In it occurs the following, for instance. "In fact, she (Mrs. Sirima Bandaranaike) did not participate in the choice of the candidate for the Presidential election"

How far is it valid or true that the party President did not participate in the choice of party's candidate? Can one dissociate oneself from such choice as long as one holds the Presidential office of the party? Is not holding the office itself active participation? These posers are, of course, merely speculatory-until courts give a ruling.

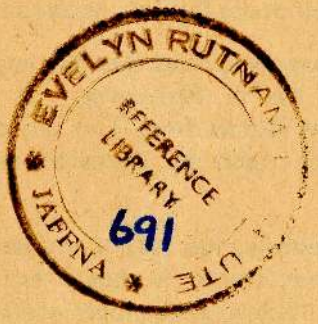
Presidential Election Act lays down that a candidate is disqualified if such 'candidate personally engaged a person on whom civic disability has been imposed as a canvasser or agent or to speak on his behalf.

And then Section 67 (1) of this Act further provides that such a 'disabled' person should not take part in the process of Presidential election in any manner whatsoever. The contravention of this provision is an offence punishable with six month's imprisonment and/or a fine of Rs. 1,000.

In terms of Section 90 of the Act, the election of any candidate to the office of Presidency shall become null and void by reason of such candidate being guilty of any corrupt practice or illegal practice specified in the Act.

Thus, the general public of the country are awaiting eagerly, almost in suspense, not only the election of a President but also a ruling on this controversial question, the first to be determined by the country's voters and the latter by a competent court of law.

Sun - 12 October 1982.



ANSWERS TO SOME VITAL QUESTIONS

Presidential polls

I made note of 'some vital questions' raised by that vetaran P. E. G. Mendis through the 'SUN' of October 12.

Although he prefers a lawyer, I as an ordinary but informed reader propose to answer them.

Can the President restore the civic rights of those deprived of them, as promised by more than one Presidential candidate? The answer is unreservedly in the affirmative.

Article 34 (2) of the Constitution lays down that the President may (a) grant a pardon either free or subject to lawful conditions or (b) reduce the period of such disqualification in respect of any person on whom civic disability has been imposed by resolution in Parliament under Articl 81.

Thus, there is all justification for Presidential candidates to announce their desire for such restoration of civic rights.

It is erroneous to think that this imposition was effected by a Bill or an Act of Parliament. It was merely by passing a resolution as distinct from Law or permanent legislation and restoring civic rights by President requires no Parliamentary approval.

As for restoring the 1972 Constitution as pledged by some Presidential candidates, it should be stated that this could be done only by following the proper constitutional procedure within the specified constitutional framework. There is absolutely no other way.

Article 82 (6) of the Constitution states that no provision in any law shall, or shall be deemed to, amend, repeal or replace the Constitution or any provision thereof or be so interpreted or construed unless enacted in accordance with the specified procedure.

For one thing, this basically requires the agreement of two thirds majority in Parliament, not to mention of other complications and implications, procedural and otherwise.

When a Presidential candidate announces his intention to discard or 'tear up' the present Constitution, I presume he means to do so by following the specific procedure. It would at once be seen that this is no easy task. If so, is this announcement just another tall talk on an election platform, one wonders.

If by tearing the Constitution they mean the sheet of paper on which it is printed disregarding the fact that the Constitution is the supreme and fundamental law of the land from which all other laws and legislation spring, then the candidature at a Presidential election is not a pre-requisite to be able to tear it.

Even a small child could do it!

Of course, there is another kind of 'tearing' of Constitution. That is, capture power by hook or by crook and thereafter announce that the Constitution is disregarded or suspended as was done in Pakistan, for instance.

One shudders to think of a similar fate to befall Sri Lanka. I am sure, none of our democracy-loving Presidential candidates intends the Pakistani model when making this announcement regarding the Constitution though many Asian countries have experienced it.

Sun - 18 October 1982

A UNIQUE ELECTION

When, during his Presidential election campaign, Dr. Colvin R. de Silva raised a question of law as regards the competence in law of another candidate for the latter's candidature, he nationalised the law, as it were, for questions of law became the subject matter of discussion even in village tea boutiques.

Colvin repeatedly quoted a previous precedent where the MP elected by the people was disqualified by a court of justice and the Parliamentary membership was awarded to the one who was defeated at the elections. Many people became inquisitive to know more about it in their electoral thirst and indeed many have personally inquired from me. With the election hustle bustle subsiding, their curiosity has apparantly grown.

It was truly a unique instanee for never before or since has an MP chosen by the people been disqualified and deprived and a defeated one offered a Parliamentary seat although such provisions of law have for long been in the Statute Book.

It was way back in 1965. When K. D. D. Perera won the Bandaragama seat at the General Election, two election petitions were filed against his election on the ground that one his agents was guilty of corrupt practice in terms of Section 51 (1) of the Ceylon (Parliamentary Elections) Order in Council 1946. The Election Judge Justice Abeysundara, however, rejected both the petitions.

The Supreme Court, nevertheless, held in appeal that the said corrupt practice had in fact been committed and by that reason, the election of Mr. Perera was null and void.

The decision was reported to the then Governor General in accordance with law whereupon the Bandaragama seat was declared vacant.

Not to be easily outdone and his enthusiasm and militancy undiminished, Mr. Perera not only tendered fresh nominations once again on July 25, 1967, but he also won the seat by a majority of 5,468 votes at the by-election held subsequently. By the way, his contestants were George Kotalawala and Eustace Bandara. The deposit of the last mentioned was forfeited.

As was to be expected, not one but two election petitions were thereafter filed challenging the election of Mr. Perera. The basis was that under the earlier report by the Supreme Court to the Governor General, he was disqualified for a period of seven years. The second petition prayed that George Kotalawala who came second at the election be declared lawfully elected.

The Election Judge Justice Alles allowed the petition holding that Mr. Perera was disqualified in law. But he refused to declare George Kotalawala elected as prayed by the second petition.

The persevering man he was, Mr. Perera was not satisfied with the decision. He appealed to the Appeal Court from this order.

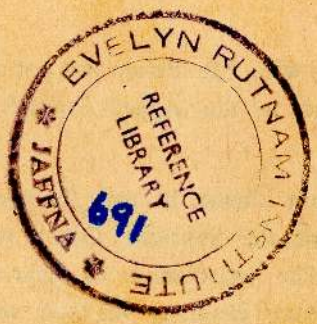
Digressing from the main theme, it may be pertinently mentioned here that at that time, the Supreme Court was not supreme though so called. The jurisdiction to hear election petitions pertaining to Parliamentary elections was then vested in the Supreme Court and a party dissatisfied was able to appeal to the Appeal Court.

Today, however, the situation is reversed. Parliamentary election petitions are heard by the Court of Appeal and an appeal against its decision has to be addressed to the Supreme Court thus making the latter literally supreme and the highest court of justice in the land.

To come back to the main issue, not only the Appeal Court dismissed appeal by Mr. Perera but further held that the candidate who came second was entitled to the Parliamentary seat, thus making Mr. Perera eat the humble pie.

Accordingly, George Kotalawala made and subscribed the Affirmation required by law on 5 March 1969 and took his seat in the House of Representatives as the legislature was then known and remained an MP until Parliament was dissolved.

Sun - 2 Novermber 1982



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