

The Friday Forum

Lanka

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11.06.2020

Media Release

The Rule of Law and Democratic Governance

At the Annual National law Conference 2020 organised by the Bar Association of Sri Lanka 2020, President Gotabaya Rajapakse in the course of his address said “the time has come for all stakeholders including the judiciary, government, legal fraternity, and all other citizens concerned, to work together and make the system of justice people friendly, efficient and effective the independence of the judiciary is the corner stone of the rule of law. Without the independence of the judiciary the rule of law will inevitably fail.” (Daily News 17 February 2020).

On 2 June 2020, the very night the Supreme Court gave its order, dismissing all fundamental rights petitions relating to the re-summoning of Parliament and postponement of General Elections, without stating any reasons, the President promulgated an Extraordinary Gazette notification giving a Task Force of serving and Military officers a sweeping mandate and powers of governance.

The Task Force is chaired by the Secretary for Defence. The Members are the Commanders of the three armed forces, Directors of Intelligence Services of these Forces, the Acting IGP, and some other senior military officers. Most are still serving in the forces though a few are retired senior military officers. They are empowered to "curb illegal activities of social groups (not defined), who are violating the law (not defined), which is emerging as harmful to free and peaceful existence of society.” The responsibility has been placed on this Military Task Force "to build a safe and secure country, a disciplined and virtuous and lawful society.”

The President has decided to create a military Task Force in the interests of protecting public security. They are empowered to maintain peace, law and order. This is despite the fact that the President, government ministers, and lawyers challenging the fundamental rights petitions in the Supreme Court, have stated repeatedly that there was no situation of threat to public security, or a need to respond to an emergency or breakdown of law and order.

An impression seems to have been created that the Supreme Court decision enables the President to govern indefinitely without Parliament, and without any constitutional limitations on his powers. Also, that he can create governance institutions that can function even outside the framework of the Constitution, and other arms of the Executive. The Prime Minister, like the President is part of the Executive branch, but unlike this Task Force has a status in the Constitution, and is part of Parliament. What is his role and responsibility in relation to the Task Force?

The Supreme Court gave no reasons for dismissing the fundamental rights petitions. We do not know how their Lordships interpreted the critically important Article 70 of the Constitution, which reflects the balance between the powers of Parliament and the President in protecting the Sovereignty of the People, a basic norm of the Constitution. Nor do we know how they interpreted the provisions of the Elections Act on the holding of a General Election and the summoning of the new Parliament, after a lapse of 3 months from the date of the Presidential Proclamation dissolving Parliament.

The Friday Forum calls upon all those the President referred to in his address at the Law Conference 2020 to examine the details of this Gazette Extraordinary, and see whether this document undermines or reinforces the Rule of Law in our country. Does it conform to the Constitution, the basic law, of the country? If it does not do so, it is in conflict with the Rule of Law. The President, must then, in light of his oath of office to respect and safeguard the Constitution, his legal duties under Art 33 of the Constitution, and his publicly stated commitments, withdraw this Proclamation.

Similarly, the Military personnel holding office must not accept membership of this Task Force. Army officers too (as pointed out recently by respected and eminent retired Army generals in other jurisdictions like the USA), take an oath of office to safeguard and respect the Constitution.

Article 33 of the Constitution is cited in the Gazette as authorising and empowering the President to appoint this Task Force and create this mandate. Not a single section or subsection of Article 33 covers the scope of this Extraordinary Gazette. A subsection giving the President power to do such acts not inconsistent with the provisions of the Constitution, or written law as are authorized by international law, certainly does not cover this mandate (Article 33 (2) (h)). We do not know who advised the President to refer to this Article of the Constitution in this Gazette. Chapter 18 of the Constitution and the Public Security Ordinance, in fact require the President to respond to demands of public security according to specific provisions. This framework of laws requires him to communicate with Parliament, when he uses the military to maintain law and order and public security.

When we examine the mandate of the Task Force we must reflect on what implications this has for governance. The Task Force has sweeping powers to investigate all matters within their broad mandate. They can issue directions to "social groups," all public servants, public institutions and public corporations. Failure to follow directives will be reported directly to the President. Independent Commissions like the Elections Commission, the Human Rights Commission, the Right to Information Commission, and the Public Service Commission, state universities and state media, are "public" institutions. It would appear that directives can be given to them too by the Military Task Force, and that these directives must be followed.

What implications does this Military Task Force have for the chain of authority in important areas of public administration? Matters such as conducting elections, appointments and transfers of the public service and the Police, and a wide range of development activities can also come within the sweeping powers given to the Task Force

If this Task Force continues to function Sri Lanka would have established a military regime, within what is expected to be a civilian administration and a parliamentary democracy under a written Constitution. Let us not forget that our success in coping with the corona pandemic, the aftermath of the Easter Sunday violence and the tsunami was because the military functioned as support to a civilian system of governance. The Military Task Force on public security will operate without the checks and balances of the Constitution, and the civilian institutions. It can become the first step to the creation of a military dictatorship in this country.

The Friday Forum calls upon the Independent Commissions, professional associations, the media, civil society organisations including faith groups, trade unions and all citizens to take this gazette notification seriously. They must individually and collectively respond to its contents as a matter of urgency. We must all urge the President to withdraw this Gazette. We must call upon him not to give these wide powers to a Military Task Force operating as an institution parallel to those created by the Constitution.

It is surely time for all of us to speak truth to power.

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On behalf of:

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