PARLIAMENT - A DEMOCRACY OR A MOCKERY?

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INTRODUCTION

Parliament is that arm of government that is concerned with the making of laws, the financial arrangements of the government and the representation of the people. The Parliament of Guyana consists of the President and the National Assembly. It is described by Article 50 of the Constitution as one of the supreme organs of democratic power in Guyana.

In my presentation, I will look at the main function of Parliament, the making of laws and its role as a supreme organ of democratic power. Due to the limitations in terms of time, I have opted to refer only to a few of the recent laws passed by Parliament and the consequences. The laws that I will address are:

1. The constitutional amendments relating to the service commissions;
2. The terrorist law;
3. The deportee law;

4. The seat belt law.

CONSTITUTIONAL AMENDMENTS-SERVICE COMMISSIONS

Acts of Parliament Nos. 5, 6 and 8 of 2001 introduced changes in relation to the appointment of members to the Judicial, Public, Police and Teaching Service Commissions. The amendments were not a credit to those who assumed responsibility for their drafting. They were ambiguous, vague and characterised by a total absence of specifics. The legislative vacuum led to different interpretations as to what Parliament intended. The result is that all the service commissions have not been reconstituted for almost 2 years. I repeat what I said previously, that in making laws, proper advice and drafting skills are necessary and particularly important in a society which was already charged with high political tension and the concomitant well-known negative consequences. It is poor drafting and absence of clarity which provides an opportunity for those who are eager to undermine the rule of law.

Were the legislation properly drafted, comprehensive and definite, we would not have had the obscene spectacle of the 'blame' game being played by the politicians. We would have avoided the Parliamentary impasse of not being able to appoint the standing committee of the

National Assembly to address matters relating to the appointment of the members of the service commissions. We also would not have had to resort to the position held by some persons that dialogue outside of the National Assembly is a substitute for proper laws. The place for dialogue or debating of laws is in Parliament. Parliament is the democratic law-making forum of the country and extra parliamentary dialogue subordinates Parliament. Dialogue outside of Parliament to the exclusion of some Parliamentarians is repugnant to the notion of Parliamentary democracy. Even if extra parliamentary talks produce results, it will never be a long term substitute for Parliament enacting proper laws.

What is the effect of the non-existence of the Service Commissions? Has it prevented appointments, promotions and dismissals? The answer is twofold. Yes, it has prevented the appointments of many individuals. On the other hand, many purported appointments and dismissals have taken place on a selective basis, notwithstanding the non-existence of these bodies.

With regard to posts that come within the portfolio of the Judicial Service Commission, certain appointments have been made to the posts of DPP and the Registrar of Deeds.

With regard to the Teaching Service Commission, it appears as if the Secretary to the Commission or the clerk to the secretary has arrogated to himself/herself the functions of this Commission and has made many acting appointments and promotions of teachers.

The present Police Commissioner (ag.) was appointed without the Police Service Commission being in place. It is expedient when it comes to the appointment of his replacement to argue cogently that a successor cannot be appointed because of the absence of the Police Service Commission. Impliedly therefore, the appointment of the present Commissioner of Police becomes suspect.

There is hardly need for me to mention the many dismissals of Public Service Commission appointed public servants although the members of the Public Service Commission have not been appointed.

There have also been many appointments to established Public Service posts or to posts created within the public service. Contract appointments have been made or approved by Office of the President contrary to Act of Parliament No. 17 of 2000 which amended Article 120 of the Constitution. It states that "The President may constitute offices for Guyana, make and terminate appointments to such offices, save where the constitution of, and the making of appointments to, such

offices involve expenditure chargeable to the Consolidated Fund, such expenditure shall be subject to the approval of the National Assembly." Of course, in several instances, the National Assembly has been treated with disdain and its approval has not been sought for many appointments of persons within the public service.

THE TERRORIST LAW

In 2002, Parliament passed an Act called the Criminal Law (Offences) (Amendment) Act 2002, Act No. 7 of 2002. The explanatory memorandum which usually sets out the purpose and objective of a bill read as follows:

> "This Bill seeks to create the specific offence of the commission of a terrorist act. The Bill is necessary in view of the mounting violence in which the country is engulfed. It is hoped that this measure would serve as a deterrent to those who are inclined to commit acts of violence including the destruction of property."

The offence of 'terrorist act' as drafted or rather the attempted copying of the offence is described in a record 189 words all lumped together. It is a classic demonstration of verbosity, tautology, confusion and incomprehensibility.

The penalty for committing a terrorist act, if death results, is "a fine of not less than one million five hundred thousand dollars together with death".

The terrorist offence was copied from the State of India legislation. However, the idea of a penalty of a fine together with death appears to be an innovation of the local draftsmen as the penalty in the India legislation is different.

It is my view that the effectiveness of this Act of Parliament can be ascertained by asking 2 questions: Firstly, has this Act of Parliament served its purpose by reducing the "mounting violence in which the country is engulfed"? Secondly, has the hope of Parliament that this Act would serve "as a deterrent to those who are inclined to commit acts of violence" been achieved?

This leads to the question of enforceability! It has been seven months since this urgent Act of Parliament has been in operation and no-one has been charged with the terrorist offence. Is it because this Act of Parliament has achieved its goal and acted as a deterrent and the bandits have refrained from committing terrorist acts? Or is it that those tasked with administering the Act have great difficulty enforcing this colossal cacophony of words in its present form.

Instead of addressing the situation of crime and violence in this country, the main achievement of this Act of Parliament has been to burden the judiciary by producing litigation challenging its legality and constitutionality.

THE DEPORTEE LAW

On the 26th September 2002, the National Assembly passed the Prevention of Crimes (Amendment) Act 2002, Act No. 8 of 2002 which was assented to by the President on the 1st October 2002. The law states that the Minister may, by order, upon application by the Commissioner of Police, designate as subject to police supervision, any Guyanese citizen who has been convicted of specified offences in a foreign state, who has been deported or elected to return to Guyana in lieu of deportation or a person whose conduct and activities have been of such a nature that he may reasonably be regarded as constituting a threat to the public safety or public order of Guyana.

It further provides that the Commissioner of Police may apply, ex parte, to the Judge of the High Court to obtain permission to make an application to the Minister to make an order to impose restrictions as to residence, reporting to police, registration and the use of firearms as the

Minister may deem necessary in the interest of public order and public safety.

The Constitution of Guyana guarantees the fundamental right of freedom of movement. However, fundamental rights are not absolute and may be curtailed. The Constitution caters for the restriction of a person's movement or residence by an Act of Parliament and provides that a person so restricted shall be entitled to have his case reviewed by a tribunal established by law and constituted in such a manner as to ensure its independence and impartiality. The Constitution further provides that an aggrieved person shall be given a fair hearing within a reasonable time.

This 'deportee' Act of Parliament which restricts a person's fundamental right, ex parte, fails to make provisions for the establishment of a Tribunal to give effect to the Constitution which is the supreme law.

It is therefore not surprising that, like the terrorist law, the deportee law has produced litigation on the ground that the failure of Parliament to establish an independent and impartial tribunal in accordance with the Constitution renders the legislation ultra vires, null and void.

The Act does not prevent the Minister from making the order many years after the offender has returned to Guyana.

It must be mentioned that the Guyana deportee law was copied substantially from the Jamaican legislation. However, the Jamaican Parliament in its wisdom provided for the establishment of an independent Restricted Persons Review Tribunal to review applications by persons whose fundamental rights have been restricted, ex parte. The exclusion of these provisions by the local copyists imply that they considered them superfluous.

This Act of Parliament is not viewed as oppressive by the Attorney General, but as an example of Parliament's democracy. He pleads that the deportee and terrorist laws were made in the public interest for the peace, order and good government. He further pleads that the object of the legislation "was to arrest the going tide of criminality … and place emphasis on the uncertain trend of criminality." It is his further defence that "if the legislature decides to subjugate subjective considerations of an individual in the interest of society it is not the function of the Courts to frustrate such policy." With all due respect, I beg to differ. I would hardly describe a person's fundamental right to freedom of movement as "subjective considerations". It is the function of

the Courts to strike down any law which contravenes the rights of individuals guaranteed by our Constitution. This is what democracy and justice are all about.

THE SEAT BELT LAW

The Motor Vehicles and Road Traffic (Amendment) Act 2002 provides, *inter alia*, that "every person who drives or rides on the front seat of a motor vehicle shall wear a seat belt." There were exceptions including "any person who holds a valid certificate of exemption issued by a registered medical practitioner on a form approved by the Minister and stamped by the prescribed authority."

This law was passed by the National Assembly on the 9th May 2002 and assented to by the President on the 30th May 2002. The law did not come into operation immediately. The National Assembly passed a commencement order to the effect that this Act of Parliament would come into effect on the 1st January 2003. Presumably, the purpose of delaying implementation of this law was to give vehicle owners an opportunity to ensure that their vehicles were equipped with seat belts and secondly to give time to those in charge of administering the Act to establish and put in place the mechanisms for the effective operation of

the Act. After one year, a person who is unable to comply with the requirement of wearing a seat belt due to medical reasons cannot obtain the certificate of exemption contemplated by the Act because there are no approved forms and Parliament has failed to identify who or what is the "prescribed authority" to stamp the form. In short, this Act of Parliament was incomplete. No mechanisms have been put in place to ensure that it can be implemented effectively.

SUMMARY

In summary, we have the introduction of Acts of Parliament which led to the non-constitution of all service commissions for almost 2 years. This has led to extra parliamentary measures which have the effect of subordinating Parliament which is touted to be the supreme organ of democratic power. In the meantime, there is the incongruity of many appointments and dismissals having taken place, while others have been denied appointments on the ground that the relevant service commission is not in existence.

The deportee law seeks to restrict, ex parte, the fundamental right of freedom of movement. It is lopsided and deliberately failed to make provisions to allow an aggrieved person access to a tribunal established

specifically to deal with their applications for review and thus ensure that our Constitution, the supreme law, is respected.

The terrorist law has not curbed the crime situation as intended. Instead it has burdened the judiciary by producing litigation challenging its constitutionality and legality.

In the case of the seat belt law, it contains provisions which have not been given effect to or cannot be given effect to in its present form.

In a word, Parliament has passed many laws which are defective either by omission or inclusion. There are laws that cannot be enforced or laws that are not enforced. There are also laws that are completely ignored.

CONCLUSION

It is encouraging that there has been an end to the boycott in Parliament. The first order of business should be to rectify and amend, with the assistance of knowledgeable individuals, the Acts of Parliament which have created the impasse so that the entire country is not at a standstill as the world goes forward. Without curing the defects, we are likely to have a repeat of the problems all over again as extra parliamentary measures cannot be a long term substitute for enacting

proper laws. It is not in the interest of either government or opposition for there to be non-participation and non-appointment of the service commissions and other committees. That is a recipe for anarchy and abuse of power.

While there is nothing inherently wrong in enacting laws to prevent crime, there is something fundamentally wrong if this is done with total disregard of our supreme law, the Constitution. There is also something supremely wrong when persons, particularly those in power, fail to submit themselves to the laws passed by Parliament.

Last year, I was given the opportunity to make a presentation at the GBA's annual law conference under the theme "*A Review of the Constitutional Reform Process*". My presentation highlighted some of the constitutional amendments, their deficiencies and the effect of the flaws caused by the sloppy drafting. Although the facts were incontrovertibly unchallenged, yet it appears that certain persons were not pleased with the highlighting of the facts and dealt with the messenger rather than the message.

Democracy carries with it the right to be permitted to speak the truth freely, without fear of reprisals, democracy is about the right to highlight problems, to criticise constructively with the hope of

development and improvement. I trust that this presentation will be viewed in this regard.

In my view, Parliament as a democratic power becomes a mockery when members of the political executive ignore or knowingly flout the laws made by Parliament and arrogantly justify their actions on account of the inadequacies of the law, judicial sluggishness and judicial meandering at times.

Parliament should be the centre for informed dialogue on national issues. The policy of selecting Parliamentarians should be premised not on loyalty to the head of the party but to competency and the ability to attract support of the constituency.

Consideration needs to be given to parliamentary function being a full time occupation, and not as an interruption from the other activities in which our Parliamentarians engage, in order to make up numbers for a vote.

Parliamentarians should have access to experts so that they can make valuable and informed contributions to debates. They should be available to their constituency to listen to grievances.

Having criticised the drafting of laws or Acts of Parliament, let me say that legislation will never cater for all contingencies. Legislation will never be perfect. No law will ever be a substitute for decency, customs, values and traditions. It is for this reason that irrespective of what legislation we have there will be dysfunction unless those tasked with governing this country understand the necessity and importance of putting nation and public interest above personal and partisan interests.

Lofty as the ideal of perfection is, unattainable though it might be, our inability to reach the ever receding mirage of perfection should not justify the abandonment of that perfection and replace it with the ease and comfort of mediocrity, for in doing so, what we create is form without substance.

Having said all of this, it is for you ladies and gentlemen to determine whether what takes place in our Parliament is democracy or a mockery of it. Whether we have form only or whether we have form with substance.

ADDENDUM

I had completed the writing of my presentation when the communiqué was issued as a result of meetings which took place between President Jadgeo and Leader of the Opposition Robert Corbin. The communique stated, among other things, that agreement had been reached as to the composition and appointment of the standing committee to address matters relating to the appointment of members of commissions established in accordance with Article 119C of the Constitution which is set out in Act of Parliament No 8 of 2001 referred to herein. It was also agreed that the way forward was by Motion. The President and the Leader of the Opposition approved the terms of a Motion setting out the modalities for enabling the Appointive Committee to discharge its functions to be placed on the Order Paper for the 8th May sitting of the National Assembly for approval. This has been done.

Some of the issues raised by this communiqué include:

1. If an Act of Parliament failed to include specific provisions as to the composition and duties of a committee, should that Act of Parliament not be amended? Should not the source of the problem be addressed?

2. Is a motion the best formula for outlining the matters relating to the composition and duties of the committee?

3. The communiqué does not include any position as to consequences of non-compliance. What if the President or Leader of the Opposition and now the National Assembly fail to adhere to the terms of the communiqué?

4. What happens if the Service Commissions are constituted and shortly thereafter, some members walk out? Do we take a step backward and have a repeat of the original problem?

5. What is the significance, if any, of the two other parliamentary parties in the National Assembly being excluded from the meetings which resulted in the communiqué?

6. Indeed, what is the relevance of the 60-odd Members of Parliament, if issues can only be resolved by meetings held by the President and the Leader of the Opposition?

7. Is the crime which has engulfed this nation sufficiently important to have been given greater priority than facilities for Members of Parliament. Or are we satisfied that the terrorist and deportee legislation will deal with the crime situation?

8. Finally, can Parliament be legitimately described as a supreme organ of democratic power when all important issues are discussed and agreed on outside of the National Assembly and then approved by the 66 members of the National Assembly, acting as robots?

Act No. 8 of 2001 has to be considered as deserving attention as this Act of Parliament has led to the non-constitution of the service commissions for almost two years by virtue of its failure to contain provisions providing for the composition and duties of the appointive committee.

It is therefore my view that, having regard to local conditions, Act No. 8 of 2001 should be amended by providing for the composition and duties of the committees. **Provision should also be made for non-compliance.** Finally, crime is of national importance and Parliament should address it as a priority.