

The Need to Strengthen the Legal Framework to Ensure Security Concerns

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Your Lordship the Chief Justice, Justice Kodagoda, Mohan Peiris, President's Counsel, former Chief Justice, Dr. Charika Marasinghe, ladies and gentlemen.

It is not a very envious task to come as the fourth speaker after three eminent and eloquent speakers have come and delivered very interesting speeches before me. However, I will try to live up to expectations. First of all, I must say I'm privileged to associate myself with the International Research Conference of General Sir John Kotelawala Defense University under the theme 'Holistic Approach to National Growth and Security'. I'm thankful to the Vice Chancellor, Major General Milinda Peiris and the organizing committee for inviting me to be a speaker of the plenary session in law to be held under the theme the Role of Law in National Growth and Security. I have decided to speak on the topic 'the Need to Strengthen the Legal Framework to address Security Concerns'. Sri Lanka as you know is a developing country with a population of approximately 21.8 million, bearing a gross domestic product or GDP per capita of 3852 USD in 2019.

After the conclusion of the war which plagued the country for 30 years, Sri Lanka experiences an economic growth at an average of 5.3% from the period of 2010 to 2019. Although national growth has slowed down in the previous years, Sri Lanka repurposed its peace dividend after the end of this war towards reconstruction and further growth. In the five-year period from 2009 to 2013, which was the period

immediately after the end of the 30-year-old war, the economy grew at an annual average rate of 6.5%. It was particularly impressive in the three years after the end of the war recording a GDP growth of 8% to 9.1% showing continued high growth trajectory. However, this momentum broke with growth declining substantially to 3.4% in 2013. During the five-year period from 2014 to 2018 the average annual growth increased to 4.2%. Moreover, growth had continued to moderate since 2015 ending with 3.2 growth in 2018, the lowest in 16 years. Due to the economic impact of the Easter Sunday attacks in April 2019 growth was expected to be 3% or less in 2019. However, Sri Lanka managed to return to a sense of normalcy by stagnating at 3.7%. After an average growth of 2.3% in 2019, economy contracted down to -1.6% in the first quarter of 2020. This decline, a first in 19 years, was driven by weak performances of construction, textile, mining and tea industries. This is due to the COVID-19 health crisis which impacted economy's activity severely since the first quarter of the year. High frequency indicators suggest the growth has faltered in the second quarter, as curfews island wide impeded in economic activity and global demand remain weak. Moreover, the closure of airports to tourists between April and September brought tourism activity to a standstill. Why I went through these statistics was to show that a security situation or a national disaster could have severe consequences to the national economy or to national growth.

Ladies and gentlemen, the security of a state is one of the prime responsibilities of a government towards its people. It is in this context that under our Constitution, the President of the Republic is the Commander in Chief of all Armed Forces. He has unfettered discretion and power of appointing the commanders of the armed forces. Under article 33 (2) (g) of the Constitution President has power to declare war and peace. Under article 33 (a) the president shall be responsible to Parliament for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any written law including the law for the time being relating to public security. In a Supreme Court Determination SC Reference 2 of 2003 five judges of the Supreme Court including Chief Justice Sarath N Silva, held inter alia "we have to express our opinion accordance with the Constitutional determination made by bench of seven judges of this court that executive power being a component of the sovereignty of the people including the defence of Sri Lanka is reposed and exercised by the President and any transfer, relinquishment or removal of such power from the President will be an alienation of sovereignty which is inconsistent with Article 3 read with Article 4 being entrenched provisions of the Constitutions".

In the same determination it was further held, and I quote, "those powers including the checks and balances have to be exercised by the respective organs of the government in trust for the people for the good governance of Sri Lanka and the establishment of a just and free society as laid in the Directive Principles of State Policy contained in Article 27 (1) of the Constitution. It is in this background that we state the opinion of this court in terms of Article 129 (1) of the Constitution in respect of the first question in the reference, that in

terms of the several articles of the Constitution analyzed in this opinion and upon interpreting its content in the context of the Constitution taken as a whole, the plenary executive power including the defence of Sri Lanka is vested and reposed in the President of the Republic of Sri Lanka. The minister appointed in respect of the subject of defense has to function within the purview of that plenary power thus vested and reposed in the president.

So, the Constitution gives that power to the Head of State, the President of the Republic, because of the importance of security of the state. National economy and national growth are largely dependent on the security and stability of a nation. In Sri Lanka, our economy is dependent largely on tourism and foreign investment. Those are not the only factors but those are two key factors. Before a person could decide to make Sri Lanka his or her tourist destination or where a foreign investor is considering investing in Sri Lanka, one of the primary concerns would be the security and political stability of the country. In the event that either a prospective tourist or foreign investor is not satisfied with the security and the political stability of Sri Lanka it can be rest assured that he would rather choose another destination for his travel or investment. Therefore, the security of the state has a huge impact on the economy of a country and thereby the national growth of the country. It is pertinent at this stage to consider if there are adequate laws to ensure that there is security, and law and order in Sri Lanka. While in a general context, the existing laws are considered sufficient to meet ordinary law and order situations, what needs to be examined is whether existing laws are sufficient with regarding to dealing with a situation of terrorist attacks or economic attacks which maybe aimed at high political targets or economic targets. In both these

instances in the event of such an attack it could have severe consequences to the economy and national growth of the country. I will not endeavour to examine the normal penal laws that exist in our country which could cater to a normal law and order situation. During the last five decades Sri Lanka faced the following emergency situations.

The 71 insurrection, communal violence in 1978 and 1983, the insurgency during 1987 to 1990, over three decades of terrorism up to 2009 and the Easter Sunday terrorist attacks of 2019. In all five situations mentioned above it was clearly established that the normal penal laws were grossly insufficient to control the law and order of Sri Lanka and the security of our country. The Public Security Ordinance which has been in existence since 1947 is one of the special laws that can be used during an emergency situation. Under the Public Security Ordinance, the President is empowered to declare a state of emergency and has the power to make regulations to ensure that the national security is not compromised. Such regulations can derogate from normal laws. Such regulations, although named regulations, constitutionally has the force of law. However, in the event the President declares an emergency he has to go before Parliament and the continuance of emergency would depend on the approval of it by Parliament. In addition, under section 12 of the Public Security Ordinance it empowers the President to call out the forces in any area where he feels there is a threat to public security in order to assist the police. With that the forces get police powers. The Prevention of Terrorism Act or the PTA which came as a temporary provision act in 1979 is now part of the permanent laws of Sri Lanka. The PTA is the only law available at all times, including during periods where emergency is not in

force that could be used to deal with acts of extremism and/or terrorism or to prevent a threat of such acts. As such it is imperative to examine if the PTA is sufficiently stringent to cater to situations that could pose a threat to the national security of a country. One of the main drawbacks of the PTA is that offences as described in section 2 of the Act mainly deal with hostile acts against specified persons. 'Specified persons' is interpreted in section 31 of the Act and does not include ordinary civilians. In a present day context, where countries have to deal with international terrorist organizations that select civilian targets to achieve its purposes it is my opinion that the PTA is grossly insufficient to control a situation where a nation comes under a terrorist attack or to subsequently convict and punish its offenders. During the period from 2015 to 2019, the then regime did not consider the security of the country as a priority. In fact steps were taken to repeal the PTA and draft a Bill named Counter Terrorism Bill which was a diluted version of the existing PTA. This subsequently came into public domain.

It is now public knowledge that the Easter bombings of April 2019 was made possible largely due to the then regime's lack of preparedness to deal with such a situation in which hundreds of lives were lost. It is pertinent to note that one of the reasons why the terrorists carried out such attacks was to get international publicity and finding Sri Lanka an easy target due to security not being given a high priority at the time. In this context, it is my view that strengthening the PTA or bringing new laws to strengthen the security of the country is of a paramount importance. For this purpose, after the Easter bombings, the Sri Lanka Bar Association set up a committee to study the existing PTA, the proposed Bill; Counter Terrorism Bill and to examine a fresh and recommend new amendments to

either to improve and strengthen the Prevention of Terrorism Act or to recommend new laws to curb terrorist acts. In addition, recently the Justice Ministry has appointed committees to look into amendments required to the existing civil, criminal and commercial laws. Therefore, it is my view that it is imperative that reforms to the existing PTA should be prioritized. In conclusion, I am of the view that if we are to look forward to a growth in our national

economy and national growth it is imperative to strengthen our legal framework to ensure not only the security concerns but also to ensure that foreign investors or tourists as the case maybe feel that Sri Lanka offers a safe and secure climate, a safe environment for them to confidently choose Sri Lanka as one of their destinations for investment or tourism.

Thank you ladies and gentlemen.