

Hon M. H. Mohammed,  
Speaker,  
Parliament,  
Kotte.

COPY OF DRAFT ONLY

Sir,

Notice of a Resolution under Article 38(2)(a) of the Constitution of the Democratic Socialist Republic of Sri Lanka

I/we the undersigned being a member/members of Parliament hereby give notice of a resolution under Article 38(2)(a) of the Constitution alleging that the President Ranasinghe Premadasa has been guilty of having committed:

- (a) Intentional violation of the Constitution and/or
- (b) Treason and/or
- (c) Bribery and/or
- (d) Misconduct or corruption including the abuse of the powers of his office and/or
- (e) Any offence under any Law involving moral turpitude.

I/we hereby set out full particulars of the allegations and I/we seek an inquiry and report thereon by the Supreme Court.

It is our contention that the President despite taking the oath of office as set out in the fourth schedule to the Constitution has from the date of assuming office, knowingly and intentionally violated and continue to violate the following Articles of the Constitution:

- (1) The President has usurped the powers of Parliament and/or the Cabinet of Ministers by acts unknown to the Law and the Constitution eg. issuance of Presidential directives and guidelines etc.  
(Vide President's statement to Ministers on their assumption of office - 18th Feb. 1989)

Page 3) "They should be in accord with Policy directives coming from me with Para 7) respect to the subject and functions of each Ministry."

- (2) The President has frequently ignored the provisions of Article 43 of the Constitution which states as follows:

43(1) There shall be a Cabinet of Ministers charged with the direction and control of the Government of the Republic, which shall be collectively responsible and answerable to Parliament.  
(Vide statement of 18th Feb. 1989)

Page 2) "Politically and Constitutionally Ministers are delegates of the President  
Para 4) appointed to assist him in his exercise of the executive power" which is a direct violation of the said Article.

- (3) The President has intentionally violated the Constitution and in particular the said Article 43 by misinterpreting the provisions to believe that he is the whole executive and thereby assuming that only one man is responsible for the direction and control of the Govt.

Vide Articles 4, 30, 33, 42 and 43 inter alia  
his speech to Ministers on 18th Feb. 1989 where he states

Page 1) "I bear the Constitutional and Political responsibility to exercise executive  
Para 3) power and am solely accountable to the people in this regard." This is a clear violation of the said articles and in particular Article 42 which makes the President responsible to Parliament.

(4) The President in his statement states that:

Page 2) "The Provisions in Article 43(1) according to which the Cabinet is charged Para 5) with the direction and control of the Govt. is subordinate to Article 4(b)."

This interpretation is a clear indication of his intention to run a form of Govt. thereby depriving the Cabinet of Ministers the direction and control of the Govt. and in which the Cabinet of Ministers plays only a subordinate role in the affairs of the State.

The Statement itself is a wilful and intentional violation of the Constitution, its terms, spirit and principles and it converts a democratically elected Cabinet Govt. into a One-man dictatorship. Principles of Constitutional Law are clear on the equality of status of every Article.

(5) The President has violated the collective responsibility of the Cabinet of Ministers. Particulars of this are found in the President's statement to Ministers on their assumption of office on 18th Feb. 1989. The said speech is annexed herewith marked 'X'.

Article 30(1) states that "there shall be a President of the Republic of Sri Lanka who is the Head of the State, the Head of the executive and of the Govt. and the Commander in Chief of the Armed Forces."

While Article 43(2) states that the President shall be a member of the Cabinet of Ministers and shall be the Head of the Cabinet of Ministers.

Article 33 sets out the powers and functions of the President.

The President in his statement on 18.2.89. states

Page 2) "I'm accountable to the sovereign people for the exercise of executive Para.7) power by every Minister. I therefore have the duty to supervise the work of all Ministers."

The President has downgraded the role and status of Ministers and proceeded to interfere and by pass their authority and exercise supervisory control over them. Powers assigned to Ministers by the Constitution and other Statutes have been ignored and abrogated by Secretaries and other officials being given direct instructions by the President and/or his Secretariat.

This violation of the Constitution has arisen out of the President's view that he has a duty to supervise the Ministers (Vide Speech of 18.2.89. Page 2 Para 7).

This violates the Ministers duty to Parliament and to the Cabinet of Ministers.

In terms of Articles 43-44 and 45 Ministers are collectively responsible and answerable to Parliament and cannot be subjected to Presidential interference in their duties (Vide Article 44(3) and 45(3)).

The President by appropriating to himself the power to 'supervise' Ministers has violated:

- (a) The Constitutional maxim that he is only a Primus Inter Pares
- (b) Cabinet Convention of collective responsibility
- (c) The rights of Parliament
- (d) The democratic spirit of the Constitution.

As the President is not a member of Parliament he is answerable in terms of Article 42 to Parliament for the due exercise of his executive power through the Cabinet of Ministers all of whom except himself shall be Members of Parliament.

It is clear that the President has assumed for himself powers which are not vested in the office of the President by the Constitution (Vide Powers of the President - Article 33).

(6) The President has acted Ultra Vires the Constitution in the allocation of subjects and functions to Ministers of the Cabinet, Project Ministers and State Ministers - e.g. by Gazette Notification of 30.3.1990 (No. 603/19) the President

has assigned the "direction of implementation of such programmes and projects" to a Cabinet Minister. He has also by the same Gazette of 30.3.1990 (No. 603/19) assigned to the Project Minister also "direction of the implementation of such programmes and projects".

This allocation of the same subjects and functions to two persons is:

- (a) a violation of the Constitution especially Articles 45 and 46.
- (b) Causes confusion and impedes the exercise of executive power.
- (c) Is unknown to any other part of the world.
- (d) Once subjects and functions are assigned to one person, the President cannot assign the same to another to hold such power concurrently.
- (e) The President has violated the provisions of Articles 45 and 46 by appointing Project Ministers and State Ministers, which offices are not created by the Constitution.

Article 44(2) states that the President may assign to himself any subject or function and shall remain in charge of any subject or function not assigned to any Minister"...

The President has assigned to himself the inalienable authority conferred by Articles 45(4) and 46(2) of the Constitution to the Cabinet Ministers, the delegation of any subject or function already assigned to a Cabinet Minister to a non-Cabinet Minister.

But 45(4) any Minister of the Cabinet of Ministers may, by Notification published in the Gazette, delegate to any Minister who is not a member of the Cabinet of Ministers any power or duty pertaining to any subject or function assigned to him, or any power or duty conferred or imposed on him by any written law etc."

The President has thus violated Article 46 of the Constitution by placing in disuse the office of the "Deputy Minister" who shall assist the Cabinet Minister in the performance of his duties as required by the Constitution.

(7) Article 52(1) provides for an appointment of a Secretary to each Ministry by the President. This Secretary shall subject to the direction and control of his Minister exercise supervision over the Depts. of the Govt. and other Institutions in charge of his Minister."

But the President has acted Ultra Vires to the Constitution by making the following appointments:-

- (1) Appointment of Mr. K. M. Abeysinghe as Secretary to the Prime Minister on 30/3/90 Vide Gazette 603/19 in that a Secretary can be appointed only to a Ministry.
- (2) Appointment of 22 persons as Secretaries to Project Ministries under Article 52(1) (Annexure marked Y) Gazette No. 603/19 of 30/3/90.
- (3) Appointment of 29 persons as Secretaries to the Ministers of State under Article 52(1) Gazette No. 603/19 (Annexure marked Z).

These appointments by the President are ultra vires to the Constitution and are especially contrary to Articles 52(1) and Article 55(1) of the Constitution.

(8) The President by requiring Secretaries to Ministers to prepare Confidential Reports to him of the Ministry of the Minister and submit them directly to him has violated Article 52(2) which requires the Secretary to act "subject to the direction and control of his Minister".

By direct instructions and by requiring direct reporting from the Secretaries (by passing their Minister) the President contrary to the Constitution (especially Article 52) has assumed powers not given to him by the Constitution.

(9) Article 55(1) states that the Cabinet of Ministers shall not delegate its powers of appointment, transfer, dismissal and disciplinary control in respect of Heads of Depts. But

- (a) The removal of the Food Commissioner Mr. Obadage and other officials by the President without consulting the Cabinet of Ministers are ultra vires and contrary to the Constitution especially Article 55(1).
- (b) The removal of Secretary to the Ministry of Lands, Agriculture etc. of the North Central Provincial Council and other Provincial Officers by the President are ultra vires and contrary to the Constitution especially to the provisions of Chapter XVIII A of the Constitution.

(ii) The President has violated the provisions of the Constitution by usurpation of powers vested in the Ministers by Statutes passed by Parliament.

The appointment of Directorates to Institutions created by Statute are vested in the Minister in charge of the subject as specified by the Law:-

e.g. State Industrial Corporations Act No. 49 of 1957 Section 2 and Section 12.

State Agricultural Corporations Act No. 11 of 1972 and 20 of 1980 Sections 10.

State Plantations Corporations Act Sec. 3 & 4 etc.

But the President in his statement to the Ministers on 18th Feb. 1989 (Vide Annexure X) states that "every appointment to Boards of Directors must receive my approval." In his note to Cabinet dated 21.2.1989 the President has stated "Appointment of Secretaries of State Ministries and Chairmen of certain Corporations, Boards, State Agencies etc. have been made by me."

It is clear proof that the President by his action subjugated the powers already vested in the Cabinet of Ministers by Statutes. He has thereby violated Article 42.

(10) Article 4(b) casts upon the President the inalienable duty of the Defence of Sri Lanka and Article 30(1) makes him Commander in Chief of the Armed Forces.

However, his actions do not prove that he has discharged this supreme duty to the people satisfactorily or to the best interest of the country e.g.

- (1) Being the Minister of Defence he hardly ever has chaired a meeting of the National Security Council.
- (2) Has failed to take any positive action to provide the people the necessary security and an atmosphere of peace.
- (3) Has been carrying on political adventures of such a nature as to endanger the security of the State.
- (4) By carrying on secret negotiations with and arming of the LTTE which resulted in carnage of thousands of people including security personnel.
- (5) Acting in derogation of powers and privileges of the Supreme Legislature of the Country by conducting a Parallel All Party Conference into which all national questions are put up for discussion (Vide Article 4(a) 75 and 7).

(11) The President is required by Article 27(15) to act according to the following provisions:

"The State shall promote International Peace, Security and Co-operation and the establishment of a just and equitable international economic and social order and shall endeavour to foster respect for International Law and Treaty obligations in dealing among Nations."

He is also required by Article 33(F) to act as follows:-

"To do all such acts and things not being inconsistent with the provision of the Constitution or written Law as by International Law, Custom or usage he is required or authorised to do."

But the President has repeatedly violated the same by making public statements such as "I am undiplomatic" and acting in such a manner expressly rejected the provisions of the Constitution and failed to perform his duties.

(12) He has thereby imperilled the Security of the State.

The President has failed in his duty to protect the Fundamental Rights of the people, particularly of those mentioned in Articles 10, 11, 13 and 14.

Article 13(4) of the Constitution states that no person shall be punished with death or imprisonment except by order of a competent Court made in accordance with procedure established by law.

Article 13(1) states that "No person shall be arrested except according to procedure established by Law. Any persons arrested shall be informed of the reason for his arrest."

The President in his capacity as Head of State, Head of Govt. and the Commander in Chief of the Armed Forces has failed to protect and intentionally and knowingly prevented the investigations and conduct of inquiries and/or to punish those responsible for the:

- (a) inhuman and cruel torture and the murder of the well known journalist Mr. Richard de Zoysa.
  - (b) The disappearance of Mr. Lakshman Perera - M.M.C.
  - (c) The disappearance of Mr. Krishna Hussain and thousands of others including youth who were arbitrarily abducted, tortured, killed and otherwise disposed by hired killer groups.
- (13) While Article 14 provided for individual freedoms, Article 13(e) states that it is the duty of the State to respect the rights and freedom of others.

The President by his following actions has violated the Fundamental Rights and Duties enshrined in the Constitution for the protection of its citizens:

Creation and operation of a "Police" State in order to intimidate into submission the Sri Lankan population by:

- (a) Tapping of Telephones (Private and Official) and listening to telephone conversations of citizens including politicians, Ministers, political opponents, businessmen etc. (which is a violation of the Statute and the citizens Fundamental Rights).
- (b) Using the Inland Revenue Dept. and the Bribery Commissioners Dept. to intimidate and destroy political opponents, etc.
- (c) Use of C.I.D. Officers, Customs Officers and Excise Officers contrary to the Law against political opponents for political and personal gain.
- (d) Establishment of a separate Investigation Unit parallel to the Police Dept. under retired Police Officers i.e. A. C. Lawrence who are being paid for and maintained by public funds voted by the Parliament for other purposes, for extra legal political operations.

This is an illegal act contrary to and unknown to Criminal Procedure Code, the Police Ordinance and any other written Law.

- (e) Dismissing, punishing, reprimanding, promoting and demoting and employing public servants and State Officials in actions against the due process of the Law.
- (14) The President in his statement of 18.2.1989 (Annexure X) states that "every Minister must be circumspect in expenditure of Public Funds."

Article 148 provides for the Parliament to have the full control over Public Finance.

The President by ordering wasteful expenditure on frivolous matters and hiding public expenditure from Parliament has violated the provisions of the Constitution and his own guidelines e.g.

- (1) Expenditure on Gam Udawa Celebrations.
- (2) Expenditure on the Anniversary Celebrations of the Inauguration of the President.
- (3) Expenditure on re-decoration of Ackland House.
- (4) Engages in wasteful and totally unconnected Govt. expenditure in the name of Mobile Presidential Secretariat, to boost his ego.

- (5) Many other tamashas at the whims and fancies of the President.
- (15) It is the opinion of the undersigned that the President is guilty of bribery and/or corruption and/or nepotism and/or abuse of power either by his own action or by the action of the members of his family and/or of his close friends and associates which actions are within the knowledge of the President.
- (1) Appointments, contracts, privileges and Agencies given to members of the family through Air Lanka.
    - (i) Appointment of Rohan Jayakody as Director (Son-in-law).
    - (ii) GSA in Japan to Hubert Jayakody.
    - (iii) Air Cargo Priorities to Hue-Jay International.
    - (iv) Jordan Air Contract - Maharajah Organisation.
  - (2) Award of the Contract to establish a private television station in Sri Lanka to Maharajah Organisation and Topaz Network without calling for public offers.
  - (3) Alienation of State owned prime lands and buildings to family members, friends and close associates, e.g. 45 acres of lands on 99 year lease in Nuwara Eliya to Hue-Jay International by the UDA after getting the land divested from the Municipal Council.
  - (4) Filling station at Narahenpita to Mr. C. Wickrematunga without calling for public tenders.
  - (5) Allocation of buildings at the Gam Udawa site, Kataragama, to Mr. M. M. Mohinudeen for Rs. 1500/-.
  - (6) Allocation of land to M. D. A. Gunatilleke of Farmers (?) (Pvt) Ltd.
  - (7) Daewoo Oil Purchase.
  - (8) Sale of Public Business Ventures under Peopleisation Programme for personal benefits and several other actions.

The allegations specified above individually and collectively establish that the President has intentionally violated the Constitution and its spirit and provisions in a way to convert a democratic Constitution to a One Man Dictatorship or colloquially speaking a "One Man Show".

I/We also allege that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity - viz.

- (a) Getting gold painted replica of the "Throne" used by ancient kings made for him to be seated at official functions held at the President's House.
- (b) Ordering and conducting elaborate arrangements to celebrate his birthday each year under the guise of Gam Udawa and spending millions of public funds for Frivolous decorations and illuminations and getting songs, dances, speeches etc. composed in praise of himself for the purpose of getting a mental satisfaction of making himself believe that all his actions are endorsed by the people.
- (c) While projecting himself as a patriotic national leader has acted in violation of the accepted diplomatic conventions and antagonised friendly Nations, to the detriment of Sri Lanka.
- (d) By declaring that the LTTE has accepted his peace offer and thereafter by supplying arms and ammunitions to them, caused the death of a large number of Police and Armed Forces personnel which was a direct result of his ignorant and selfish attitude.
- (e) Making declarations that he was able to send off the Indian Peace Keeping Forces from Sri Lanka and causing destruction to the Sri Lanka Army by the decision taken without due consideration of the military aspects.
- (f) Constructing temples, dagobas, statues of ancient kings at the cost of millions of rupees and getting himself compared to King Dutugemunu with the expectation that he too will be venerated by the future generations.

- (g) Getting false stories and pictures published in the newspapers to mislead the public to believe them as miracles e.g. the moon over Ruwanwelisaya.
- (h) Portraying himself to be a pious Buddhist leader and misleading the public and having observed sil appear on television and newspapers for publicity purposes.
- (i) Taking refuge under the cover of "Dharmishta" by declaring a concept by the name of "Dharmashoka Chintanaya" to disguise his hard and criminal nature.
- (j) Wasting the valuable time of others by preaching long sermons and portraying himself to be a man of learning.
- (k) Spending public funds for the maintenance of the President's House and his private residence - Sucharitha - and employing over 500 Security Staff for his protection and living in constant fear and suspicion even of his wife.
- (l) Taking over the use of "Temple Trees" residence of the Prime Minister without allowing the Prime Minister to use it.
- (m) Transporting a specially blessed chair for his use to all functions he attends and using official security officers to protect the chair.
- (n) Declaring income from books purported to have been written by him when in fact they have been written by others and for the purpose of portraying himself to be an Author, Poet and an Intellectual.
- (o) Trying to create a false historical background of his life by setting up a "Sucharitha Museum" with his personal effects.
- (p) Having failed to look after his parents and elders during their life time, he has started a programme to venerate them and spend public funds to set up villages in their names - e.g. Piyagama and Maugama for the sole purpose of alleviating his mental agony.
- (q) Portray himself as a person of noble qualities when he has in fact neglected to look after his parents, brothers and sisters.
- (r) While preaching against waste and corruption to others he indulges in wasteful and corrupt practices on a large scale in institutions under his purview (preaches Sucharitha and engages in "Dushcharitha").
- (s) Engages himself in making derogatory and insulting statements in public about intellectuals and persons of high learning and tries to portray himself as an intellectual.
- (t) Portrays mental infirmity caused by a quick temper and suspicion of all persons.
- (u) Making declarations against nepotism and family bandyism and granting favours and privileges to his kith and kin.
- (v) Making public declarations against waste and ordering wasteful expenditure of public funds.
- (w) Claiming to be leading a simple life and in fact indulges in a luxurious life style.
- (x) Living in suspicion and hatred of all others particularly his Ministers and Party Men and exalted himself to a superior position and making use of hired squads to intimidate and harass them.

In the circumstances, We/I hereby by notice under Article 38(2)(a) of the Constitution require you in compliance with the same to note that I/We hereby seek an inquiry and report thereon by the Supreme Court.

Yours faithfully,