
JVP CAN RESURRECT THE CONSTITUTIONAL COUNCIL - FAILURE CASTS DOUBTS ON ITS POLITICAL INTEGRITY

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The non-functioning of the Constitutional Council on the basis that it can function only when its full complement of ten members is in place has given rise to a debate. Certain jurist, civil society groups and human rights activists argue that the Constitutional Council can and must function with the nine members already in place, and where it only remains for the President to make the formal appointments. However, this view does not appear to have prevailed, and the Constitutional Council remains non-functional.

The nomination of the tenth member to the Constitutional Council is held up due to the claim by the Janatha Vimukthi Peramuna (JVP) that it is entitled to participate in nominating this member. Nomination is by a majority decision of the so-called smaller parties in Parliament. Although the JVP had 39 members in Parliament, according to press reports this number has now reduced to 38 due to the resignation of one of its members (due to ill-health), and the vacancy is being filled by a member of the Sri Lanka Freedom Party.

If one excludes the JVP members, the total number of members of Parliament entitled to participate in nominating the tenth member to the CC is also 38. This is made up of: 22 from the Tamil National Alliance (TNA); 9 from the Jathika Hela Urumaya (JHU); 5 from the Sri Lanka Muslim Congress; 1 from the Up-Country People's Front, and; 1 from the Eelam People's Democratic Party.

The 17th amendment to the Constitution does not prescribe a procedure that should be followed when nominating the tenth member. Therefore, the 38 JVP members in Parliament could inform the President in writing their nominee for the tenth slot in the CC. Given the reported agitation of both the TNA and the JHU to each nominate their own person for the tenth place in the CC, and considering the political affiliations and expediencies of the so-called smaller parties, it is most unlikely that all of them would join together against the JVP.

The President on receiving the written nomination regarding the tenth member to the CC is under a constitutional duty to *forthwith* make the appointment (Article 41A (5) of the Constitution), and communicate the appointment to the Speaker (Article 41A (11) of the Constitution). However, since there is

a dispute regarding the eligibility of the JVP to participate in the selection, the President will not be faulted if he first seeks the opinion of the Supreme Court regarding the entitlement of the JVP to participate in nominating the tenth member before making the appointment. The Constitution empowers him to seek such an opinion.

The JVP was actively involved in bringing about the 17th amendment to the Constitution, and the people of this country have a right to expect it to do all within its power to ensure that the CC recommences its function. Failure to do so will expose the JVP to the accusation that it condones or has acquiesced in the collapse of the CC on account of political expediency.

It is vitally important for the people to continue to exert pressure until the CC starts to function. The media have a responsibility to keep this issue in the forefront of public discussion until a successful conclusion is wrested from the politicians.

Our Legal Correspondent comments:

The TNA too should not be allowed to shirk responsibility. The TNA's position is that the JVP MPs, having entered Parliament as members of the UPFA, belong to the party of the Government; they are therefore not entitled to participate in choosing the representative of the "smaller parties" on the Constitutional Council. Having taken up this position the Members of Parliament of the TNA need to take the next possible step. If they are right, they have a clear and an incontestable majority (22 as against 16). They should make their choice and send the name in to the President. The President should then "forthwith" make the appointment. If it turns out that he has received two nominations, one from the JVP MPs and one from the TNA MPs, there is his constitutional power to seek the advice of the Supreme Court just waiting to be exercised.

This suggestion does not absolve the President from his responsibility to take other constitutional steps as suggested, for instance, by CRM in its statement published elsewhere in these pages. It is intolerable that the country is deprived of this vital institution when so many civil society groups and individuals have pointed out common sense solutions. ■