

Post Legislative Scrutiny generates people friendly laws

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Abstract— Post-Legislative Scrutiny is, relatively, a novel concept. An effective mechanism of Post-Legislative Scrutiny will contribute to review the laws in force, making the laws people-friendly. An institutionalized Post-Legislative Scrutiny mechanism will accomplish the intention of the legislature. Moreover, it reinforces the “parliamentary Supremacy”. The concept, Post-Legislative Scrutiny will prevent the legislature from becoming a “Legislative Black Hole”. The main objective of the paper is to explore prevailing Post-Legislative Scrutiny mechanisms in the world, with special reference to the United Kingdom Parliament. And other objectives are to evaluate Lankan requirement of Post-Legislative Scrutiny and to recommend a strategic plan to set up an effective Post Legislative Scrutiny mechanism in Sri Lankan parliament. The Methodology adopted in this research is, a comparative study on post-legislative scrutiny mechanisms of United Kingdom and Sri Lanka. United Kingdom government takes revolutionary steps towards Post-Legislative scrutiny with the advent of two significant reports namely, the Constitution Committee Report and the Law Commission Report. United Kingdom government responds aforesaid reports, introducing Joint committees and the legislations go through a government review, parliamentary review and a review by the independent reviewers’. Sri Lanka is in a dire need for review of legislations. Establishment of a post-legislative scrutiny unit and a post-legislative scrutiny committee in Sri Lankan parliament would better serve the purpose. In conclusion, if the parliament or the legislature is to preserve its legislative supremacy, it, unquestionably, should legislate for people and those legislations should be qualified as “people- friendly”. A Post-Legislative Scrutiny mechanism generates people friendly- laws.

Keywords: Post - legislative Scrutiny, Parliament, people-friendly- laws

1. INTRODUCTION

The fundamental purpose of this research paper is to critically assess how legislation should be reviewed once it has been brought into force. (Post- Legislative scrutiny). The recent interest in Better regulation in Europe, and the growing interest on post-legislative scrutiny In United Kingdom paved the way for this research paper. “Better law making” and ‘better regulation’ is the prime objective of a legislature. Although heaps of legislations come in to being, do they really serve the purpose? ‘Quality control’, when it comes to legislation, will benefit the people, immensely. This approach will immensely contribute to Sri Lanka in two ways .it will institutionalize post –Legislative scrutiny in Sri Lanka and it will help the legislature to create workable laws that truly help the masses than legislating unworkable laws.

2. METHODOLOGY

The methodology of this research work mainly, is to conduct a comparative literature review on United Kingdom experience on post legislative scrutiny and Sri Lankan situation. Following research questions embraces the methodology that will be adopted;

1. What is the post legislative scrutiny and its significance?
2. What is the United Kingdom experience on post legislative scrutiny?
3. What is the prevailing situation of Sri Lanka on post legislative scrutiny mechanisms?
- 4 .How could the concept post legislative scrutiny be adopted to remedy Sri Lankan law implementation issues?. United Kingdom experiences could be ascertained though a thorough literature reviews on the subject matter. In this research paper only the key points of the literature will be reviewed and Prevailing need of post legislative scrutiny in Sri Lankan context has been pointed out briefly, by using the legislations related to consumer protection. Consumer protection is only one field of legislation that needs the touch of post legislative scrutiny.

Having a thorough understanding of aforesaid two contexts; namely Sri Lankan and the United Kingdom, a post legislative scrutiny mechanism will be proposed.

3. RESULTS

A paper prepared by Richard Kelly and Michael Everett of United Kingdom Parliament Constitution Centre provides a brief explanation of the major reports into post-legislative scrutiny in the United Kingdom since 2004. It describes of the main recommendations from two reports namely, Constitution Committee report and Law Commission report. United Kingdom Government responded to each of aforesaid reports. In following passages the contents and the commendations of aforesaid reports will be examined. United Kingdom parliament foresees the concept Post legislative Scrutiny long before. That is evident in the report presented by House of Commons Select Committee on Procedure (1970-71), on The Process of Legislations. It states that; "Pressure of Government business in each session often reduces the chance of securing a place in the legislative programme for a Bill to amend an Act passed within recent years. For this reason, years may pass before Parliament has an opportunity to consider legislation embodying amendments to a recent Act, the need for which has become imperative following, for example, a judgment in the courts, difficulties in interpretation, impracticality in everyday use, or the nature of the delegated legislation made under its authority."

The constitution Committee report

In October 2004, the House of Lords Constitution Committee submitted a report on the legislative process. Following observation in the report on post legislative scrutiny embraces the big picture connected with the concept concerned: "Post-legislative scrutiny appears to be similar to motherhood and apple pie in that everyone appears to be in favour of it. However, unlike motherhood and apple pie, it is not much in evidence."

The report further states that ;" 'Parliament and the Legislative Process' in which the Committee recommended that most Acts other than Finance Acts, should normally be subject to review within three years of their commencement, or six years following their enactment, whichever is the sooner." House of Lords Select Committee on the Constitution brings about following observation; "The Constitution Committee found that there was a significant room for greater post-legislative scrutiny. The Committee recommended that Government departments should be responsible for producing a Memorandum of the post-legislative review of an Act, which a select committee could then conduct an inquiry into. "

In a House of Lords debate. Lord Norton of Louth the Chairman of the Constitution Committee contended that: "the implementation stage of legislation constitutes a Parliamentary black hole. By addressing it... there is the potential to develop a new and significant role for Parliament, ensuring that it plays a role at all stages of the legislative process "

(I) Government response to the constitution committee report

In April 2005 the Government responded to the Constitution Committee's recommendations.

It stated that: "Departments already engage in post-legislative scrutiny: policy evaluation is a constant activity, and it is frequently linked to legislation, which is just one means of implementing policy aims. Nevertheless, the Government believes that strengthening post-legislative scrutiny further could help to ensure that the Government's aims are delivered in practice and that the considerable resources devoted to legislation are committed to good effect."

The law commission report

After receiving the Constitution Committee report, the Government asked the Law Commission to conduct an inquiry into post-legislative scrutiny. The Law Commission reported back in October 2006 . it proposed a Joint Committee for Post-Legislative Scrutiny.

The Law Commission's Objectives were as follows:

- 1 .To ensures that the law is as fair, modern, simple and as cost-effective as possible;
2. To conduct research and consultations in order to make systematic recommendations for consideration by Parliament;
3. To codify the law, eliminate anomalies, repeal obsolete and unnecessary enactments and reduce the number of separate statutes

The law commission further States that; " The Government has recently been giving close consideration to how post-legislative scrutiny can best be achieved. What is meant by "post-legislative scrutiny" is often ill-defined. It could range from a wide-ranging policy review to a quite limited and technical evaluation of the effectiveness of the drafting. We have asked the Law Commission to undertake a study of the options, and to identify, in each case, who would most appropriately take on the role. We are conscious that the resources of the Law Commission are not used to best effect, and believe that they may have a role to play in post-legislative scrutiny."

(I) The government response to the Law commission report.

On 20 March 2008, in a written ministerial statement, the Leader of the House of Commons, Harriet Harman, responded to the law commission report and laid down government's stance on post- legislative scrutiny she continued: "The new process for post-legislative scrutiny introduces a systematic approach for strengthening the scrutiny of laws after they have been enacted by Parliament. The aim is to complement the Government's internal departmental scrutiny with parliamentary scrutiny, principally by Committees of the House of Commons, to provide a 'reality check' of new laws after three to five years. "

The Law Commission published a consultation paper on post-legislative scrutiny in January 2006. Focus of the Law

Commission project is on the post-legislative scrutiny of primary, domestic legislation. It was presented to Parliament by the Leader of the House of Commons in March 2008. The leader of the House states in her report stated that "Every year, the Government introduces many new laws, which directly affect the lives of people in the United Kingdom. Legislations implements government policy on a wide range of issues that are important for the public from security, education, health, transport, the environment to policies for families. However, one important area that needs a new approach is post-legislative scrutiny"

[Para 2.4] of the report states that "For the purposes of this report, we understand post-legislative scrutiny to refer to a broad form of review the purpose of which is to address the effects of the legislation in terms of whether the intended policy objectives have been met by the legislation and, if so, how effectively. However, this does not preclude consideration of narrow questions of a purely legal or technical nature"

The summary of United Kingdom government responses

Government responses can be summarised under following major areas. United Kingdom government clearly lays down a mechanism for post legislative scrutiny. The major areas like the headline reasons for having more systematic post-legislative scrutiny, Challenges in relation to post-legislative scrutiny, Post Enactment review by departments, new Parliamentary Joint committee, external Reviewers, evidence, which legislations to be reviewed, time scale and freely available electronic search have been mainly covered by the united kingdom government.

As a result of the positive response of the government, by January 2013, 58 memorandums on post-legislative assessments had been published. The note also gives details of the individual inquiries held by Select Committees in response to the publication of several Memorandums, as well as some detail on post-legislative scrutiny in the House of Lords. Following two memorandums caught much public attention

(a) Post-legislative Scrutiny of the Counter-Terrorism Act 2008 Presented to Parliament by the Secretary of State

(b) Post-legislative scrutiny of the Freedom of Information Act 2000

4. DISCUSSION

Sri Lankan legislative process and flaws in implementation of laws

In 2015 Sri Lankan parliament has passed 16 Acts and 19th amendment to the constitution. Likewise every year Sri Lankan parliament passes acts, orders and regulations. These acts, orders or regulations are of a wide range and, are connected with people's lives. Acts, orders and regulations related to finance, inland revenue, Education, public security, and Election are often passed.

According to the Constitutional provisions and the standing orders of the parliament, generally a Bill should undergo a

long procedure before it is passed whereas an order or a regulation can be passed within a short period of time. Although the laws are passed, in the manner as aforesaid. That causes a huge impact on people's lives. Though Parliament has passed laws, flaws are abundantly found in operation.

Consumer protection laws and flaws of implementation

Consumer protection is one of the areas of laws with flaws in implementation. Followings are few instances where the flaws of consumer protection laws were pointed out.

(i) *Dr. Dayantha Jayasuriya, PC in his article "Challenges of Consumer Protection in Sri Lanka",*

In his article he points out the issues of consumer related legislations and its implications as Weak or ineffective institutional mechanisms, Issues with evidence, procedure and, Limited compensation/ineffective redress.

(ii) *A survey undertaken jointly by the Business Times and the Colombo-based Research Consultancy Bureau*

The survey was conducted over contamination in milk foods and it has revealed some interesting issues. Over a 1000 people responded to the poll, conducted on the street, via mobile phone and on email; the results showed a diversity of views on whether local and imported food is properly tested to ensure it is safe for consumption. Three reasons were revealed to have direct impact on the destiny of the consumers, irrespective of the fact that there are loads of acts, orders and regulations, regulating the consumer protection namely, lack of policing by food authorities, corrupt officials and lack of a strong consumer resistance movement.

(iii) *Article "Consumer Protection in Sri Lanka", An Evaluation of the Prevalent Law and Issues to be Addressed Mr. Upali Karunawardhena of Department of Law, University of Peradeniya*

He analyses some inherent weaknesses in Consumer Affairs Authority act. Namely, no provisions to directly claim damages and redress by the injuries caused by defective products, Lack of procedural fairness, The powers which enable the Minister to consult the Authority being opened to undue political influences, Unnecessary confusions caused by lack of specifications about the interface of the Consumer Affairs Authority and the other relevant authorities and Lack of participation of the 'judiciary' in preserving the consumer rights under the persisting law of the country. In this light it can be concluded that there should be an effective mechanism of post legislative Scrutiny mechanism in order to remedy the aforesaid situation.

Public outcry for effective Laws and establishment of a post Legislative Scrutiny mechanism in Sri Lankan parliament

As in aforementioned field, there is a huge public outcry for corrections in laws in order to reach the true needs of the people. No institutionalized post legislative scrutiny process in Sri Lanka to address this issue except for ad hoc

approaches by the governments, ministers or Ministries resulting heaps of Acts, orders or regulations.

By this research paper it is proposed to establish a parliamentary committee to undertake post Legislative scrutiny and to establish a Post- legislative Scrutiny Unit. Standing Order 125 of the parliament provides for the establishment of Committee on Public Accounts. And Standing order 126 of the parliament provides for the establishment of Committee on Public Enterprises. Likewise the provisions can be made for a Committee on post-Legislative Scrutiny.

Post-Legislative Scrutiny is proposed to be established in the parliament as a separate unit and it should report to the committee on post legislative scrutiny. People should be able to communicate with the Post Legislative scrutiny Unit, directly .The communication with people should be made possible through Electronic means and they should have the access to the scrutinized primary or secondary legislations connected there to. The unit should be comprised of Independent reviewers, Experts, Civil society activists and Media representatives.

The Post Legislative Scrutiny committee shall be comprised of Members of Parliament .The committee shall .entertain the reports from the Post scrutiny unit; call the Memorandums from relevant ministries and. Issue binding recommendations to the authorities, concerned. In formulating the procedures of the scrutiny unit and the post legislative scrutiny committee, the United Kingdom government responses to the law commission report can be adopted, to suit the domestic needs.

5 .CONCLUSION

If parliament is to preserve its legislative supremacy, it, unquestionably, should legislate for people and those legislations should be qualified as “people friendly” .If the legislature fails to comply with that requirement, undoubtedly, it would become a “Legislative Black hole” .In this backdrop United Kingdom government takes revolutionary steps towards Post –Legislative scrutiny with two significant reports: Namely, Constitution committee report and Law commission report.

The government responds to aforesaid reports in a positive manner, introducing post legislative scrutiny into the British parliamentary system. With the introduction of the Joint committee, the legislations undergo government review, parliamentary review and the reviews by the independent reviewers. Memorandums from the government departments are also called for the better implementation of the laws. This paves the way for a people friendly legislative process which could be adopted by Sri Lankan legislature as well. In that light, this research paper moves on to make proposals for the establishment of a post legislative scrutiny unit and a post legislative scrutiny committee, intending people friendly legislative process

which reach the true ambitions and the requirements of the people.

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