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AN EFFECTIVE JUDICIARY AND THE NEED FOR A CONSTITUTIONAL REFORM IN SRI LANKA

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The judiciary if that is to be called effective, must be provided with independence, proper structural framework, clear distribution of jurisdictions which are accessible easily and effectively by the people, the power to inquire into any action which is not in compliance with the Constitution and most importantly the potential to hear cases of violation of rights and other constitutional provisions impartially and deliver justice without delay. The 1978 Constitution has problems with regard to who exercises judicial power, the unconstitutional practice on appointment, removal dismissal etc. of judges, lack of post-enactment judicial review, jurisdictional issues such as the fundamental rights jurisdiction of the Supreme Court and the constitutional and practical difficulties associating with it, delay in delivery of justice etc. There were many attempts made in the past to reform judiciary but failed, 2000 draft Constitution and the report of the All Party Representative Committee are few recent examples of such. The ongoing constitutional reform process has paid considerable attention to reform existing judicial framework. The objective of the research is to explore the areas of judicial functions which need reform and the recommendations made toward this end in the contemporary political discourse. The study is library based thus provisions on judiciary in the 1978 Constitution, literatures on judicial independence, the reports of the Public Representation Committee, the Sub Committee on Judiciary and Centre-Periphery relations, the UN expert panel reports on independence of judiciary and the past attempts for judicial reform have been subjected to critical analysis. This research also involves a comparative study as to the framework for judicial functioning in other jurisdictions such as in India and South Africa. Recommendations have been made in Sri Lanka with regard to vesting of judicial power directly on the judiciary, changes in the court structure, establishment of Constitutional Court and increase the number of judges, the supervisory power of the Constitutional Council over appointment of judges, fair procedures for transfer, dismissal of and disciplinary actions against judges, vesting of fundamental rights jurisdictions with Court of Appeal sitting in the provinces with flexible procedures, the power of post-enactment judicial review etc. Unlike in the past, steps to be taken to incorporate those far reaching recommendations into the Constitution in order to make the judiciary effective in promoting democracy and justice.

Keywords: *Judiciary, effectiveness, reform, recommendations, new Constitution*