

**Public Service and the
Public Service Commission
of
Sri Lanka**

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Public Service and the Public Service Commission of Sri Lanka

Scope of Work

Sri Lanka's public service has experienced several changes in its chequered history during the post-independence era. At the beginning, the constitutionally mandated Public Service Commission (PSC) played a significant role in managing the public service. Now its role is split among several authorities with the periodic constitutional changes. This has resulted in the poor quality in the delivery of state services with increased political interference. It is observed that the higher public officials do not have the required freedom and autonomy to implement the policies to achieve their stated objectives. The entire public service both at national and provincial levels has deteriorated over the last five decades due to excessive political interference in appointments, transfers and promotions. In this scenario concepts such as professionalism, meritocracy and careerism have diminished in managing the public service to a great extent. Consequently, there is mounting criticism and dissatisfaction among the general public over the lack of responsiveness and accountability of public service delivery and maintenance of law and order in the country.

Personnel management in the public service has conventionally followed a highly centralised model. Centralised agencies played a key role in recruitment, placement, career paths, remuneration, preparation of service minutes, and disciplinary matters. Line Ministries and departments have usually been the recipients of centrally recruited and administered staff.

Critical to the performance of the bureaucracy is a well-functioning Public Service Commission (PSC), for it is this institution that promotes and safeguards the merit principle in the recruitment, promotion, and career management of public servants. Thus, it may be argued that the PSC is the ultimate source of accountability for the public bureaucracy and de facto a core institution of accountability. Commission is responsible for a merit-based recruitment process for the public service as well as for ensuring a fair, prompt and effective disciplinary action system. However, in recent years, the PSC's image has been seriously tarnished because of its excessive politicisation and corruption.

Methodology

Data collection methods: Information needed for the study was gathered through a literature survey and direct interviews with parties who are knowledgeable on the public service. Information was also gathered on best practices through a web search. Public officers who have different experiences in dealing with the PSC and the Administrative Appeals Tribunal were also interviewed to gather information. Annexe A gives the list of key informants interviewed.

Primary and secondary data representing both qualitative and quantitative aspects were used in the study. Primary data comprised information collected through interviews, key informant interviews, rapid appraisal and focus group interviews. Sources of secondary information included project reports, annual reports, official documents and published books in addition to literature on public administration. An output of a consultation workshop held under the auspices of the TISL on the preliminary findings was also used. A full list of participants is appended as Annexe B.

The interviewees comprised members of the PSC and public officials at national and provincial levels related to public service recruitment, promotion, transfer and disciplinary control. Selection of interviewees was limited to the national level agencies in Colombo and one or two provincial level officials in the Western or Southern Provinces. Selected officers of the PSC office, the Ministry of Public Administration and a Provincial Ministry were identified as key informants.

Study period: The study commenced in September 2014 and was completed in December 2014.

Rationale and Objectives of the TISL Study

The rationale behind undertaking this study for the TISL is as follows:

- People allege favouritism, politicisation, discrimination, inefficiency and corruption in the public service. Questions have been raised, particularly after the 18th Amendment, leading towards erosion of trust among the people.
- As one of the important pillars of the National Integrity System, the PSC has a crucial role in promoting excellence in public human resource management in the country.
- To what extent the allegations are true has not been investigated or analysed. No comprehensive study has been carried out yet to diagnose the weaknesses of the PSC.

The broad objective of this study is to diagnose the limitations, irregularities and weaknesses in the PSC, and to come up with a set of policy recommendations.

The specific objectives of this study are to:

- Critically review the transition of the PSC under different Constitutional mandates
- Provide an overview of PSC's scope and functions and compare them with the experiences of different countries.
- Observe the institutional weaknesses of PSC
- Ascertain the nature, extent and implications of the work of the PSC
- Make specific recommendations for policy reforms in PSC.

Evolution of the Public Service Commission

Under colonial rule, the public service was the prerogative of the Crown. Consequently, the responsibility for recruitment, appointment, promotion and disciplinary control of public officers was vested in the Governor. This power was exercised by him directly or indirectly through a delegation to the heads of departments. The first Public Service Commission (PSC) was set up under the Donoughmore Constitution of 1931. Under its Article 86, all public servants held office at the pleasure of the crown. The PSC of 1931 was an appendage of the government.

Under the Soulbury Constitution of 1946, the public service enjoyed a completely independent status. Section 60 (1) vested the executive power of appointment, transfer, promotion and disciplinary control of public officers in an independent PSC. The PSC consisted of three persons, appointed by the Governor General on the recommendation of the Prime Minister, who unlike in the Commission of 1931, did not hold any other office.¹ The rationale behind the creation of an independent PSC was to ensure an impartial and permanent public service shielded from political interference.

The independent PSC, created by the 1946 Constitution, had been subject to much criticism. The foremost critique stems from modern management theory. The ministerial responsibility casts a duty on the cabinet of ministers to be responsible to the legislature for the acts of their officers over whom they had no control. The members of parliament, particularly those from the opposition benches constantly argued that the activities of the PSC should be subject to their review and scrutiny while the government members insisted that the PSC as an independent body was not responsible to parliament.

The very fact of the independence of the PSC was later held against it. This system, it was alleged, may have been suitable during the colonial era when the functions of government were limited. With the direct intervention and guidance of the process of development, it was felt that the cabinet of ministers or the political executive should have the powers over the machinery of implementation of these policies. Hence, the need was emphasised for the cabinet executive over powers of appointment and disciplinary control over the officers who execute the process.

In this background the framers of the first Republican Constitution of 1972 brought the entire administrative structure of the country under the control of the cabinet of ministers to give effect to the new thinking. The cabinet and individual ministers were vested with the powers relating to the public service, termed state service, which had been controlled hitherto by the PSC. This meant that the ministers would be answerable to parliament in respect of public officers coming under their control. It was the

¹ Section 58 (1) of the Constitution of 1946.

contention of the Government that the key officials who put into practice the policies of the government must tangibly identify with the substance of those policies. While this development was considered as a legitimisation of the process of politicisation of the public service, it also had the effect of eroding the status of public officers whose position was safeguarded under the Soulbury Constitution.

Whilst the Constitution of 1946 vested the power of appointment, transfer, dismissal and disciplinary control over the public service in an independent Commission, the Constitution of 1972 abolished the PSC and vested that power in the Cabinet of Ministers. Section 106 (1) stated: "The Cabinet of Ministers shall be responsible for the appointment, transfer, dismissal and disciplinary control of state officers and shall be answerable therefore to the National State Assembly". Section 106 (2) stated: "Subject to the provisions of the Constitution, the Cabinet of Ministers shall have the power of appointment, transfer, dismissal and disciplinary control of all state officers". Section 106 (5) insulated the cabinet and its delegated authorities from judicial inquiry in respect of the exercise of these powers. Further, section 106 (3) empowered the cabinet to determine all matters relating to state officers including the constitution of services, the formulation of schemes of recruitment and codes of conduct for them and the procedure for delegating powers of appointment, transfer, dismissal and disciplinary control.

With respect to delegation, the cabinet reserved to itself the authority in respect of the higher grades of officers, such as the Additional Secretaries, Senior Assistant Secretaries, Heads of Departments and Government Agents. Individual ministers retained the authority in respect of staff grade officers and delegated authority in respect of non - staff grades to the heads of departments and then officers below this rank.

The Constitution of 1972 substituted two boards, namely, the State Services Advisory Board (SSAB) and the State Services Disciplinary Board (SSDB) in place of the PSC.² They acted in an advisory capacity to assist the cabinet in the exercise of its authority. These two Boards advised the cabinet of ministers in regard to the powers of appointment, transfer, dismissal and disciplinary control of state officers. The appointment of higher grade public officers involved in the formulation of policy was made by the cabinet of ministers, after considering the views of the minister concerned and the SSAB. In the course of other appointments, the SSAB was consulted by the minister concerned who in the end took the responsibility for making a selection. However, the advice of the two Boards was not binding on the cabinet of ministers or on an individual minister.

Consequently, the actual powers in respect of the state services were vested in the cabinet of ministers. The cabinet could delegate its powers to individual ministers. In

²Section 111 (1) and Section 112 (1) of the 1972 Constitution.

turn, the minister could re-delegate his powers to state officers, with the concurrence of the cabinet, if he wished to do so but at any time he could himself exercise the powers delegated. In regard to dismissal and disciplinary control of state officers, the cabinet of ministers was again the final authority. There was provision for appeals to the cabinet of ministers by an aggrieved officer. In effect under the constitution of the First Republic there was complete political control of the public services. From a non-responsive PSC, the pendulum swung in the direction of the supremacy of the elected politician in the public life of a country, reducing the status of the bureaucrat.

After the general elections of 1977, in the course of the drafting of the constitution of the Second Republic, when the revival of the Public Service Commission was being actively considered, there was the hope among most public servants that the PSC would be revived in its original pre-1972 form, and would thereby function as a guardian of the rights and privileges of public officers. But when the Commission re-emerged in the Constitution of the Second Republic, it took a completely different form.³

The PSC of 1978 was created only as an institution subordinate to the cabinet. Its constitutional role was to assist, confirm, promote, transfer, dismiss and exercise disciplinary control over public officers. These powers came again to be vested in the cabinet of ministers. The cabinet exercised these functions directly in respect of heads of departments and delegated them to the PSC in respect of other public officers. In a departure from the 1972 Constitution, in 1978, the cabinet was expressly debarred from delegating its powers in respect of the heads of departments.

With the revival of the PSC under the Constitution of 1978, the restoration of the privileged position of the public service was anticipated. However, the PSC that was established was subordinate to the cabinet. The cabinet of ministers was vested with the appointment, transfer, dismissal and disciplinary control of public officers other than those enumerated under article 54. Article 55 (2) even debarred the cabinet from delegating its powers in respect of heads of departments allowing it to do so, only in respect of other public officers. In carrying out this delegation, the cabinet directed the PSC to re-delegate these powers to secretaries and heads of departments, thus leaving the PSC with no original powers of its own. By article 55 (3), the cabinet was empowered to take away the delegation in respect of transfers from the PSC and to delegate same to a minister. Article 59 further empowered the cabinet to alter, vary or rescind the decisions of the PSC and a Committee thereof or of their delegates. Accordingly, the PSC was bereft of any original powers of its own.

The Seventeenth Amendment which came into force on 3rd October 2001, restored the position of the PSC as an independent body by making it responsible and answerable only to parliament. Its objective was to bring into being, truly independent Commissions,

³ Sri Lanka Institute of Development Administration. (1983). *Report of a SLIDA Workshop*, Development Series. No. 1. p 25.

the PSC being one of them. It established the Constitutional Council (CC) comprising representatives of all political parties in parliament. The CC identified the members of the PSC, the Elections Commission, the Police Commission, the Human Rights Commission, the Delimitation Commission, the CIABOC and the Finance Commission. It purported to depoliticise the public service, including the police service, removing political influence in the appointment of judges and ensuring the conduct of free and fair elections. The President's discretionary powers over these affairs were subjected to checks and balances.

Under the Seventeenth Amendment, the Constitutional Council recommended to the President, the persons for appointment as chairpersons and members of the PSC. Executive President had no power to select the members on his own choice. The PSC under the Seventeenth Amendment comprised not more than nine members appointed by the president of whom not less than three members should have been persons who have had over fifteen years' experience as public officers.⁴ They held office for a term of three years and were eligible for re-appointment for one further term. It was expected that these members would represent a broad spectrum of administrative, academic and professional experience.

The appointment, promotion, transfer, disciplinary control and dismissal of public officers were vested in the PSC under article 55 (1). It excluded the provincial public service, judicial service, appointments to heads of departments and secretaries to ministries. The PSC was also empowered to formulate rules, regulations and procedures with respect to the public service.⁵ With respect to the heads of departments, this power was vested in the cabinet of ministers but had to be exercised after ascertaining the views of the PSC.⁶ Article 56 provided for delegation of the Commission's powers to a Committee of three persons appointed by it. Further, Article 57 provided for Commission's delegation of its powers to a public officer as specified by it. The PSC was answerable to parliament for the discharge of its powers and functions and constitutionally required to forward to Parliament in each calendar year, a report of its annual activities.⁷ Yet, any determination of all policy matters relating to public officers continued to be vested in the cabinet of ministers.⁸

Article 61A of the constitution grants immunity from legal proceedings, in respect of any order made by the PSC. Thus, no judicial review of PSC decisions is possible other than by way of a fundamental rights application.

To whom can a person aggrieved by an order of the PSC appeal to? Seventeenth Amendment made provision for public officers to have a new independent institution,

⁴ Article 54 (1) in new Chapter IX, introduced by the Seventeenth Amendment.

⁵ Article 61B of the Constitution (as amended by the 17th Amendment).

⁶ Article 55 (3).

⁷ Article 55 (5).

⁸ Article 55 (4).

namely, an Administrative Appeals Tribunal (AAT), appointed by the Judicial Service Commission to adjudicate on disciplinary matters and alter, vary or rescind any order made by the PSC.⁹ Within four weeks of the receipt of a determination of the PSC, a person can appeal to the AAT, the appellate authority.¹⁰

Under article 56, the PSC may delegate its powers with regard to specified public officers to a committee appointed by the Commission. Article 57 (1) provided for the PSC to delegate its powers to a public officer. Any public officer aggrieved by an order made by a committee of the PSC or any public officer acting under delegated powers may appeal to the PSC against any order. The PSC can alter, vary, rescind or confirm such order. PSC's orders are exempt from judicial review other than by way of an FR application.¹¹

The term of office of the first PSC under the 17th Amendment expired on 1 December 2005. From 2 December 2005 to 17 April 2006, the PSC had become defunct due to the non-appointment of the Constitutional Council; so that there was no constitutional body to make the necessary recommendations for appointment to the PSC. The second PSC was appointed on 10. 04.2006 by presidential fiat abandoning the constitutional requirements in favour of direct selection by the President. The unconstitutional appointments of the PSC and the Police Commission by the President were challenged before the Court of Appeal. Relying on Presidential immunity conferred by Article 35(1), the court held that President's action could not be challenged in a court of law. During the two year period 2009 to 2010, the PSC was again defunct as its members were not appointed. All PSC matters were handled by the cabinet while certain matters were delegated to the ministry secretaries.

The Eighteenth Amendment made some fundamental changes to the PSC. First, the requirement of the Constitutional Council recommendation to the President was abolished. Instead, the new Article 41A established a Parliamentary Council, comprising:

- a) The Prime Minister
- b) The Speaker
- c) The Leader of the Opposition
- d) A nominee of the Prime Minister, who shall be a member of parliament; and
- e) A nominee of the Leader of the Opposition, who shall be a Member of Parliament:

Provided that, the persons appointed in terms of sub-paragraphs (d) and (e) above shall be nominated in such manner as would ensure that the nominees would belong to communities which are communities other than those to which the persons specified in

⁹ See article 59 (2) of the Constitution (as provided for in the 17th Amendment) and section 4 of the Administrative Appeals Tribunal Act No. 4 of 2002.

¹⁰ Article 59.

¹¹ Article 61A.

paragraphs (a), (b) and (c) above, belong.¹²

It stipulates that the president shall seek the observations of the Parliamentary Council in making the appointments to the Commissions referred to in schedule I which includes the Public Service Commission. Accordingly, the PSC and its Chairman could be directly appointed by the President.

A new article 55 was substituted in place of the earlier article in the 17th Amendment. The new article 55 (1) vested all policy matters including the policy relating to appointments, promotions, transfers, disciplinary control and dismissal in the cabinet of ministers which was similar to the earlier position under the 17th Amendment. The new article 55 (2) vests the powers of appointment, promotion, transfer, disciplinary control and dismissal of all heads of departments in the cabinet. This provision deviated from the 17th Amendment provision in that the requirement to consult the PSC before appointing heads of departments was rescinded.

A fundamental change introduced by the 18th Amendment was the vesting of powers of appointment, promotion, transfer, disciplinary control and dismissal of the public officers (other than heads of department) in the PSC.¹³ Unlike the PSC directly delegating powers under the 17th Amendment, the 18th Amendment vested the powers of delegation directly in the cabinet.¹⁴ Another change brought about by the 18th Amendment was the direct appointment of the heads of departments by the cabinet whereas under the 17th Amendment the cabinet had to perform this function after consulting the PSC.¹⁵ The Administrative Appeals Tribunal arrangement established under the Seventeenth Amendment continues under the Eighteenth Amendment.

The Eighteenth Amendment also brings the police service under the PSC, whereas earlier it was under a separate National Police Commission. Thus, the special categorisation of the police service was done away with and it was brought under the public service. Now, the Police Commission functions under the 18th Amendment with reduced powers, such as investigating complaints from the public. While the Inspector General of Police (IGP) was a post in part II of the schedule under article 41C that required Constitutional Council sanction for presidential appointment, 18th Amendment downgrades his position. Presently, he holds office at the pleasure of the cabinet.

As an organ of state, the PSC serves as the independent custodian of the integrity and values of the public service. The preceding discussion has traced its transition under the three post war constitutions and the two significant Seventeenth and Eighteenth

¹² Article 41A (1), introduced by the 18th Amendment, certified on 09 September 2010.

¹³ Article 55 (3) of the Constitution introduced by the Eighteenth Amendment.

¹⁴ See section 10 of the 18th Amendment.

¹⁵ Article 55 (2) of the Constitution introduced by the Eighteenth Amendment.

Amendments. In summary, the prognosis is that consequent to the Eighteenth Amendment, the PSC's vital role as an independent and neutral body to safeguard the integrity, impartiality and meritocracy of the public service remains diminished.

How are the members of the Public Service Commission appointed?

Not more than nine Members of the Commission are appointed by the President, acting on his sole discretion. The President appoints one such member as its Chairman. The Constitution provides that not less than three members shall be persons who have had over fifteen years' experience as public officers (Article 54). This provision defines how its members are appointed, their tenure of office and the qualifications for appointment as members. Certain classes of persons are disqualified for appointment such as a Member of Parliament, Provincial Council or local authority.

The procedure for appointment consists of the President identifying suitable persons and afterwards seeking the views of the Parliamentary Council (PC). The PC has a majority of members favourable to the President and any dissent is unlikely. PC has to give its observations within a week in respect of the President's nominees. The President is not bound to accept the views of the PC and he can forthwith appoint the members regardless of PC observations. Thus, the President enjoys unfettered discretion for appointing the members of the Commission.

Members are appointed for a fixed term of years. In terms of Article 54 (4), every member of the Commission holds office for three years from the date of appointment and is eligible for re-appointment. But no member can hold office for more than two terms (Article 54 (5)). A member cannot be removed during this period unless he resigns office voluntarily by writing addressed to the President or is removed from office by the President or is convicted by a court of law of any offence involving moral turpitude.

Should the Chairman of the Commission be appointed on a full-time basis? There is no such requirement in our law. Yet in some countries, the Chairman and possibly the Vice-Chairman where one exists are full-time appointees. It would be preferable if all the members are appointed on a full-time basis as the volume of business can be expeditiously dispensed with. Where full time appointees are warranted, a Commission of three may be preferred. In case of a nine member Commission, at least the Chairman may be full time.

Moreover, a member of the Commission is not eligible for appointment as a public officer or a judicial officer after the expiry of his term of office as a member [Article 54 (5)]. The purpose of these requirements is to provide security of tenure for the members so that they are able to act with complete impartiality and justice without fear or favour whilst at the same time ensuring that their actions are not influenced by expectations of future public office.

Vision, Mission and Objectives of the Public Service Commission

The PSC website outlines the following vision, mission and objectives:

Vision: Dedicated Public Service for the Nation's Excellence.

Mission: To Establish and Promote an Efficient, Disciplined and Contented Public Service to Serve the Public with Fairness, Transparency and Consistency

Objectives of the Public Service Commission

- To establish, improve and sustain the efficiency and effectiveness of the human resource by upholding standards, policies, guidelines and rules governing the appointments, promotions and disciplinary control of the public service.
- To be sensitive to the needs of the changing environment in order to support the process of decision making for continued progression in public service.
- To be responsive to the grievances of the public officers aggrieved by orders of the delegated authorities in consideration of the interests of both parties and making fair and correct decisions.
- To establish a recognised career path for the public officers in order to ensure the career development of individuals with exposure to varied skills, knowledge and experience with a view to retaining the most appropriate officers in service by motivation and job satisfaction.
- To create a disciplined public officer adhering to professional ethics void of acts of misconduct¹⁶

¹⁶<http://www.psc.gov.lk/web/> accessed on 13 September 2014

Role of the PSC

A.J. Wilson analysed the role of the PSC in developing countries as being a device to place obstacles against possible discrimination as well as against political interference in the selection of personnel in a context where competition for jobs gains momentum, and allay minority fears of discrimination, and also protect the rights and privileges of public officers against erosion by the legislature and the executive.¹⁷

Basically the role of the PSC is a quasi-judicial one. Its role and powers are constitutionally entrenched. On the other hand, the provincial PSC is statutorily established. PSC is not responsible for laying down human resource management policies, such as recruitment policies and terms of service. These matters are left to the executive departments, such as the Establishments Division and the Combined Services Division of the Ministry of Public Administration and the Department of Management Services in the Ministry of Finance. Once the policies for appointment, promotion and discipline have been determined, it is the responsibility of the PSC to interpret and administer them in practice. The reason for not involving the Commission in policy development is to prevent it being drawn into political controversy and maintain thereby its impartiality. The PSC provides assurance that all actions concerning recruitment, promotions and appointments within the Public Service are:

- made in an equitable, fair and impartial manner
- free from favouritism, patronage and discrimination
- based on the principle of merit

All officers serving in the Provincial Council Service who do not belong to the All Island Services fall outside the ambit of the PSC¹⁸. The employees of State Corporations, Statutory Boards and State Owned Companies also do not come within the purview of the PSC as their employees are not public officers. The PSC's powers of appointment, transfer, dismissal and disciplinary control do not extend to important categories of top officials, such as Secretaries to Ministries who are appointed by the President and Heads of Departments who are appointed by the Cabinet of Ministers.

In the year 2010 the Eighteenth Constitutional Amendment redefined the new role of the Public Service Commission as an entity responsible and answerable to Parliament for "appointment, promotion, transfer, disciplinary control and dismissal of public

¹⁷ A. Jeyaratnam Wilson. "The Public Service Commission and Ministerial Responsibility : The Ceylonese Experience". *Public Administration*. Journal of the Royal Institute of Public Administration. Autumn 1988. Vol. 46. p. 81

³ "All Island Services" means services already identified as island wide services such as the Sri Lanka Administrative Service, Sri Lanka Engineering Service, Sri Lanka Scientific Service, Sri Lanka Architectural Service, Sri Lanka Accountants Service, Sri Lanka Planning Service, Sri Lanka Education Administrative Service, Sri Lanka Agricultural Service, Sri Lanka Animal Production and Health Service, Sri Lanka Medical Service, Sri Lanka Indigenous Medical Service, Sri Lanka Surveyors Service and any other service identified by the appropriate authority from time to time.

officers". The PSC contributes to an impartial Public Service with a high standard of competence, efficiency and integrity by making of appointments to public offices (or posts in the Public Service) the removal of persons from such office and the exercise of disciplinary control over public officers.

The decisions of the PSC cannot be canvassed in any Court of Law or Tribunal except in the Supreme Court by way of fundamental rights applications and in the Administrative Appeals Tribunal set up under Article 59 of the Constitution.

Statutory Basis and Status of the PSC

Provision is made in Article 54 (1) of the Constitution for the establishment of the PSC. Article 55 defines the powers of the Commission. In some countries, the PSC is established by an Act of Parliament, but in Sri Lanka it is enshrined in the Constitution which makes it rigid. Therefore, the PSC cannot be eliminated unless there is a constitutional change. Commission decisions are exempted from judicial review other than by way of a fundamental rights application (Article 61A). The term of office of a member of the PSC is three years.

Article 52 (7) of the Constitution stipulates that the office of the PSC is deemed not to be a department of government. It is a quasi-judicial body which has executive responsibilities in appointments, promotions and discipline but not policy responsibilities. Yet, in countries such as Australia, such Commissions have wider powers, including policy responsibility in addition to executive responsibility. There, the central personnel agency is brought under one roof.

There has been much argument over the question whether the PSC should be an advisory body or an executive body. PSC has delegated powers to act executively over certain classes of posts with the exception of super scale posts. Under the 17th Amendment to the Constitution, the PSC had complete executive responsibility over recruitment, transfer, promotions and discipline in respect of all posts except those of Ministry Secretaries and posts of comparable higher status.

The case for an executive PSC lies in the fact that if elected politicians were given any responsibilities in these sensitive areas, there is great danger of political patronage and nepotism undermining the morale of the public service. An autonomous and impartial Commission having full executive powers not subject to Ministerial control would apply the principles of merit and fairness in the discharge of its responsibilities.

How does this principle conflict with the doctrine of individual ministerial responsibility? Article 45 (3) of the constitution enshrines the doctrine that ministers are individually responsible and answerable to parliament. Parliament performs the function of controlling the executive through the operation of the doctrine of individual ministerial responsibility. Thus, it was possible for an individual minister to be censured by parliament and forced to resign regardless of the standing of his colleagues.

The ministers are responsible for all the actions of officials employed in the respective ministries, departments and agencies that come within their purview. This arises because public officers are not permitted to sit in parliament, or to engage in public controversy. Individual ministerial responsibility derives from a parliamentary power to hold ministers to account. Such accountability entails both an obligation to answer and an obligation to make redress for defects of administration. For all acts of commission and omission by their officials, ministers must personally carry responsibility. They

should apologise, take remedial action and inform parliament of what has transpired and of what steps he intends to take in order to discipline any offending public official and to prevent recurrence of the reported misconduct.¹⁹ Ministers are thus expected to defend the actions of their officials and likewise accept responsibility for any mistakes which they may make.

Associated with the responsibility of individual ministers to parliament is the anonymity and non-accountability of public officers. Their accountability to parliament is indirectly through the line minister. The ultimate political accountability is to the people. A chain of accountability links officials who answer to the ministers, who in turn answer to parliament who ultimately answer to the electorate.

Ministers do not see how it is possible to discharge their management functions in relation to the Departments within their portfolios unless they have some share in the control of public officers through whom their policies are executed. Ministers cannot be expected to defend in Parliament, the official actions and conduct of public servants in their departments unless they have some means of exercising discipline over them. Can the Ministers place their utmost confidence in senior officials if they had no say in their placement? While the initial recruitment is based on impartiality and merit, subsequent transfer and sometimes promotion in practice has the ministerial influence.

The significant features with regard to the present PSC are:

- a. PSC comprises nine persons appointed by the President for three years.
- b. Their salaries are chargeable to the Consolidated Fund and not liable to diminution during their term of office.
- c. PSC is answerable to Parliament for the discharge of its powers and functions.
- d. Commission may delegate to a public officer, its powers of appointment, promotion, transfer, disciplinary control and dismissal of such category of public officers as are specified by the Cabinet of Ministers. (Article 57). Under the 17th Amendment, the PSC could delegate to a committee or to a public officer its powers over such categories of public officers as are specified by the PSC. However, under the 18th Amendment, the Cabinet of Ministers has the power to dictate to the PSC the categories of public officers that should remain under its direct control and the delegated authorities.
- e. An appeal lies to the PSC by an officer aggrieved by an order of a delegated authority.

¹⁹ V.K.Nanayakkara. 2012. *In Search of a New Sri Lankan Constitution*. Pannipitiya: Stamford Lake Pvt. Ltd. pp. 178-180

- f. Where there is delegation, the PSC should not exercise those powers while the delegation is in force.
- g. Power to frame rules, regulations and procedures relating to the public service was introduced by Article 61 B.
- h. Immunity from legal proceedings was granted to the PSC by article 61A.

Human Resource Functions

The Public Service Commission of Sri Lanka is a constitutionally enshrined body, which is answerable to Parliament in relation to the appointment, promotion, transfer, removal and exercise of disciplinary control over public officers. This is outlined in articles 54 to 61 of the Constitution. Some of the most recurrent criticisms of the public services have been directed at the composition, powers and procedures of the PSC. The Commissions were created to insulate public officers from political influence exerted by the government of the day.

Currently, the arrangements for human resource management and policies consist of three broad actors, namely, the Public Service Commissions, central personnel office system and line Ministries and Departments. PSCs regulate the selection process. The central personnel agencies (CPAs) are distinct from the PSCs. They are part of the executive, fully accountable to the government. The justification for a separation of the PSC and the CPA arises from the prerogative of the government as employer to be responsible for creation of posts, training and development, determination of service terms, conditions and salaries etc. outside the PSC's control. Line Ministries initiate selection processes, carry out selections, initiate and conduct disciplinary cases under delegated authority from the PSC.

Central personnel agencies, such as the Ministry of Public Administration and the Ministry of Finance are part of the executive and fully accountable to the government. They manage the classification structure, create grades and career paths, approve the creation of posts and salaries. Line Ministries and departments initiate selections, forward requests for creation of posts and carry out selections under PSC supervision. Then what are the PSC's functions? These include the following:

- Exercise the power of appointment, confirmation in service, promotions, extensions and retirement of public officers;
- Formulate and amend schemes of recruitment, promotion, service minutes and transfer procedures;
- Arrange examinations for recruitment, efficiency bar examinations, departmental and promotional examinations;
- Inter-ministerial transfers and releases to Provincial Councils;
- Act as an appellate authority for those aggrieved by the determinations of its delegated authorities.
- ensure that disciplinary action against public officers is fair, expeditious and effective.

In developing a modern high performing government sector the principal objectives of the Commission are to:

- Promote and maintain the highest levels of integrity, impartiality, accountability and leadership across the government sector.

- Improve the capability of the government sector to implement the decisions of the Government and meet public expectations.
- Attract and retain a high calibre professional government sector workforce.
- Ensure that government sector recruitment and selection processes comply with the merit principle and adhere to professional standards.
- Foster a public service culture in which customer service, initiative, individual responsibility and the achievement of results are strongly valued.
- Build public confidence in the government sector.
- Support the Government in achieving positive budget outcomes through strengthening the capability of the government sector workforce.

Accordingly, the Commission performs the following work processes:

- Identify reform opportunities for the government sector workforce and to advise the Government on policy innovations and strategy in those areas of reform.
- Lead the strategic development and management of the government sector workforce in relation to:
 - i. workforce planning, including identifying risks and strategies to minimise risks
 - ii. recruitment, particularly compliance with requirements relating to appointment and promotion on merit
 - iii. performance management and recognition
 - iv. equity and diversity, including strategies to ensure the government sector reflects the diversity of the wider community
 - v. general conduct and compliance with ethical practices
 - vi. learning and development
 - vii. succession planning
 - viii. redeployment, including excess employees
 - ix. staff mobility
 - x. executive staffing arrangements.

The Public Services Commission's powers and functions under Article 55(3) of the Constitution stipulated five main functions, which are;

1. Appointment :
2. Promotion
3. Transfer
4. Exercise disciplinary control
5. Dismissal

Policy matters: Article 55(1) says the cabinet of ministers shall provide for and determine all matters of policy relating to public officers, including policy relating to appointments, promotions, transfers, disciplinary control and dismissal. One of the significant limitations imposed over the PSC is keeping away matters related to Heads of Departments. Article 55 (4) of the 17th Amendment as well as Article 55(1) of the 18th

Amendment provided for the Cabinet of Ministers to determine all policy matters relating to public officers. Citing this power, the Cabinet attempted on several occasions to usurp the power of appointment to public office. However, the judgement of the Supreme Court in application number 146/2003, Sominda Thero v. V.K.Nanayakkara, Secretary, Ministry of Education held that policy should be applicable in general and should not be confined to specific categories of persons. Article 61B empowers the PSC to formulate, rules, regulations and procedures relating to the public service.

Appointment/ Recruitment: Article 55 (3) defines the Public Service Commission as an oversight institution in recruitment process in all public institutions by vesting the appointments, promotions, transfers, disciplinary control and dismissal of public officers other than Heads of Departments in the PSC. Under the 17th Amendment, Cabinet of Ministers had to ascertain the views of the Commission prior to appointing Heads of Departments. But after the 18th Amendment this requirement has been dispensed with.

The overall aim of the recruitment process is to obtain at minimum cost the number and quality of employees required to satisfy the human resource needs. There are three stages of recruitment, namely:

1. Defining requirements- preparing job descriptions and specifications, determine required competencies, deciding terms and conditions of employment;
2. Attracting candidates – reviewing and evaluating alternative sources of applicants, advertising;
3. Selecting candidates – sifting applications, scheduling, short-listing, interviewing, testing, assessing candidates, offer and acceptance of employment

The Commission manages the appointment of personnel in the Public Service in the following manner:

- I. Appointments to a post on permanent, temporary, contractual, casual, acting or attending to duty basis. It also has the authority to terminate the services of personnel in the Public Service.
- II. change of existing service status of an officer
- III. Appointment of an officer holding a post in the public service to another post in the public service
- IV. Reinstatement of an employee who had been treated as having vacated his post
- V. Re-employment or reinstatement of an office who had been treated as having vacated his post
- VI. reinstatement of an employee who had been dismissed from service

- VII. Appointment of an employee from a lower grade to a higher grade in the public service other than graded promotions in any particular service.²⁰

Confirmation of service: Additionally, the Commission has the authority to confirm personnel in the Public Service of their services, to extend the probation period, to return personnel to an original post or to terminate the services due to failure at being confirmed of their services. It has empowered the Ministries and Departments to confirm the services for posts in the Support Group. The power to reemploy a person who has retired from the public service vests exclusively with the PSC.

Conferment into pension status: The Commission manages the conferment into pension status of personnel in the public service who are confirmed in service and has served in services deemed pension status for not less than 3 years.

Transfer of services: The Commission has the authority to transfer permanent personnel in public service from one scheme of service to another scheme and from one service to another scheme of service of equal grade. It also has the authority to transfer permanent officers appointed on temporary transfer or loan. The PSC protects officials from arbitrary dismissal, guarantee them life-time tenure and assure them of favourable terms of employment.

Human Resource (Manpower) Planning

Human resource surveys should be continuous and there is a need therefore to establish a permanent machinery for carrying it out. The purpose of such a survey is to assess the needs of the public sector for trained manpower in terms of expanding services. In view of the close relationship between economic development planning and manpower planning such an organization should be closely associated with the development planning organization of the government.

A lack of human resource planning across the public sector leads to delays in recruitment. Departments do not ascertain the situation with regard to the occurrence of vacancies in advance. They wait till the vacancy occurs to inform the PSC to set in motion the selection and appointment process. Newspaper advertisements, calling for applications, getting PSC approval for the composition of the Interview Boards and marking schemes and conduct of interviews are time consuming procedures. For instance, currently, (October 2014) there are over 100 vacancies of posts of school principals out of 350 national schools.²¹

Good government requires a public service which is highly competent and responsive, politically impartial, and has high standards of integrity to meet the needs of the

²⁰ Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka. Part I : Sec. (I). 20.02.2009. p. 2A

²¹ Personal communication by a senior PSC official, on 8 October 2014.

community. The recruitment principles underpin good government, with the fundamental principle that selection is made on merit and based upon fair and open competition without bias or prejudice. The arrangements for making public appointments have vastly deteriorated. Accusations are still made about crony appointments. The principles of merit, equity, transparency, diversity and procedural fairness are integral to processes to recruit, select and appoint staff.

Merit means the appointment of the best available person. No one should be appointed to a job unless he is competent to do it and the job must be offered to the person who would do it best. Merit requires that:

- job opportunities are publicised so that there is a reasonable opportunity for members of the community to apply for the position;
- selection is fair and objective at each stage so that there is no patronage, favouritism or unjustified discrimination in the decision making process.
- those appointed have the necessary skills and competencies for the position;
- we choose the best candidate for the job;
- we can demonstrate that we have applied the recruitment principles by taking these steps, and therefore can justify the recruitment decision.

Fairness: Applicants have a right to fair and unbiased consideration of their application. Fair means there is no bias in the assessment of candidates. Selection processes must be objective, impartial and applied consistently. 'Open' -means that job opportunities must be advertised publicly and potential candidates given reasonable access to information about the job and its requirements, and about the selection process. Role of the Commission in recruitment is to maintain the requirement that appointments to the public service are on merit on the basis of fair and open competition.

Recruitment is the process by which qualified employees are attracted to government jobs. Public agency recruitment techniques may be either centralized or decentralized. Where departments need large number of clerical employees for the same type of positions, centralized recruitment will frequently be used as it is more cost efficient.

Open competitions have always been held for recruitment to entry level grades of Clerical, Executive and Administrative Officers. The PSC acts as the centralised recruitment, assessment and selection body for the public service. All open recruitment competitions run by the PSC are gazetted and advertised in one or more of the national newspapers and on the PSC website.

Examinations: Examinations may be used either to test aptitude or achievement in relation to standards of skills or knowledge which are laid down, or even to reduce the field of selection to manageable proportions. Thus, where the field is very wide, as for instance in the case of the management assistants (clerical) service, examinations are most useful in reducing the numbers to be finally considered for appointment. For

engineers, medical officers and accountants there is no need for any further examinations to test achievement of the appropriate standard other than possession of the professional qualification. All Public Service Commission tests are designed to measure the knowledge, skills, and abilities needed to perform the duties of a particular title.

Aptitude tests are necessary where it is proposed to select candidates for training in the acquisition of specialized skills and where it is necessary for them to demonstrate their aptitude for these jobs. These tests are applied to select candidates for training as technicians, machine operators etc. Achievement tests are applied to select candidates who have already acquired the knowledge and skills up to the levels of proficiency required for the posts to be filled. Thus, proficiency tests are applied to select stenographers, typists. In order to obviate delays, the Department of Examination should be informed of any assessments to be conducted by them so that they could include the examination in their examination calendar. Efficiency Bar examinations that were conducted twice a year are now held once a year. This often results in extension of the period of probation on the plea that an EB examination was not conducted during the year.

Service Minutes: A service minute is a plan showing how entry to a particular category of officers in the public service, such as administrators, accountants, engineers and medical officers etc. is made, qualifications for recruitment, method of recruitment, the training facilities provided after entry, and the method by which, and the posts to which an officer may obtain promotion at various defined stages in his career, and the salary structure for the classes of posts available to him. For each approved service in the public service, there is a service minute and for each post falling outside those services there shall be a scheme of recruitment. The formulation of service minutes lead to a clear understanding of the recruitment, training and staffing policy and officers are clearly informed of the posts to which they can aspire and how they can attain them.

When the PSC was re-established in May 2011, the Secretaries and Heads of Departments had no proper guidelines for preparing service minutes and schemes of recruitment in terms of Public Administration circular 06/2006. As such the PSC initiated the formulation and publication of a set of guidelines in collaboration with the Ministry of Public Administration, National Salaries and Cadre Commission and the Department of Management Services.²²

Where a need arises to amend a service minute or a scheme of recruitment, a draft of the amended scheme is submitted to the Commission for approval by the Secretary to the relevant Ministry with the recommendation of the Director General of

²² Public Service Commission. *Report of the Commission. 2011- 2014.* p. 3

Establishments. The PSC has the discretion to approve or approve with revisions or reject or revoke a service minute or scheme of recruitment submitted by a Secretary. A positive benefit of a service minute is that it can provide the workforce with a predictable and easy to understand set of criteria for advancement. In many cases it clearly spells out the specific criteria needed in order to move upward (“through rank”) in the workforce. The effect of this “career ladder” is that employees feel comfortable with the process of selection for advancement, as they more clearly see the future and possibilities for their movement through the organization.

Promotion

Promotion is the transfer of an officer from one post, class or grade to a superior post, class or grade usually involving an increase in salary.²³ The criteria applied for promotions are merit, seniority, qualifications and experience. Although, merit is considered overriding, it is difficult to enforce as there is in every service strong pressure to use seniority as the main principle of promotion.

Every promotion in the public service is made only in accordance with the approved service minute or scheme of promotion. Before making a promotion, the appointing authority must satisfy himself that a vacancy in the approved cadre exists. The Commission functions as an appeal Board for public service promotions. The public service has been viewed as a continuous ladder for those entering at the bottom of a combined service or a departmental cadre to rise to the top.

Promotion is an instrument for selecting from amongst serving public officers those who are best equipped in terms of ability, aptitude and attitudes for the performance of tasks in a position at a higher level in the public service. The principles governing promotions are outlined in the Establishments Code, the service minutes and in schemes of recruitment. They include definite statements on the method of promotion, whether by competitive examination and/or interview. It also specifies eligibility for promotion such as a specified period of service, acquisition of educational qualifications and performance reports.

No systematic study has been made in regard to schemes of promotion in the public service in their totality. Salaries Commissions have often tinkered with schemes of promotion to grant relief. Sometimes, schemes of promotion have been treated in isolation in respect of one category without giving thought to their impact on other categories of public officers. There have been times when changes to service minutes have been effected haphazardly and posts reclassified in higher or lower positions based on inadequate study. Accordingly, changes to schemes of promotion have

²³ “Promotion” means the appointment in accordance with an approved Service Minute or a Scheme of Recruitment, of an officer holding a post in the public service, to a post, class or grade which is superior to the post he holds, or the class or grade to which he belongs. *Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka.-20.02. 2009.*. No. 1589/30. February 20, 2009. p. 30A

generally been made on an *ad hoc* basis without a proper study of their implications on the various groups of public officers.

Discipline

The administration of the disciplinary code, when it is infringed, is handled by the PSC or by other officers by delegation. The application of the disciplinary code does not absolve public servants from breaching the laws of the land. In fact, the Penal Code has express provisions relating to “Offences by or Relating to Public Servants” (sections 158-168).

The Commission is a relevant Disciplinary Authority for disciplinary actions with the purpose of dismissal or demotion of officers. It also acts as the Public Service Disciplinary Board of Appeal from the authorities with delegated power. There were many instances of delay on the part of Ministries and Departments in tendering observations, recommendations and reports in connection with disciplinary matters. The Commission observed: “Scrutiny of the incomplete reports received by the Commission revealed that the degree of knowledge on the government’s disciplinary procedure and the management of disciplinary matters are at low ebb and that it has given rise to a surfeit of shortcomings.”²⁴

Although much of the disciplinary responsibilities had been delegated, ultimate authority remains with the Commission and its work in this area has increased. The exercise of disciplinary control of public officers has not only been most time-consuming but also constitutes one of the weak areas in the public service. How to expedite the final disposal of disciplinary matters? Several situations cause very long delays in concluding disciplinary actions. According to the disciplinary procedure laid down in Volume II of the Establishments Code one of the most important steps in initiating disciplinary action is the institution of a ‘preliminary investigation.’ However due to a lack of capacity and experience shown by a majority of public officers in the procedure of conducting a preliminary inquiry, such reports are found to be wanting, and the Commission had been compelled to refer the reports back to the sending authority for rectification of shortcomings. There have also been situations where the entire disciplinary process had to be abandoned owing to difficulties in tracing documents required for preliminary inquiries. Getting witness to testify at inquiries has also been difficult.²⁵

A further difficulty identified by the PSC in the conduct of disciplinary proceedings and the hearing of appeals has been the improperly formulated charge sheets. There have been delays in conducting and concluding formal disciplinary inquiries, submitting

²⁴ Public Service Commission. *Report of the Commission. 2011-2014.* p. 4

²⁵ Public Service Commission of the Democratic Socialist Republic of Sri Lanka. *Annual Report – 2008.* p. 5

reports and recommendations of Secretaries and Heads of Departments after the formal inquiry has been concluded and in submitting reports on appeals made to the PSC against orders made by the relevant authorities. In order to remedy this situation, officers in middle and upper managerial levels in the public service should be given appropriate training in all aspects of disciplinary procedure. Such training courses could be conducted under the aegis of SLIDA. Competent staff to undertake inquiries should be identified, trained and offered incentives to undertake such work.

Right of Appeal

In terms of article 58(1) of the Constitution any public officer aggrieved by an order relating to a promotion or transfer made by an authority with delegated power may appeal to the Commission against such order. A public officer aggrieved by an order or decision made by the Commission has the right to prefer an appeal to the Administrative Appeals Tribunal (AAT) in accordance with the provisions of the Administrative Appeals Tribunal Act No. 4 of 2002.

Administrative Appeals Tribunal

In order to ensure that the PSC does not act in an arbitrary manner, Article 59 of the Constitution established a new body called the Administrative Appeals Tribunal with power to alter, vary or rescind any order or decision made by the Commission. It comprises three members appointed by the Judicial Service Commission from among persons who have had over 20 years of experience as a public officer or ten years of experience in the legal profession. Any public officer aggrieved by an order made by the PSC may prefer an appeal in writing to the AAT within four weeks of receipt of the order.

The object in setting up the AAT and at the same time excluding the jurisdiction of the Courts of Law and other bodies with quasi-legal powers was to provide public officers aggrieved by a decision of the PSC with a means of redress. AAT provided a mechanism to public officers aggrieved by a decision of the PSC with a means of redress through an expeditious, simplified and inexpensive appeals mechanism. The establishment of the AAT is considered one of the timely attempts to ensure the independence of the public service. It tends to balance the power centralized on the independent Commission.

Delegation of Functions

Centralised management makes little sense in a public service world with hundreds of thousands of employees in myriad departments and agencies of all shapes, sizes and mandates. Around 450 000 public officers fall within the ambit of the PSC. The tasks of appointing, promoting, transferring and disciplining this large number of employees while shielding them from undue outside influence and ensuring fair and equal treatment is a complex endeavour.

Two types of delegations are stipulated. First, in terms of Article 56 (1), the Commission may delegate to a Committee consisting of three persons (who are not members of the Commission) the powers of appointment, promotion, transfer, disciplinary control and dismissal of such categories of public officers as are specified by the Cabinet of Ministers. Second, under, Article 57 (1), the Commission may also delegate to a public officer the powers of appointment, promotion, transfer, disciplinary control and dismissal of such categories of public officers as are specified by the Cabinet of Ministers. The full scheme of delegation is contained in the Gazette Extraordinary No 1733/52 of November 25, 2011.²⁶

Interestingly, the Commission should not exercise power, while such delegation is in force. Will the Office of the Public Service Commission still exist after the delegation of functions process is completed? Yes, it will, in view of the fact that it has to perform appellate functions from the delegatee's orders.

Can the delegated functions be further delegated by the Secretary of the Ministry or the Head of Department? No. The delegated functions cannot be sub-delegated by the public officers named in Column II to whom the powers are delegated by the PSC. This is the salutary mechanism to manage and mediate the permanent tension between the administration and the political authority.

²⁶ Delegation of powers by the Public Service Commission in terms of Article 57 as specified by the Cabinet of Ministers. See *Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka*.-25.11. 2011. No. 1735/52. November 25, 2011

Provincial Public Service Commission

The establishment of Provincial Councils has brought about a fundamental change in the public service in the Island. Consequently, there emerged a bifurcated public service comprised of two separate cadres, national and provincial. The provincial public service is a separate and distinct service operative under a different authority. In terms of article 154c, the Governor of a province can exercise executive power through officers subordinate to him. Governor appoints the PPSC. In India too, the Governor of the State appoints the State PSC.

Sections 31, 32 and 33 of the Provincial Councils Act provide respectively for the appointment of a Chief Secretary for each province by the President; the vesting in the Governor of the powers of appointment, transfer, dismissal and disciplinary control over officers of the provincial public service and for the delegation of such powers to a provincial PSC (PPSC) to be appointed by him. Any aggrieved party of a decision of a provincial PSC could appeal to the Governor whose decision is final.

In terms of section 32 of the Provincial Councils Act No 42 of 1987, the appointment, transfer, dismissal and disciplinary control of provincial public officers are vested in the Governor of the province. The Governor may from time to time delegate such powers to the PPSC. The Governor is responsible for formulating schemes of recruitment, codes of conduct, promotion and transfer policy etc. Appeals against the decisions of the PPSC are directed to the Governor for a final decision. (Section 33 of the Provincial Councils Act). The final decision of the appeal is the Governor's discretion. It is the sole responsibility of the Governor to take decisions on public officers attached to his province. Appointed by the President, Governor holds office during the pleasure of the President. Consequently, PC politicians can influence the decisions over the public service. The devolved public service fell into the clutches of the provincial politicians.

A question arises whether the Governor should exercise his powers with regard to the provincial public service on the advice of the Board of Ministers or whether the Governor is bound to act on the President's directions. It is natural for the Governor to be guided by the President's wishes as he holds office subject to the President's pleasure.

Provincial public service comprises more than fifty percent of the public officers in the country. Even when the 17th Amendment was in force, while the central public service was placed under an independent PSC, the provincial public service functioned under the Governor, a political appointee. An impartial public service free from favouritism and politicisation could not be realized by excluding this large portion of the service from an independent authority. What applies to the national PSC should apply in equal measure to the PPSC. An impression of a PPSC inferior in status to the national PSC does not augur well for provincial public officers. It is imprudent to keep this provincial service under the control of the Governor who is a political appointee. An independent

provincial PSC is an ideal to strive for. The proposed mechanism for its independence is outlined in section titled 'Independence' below.

Review of Selected Best Practices: Lessons from abroad

There are many interesting practices and case studies to consider from other countries and jurisdictions. The PSC can learn much from organizations with similar mandates and responsibilities - either with respect to its existing responsibilities or in terms of ways to improve its functioning in other unitary and federal systems. The functioning of the PSCs varies from one country to another. A single commission covers the entire public service in Australia, Britain, Canada, Malta and New Zealand. The Australia and New Zealand Commissions have a single Commissioner rather than a board.

In some countries, such as Singapore, Mauritius and Trinidad and Tobago several commissions cover specific functional areas. Separate Police Service Commissions exist in all three countries. Singapore and Trinidad and Tobago have a separate commission for education. Mauritius has a Local Government Service Commission. It is incumbent to learn from the best practices of selected countries with regard to public service matters. For the purposes of this survey of international practice, the experiences of Australia, New Zealand, Canada, Singapore, Malaysia, and South Africa are singled out for attention. Country specific examples of the working of respective Public Service Commissions are given below.

Australia: The Australian Public Service Commission (APSC) is a statutory agency of the Australian Government that acts to ensure future capability and sustainability within the approximately 160,000 people (or 0.8 per cent of the Australian workforce) that comprise the Australian Public Service (APS).²⁷ The Commission was established pursuant to the *Public Service Act, 1999* and supports two statutory office holders: the Public Service Commissioner—who is also agency head—and the Merit Protection Commissioner. The Commission's functions include policy and advisory responsibilities on the Australian Public Service employment framework (including workplace relations), classification, ethics and performance. The APS does not have centralised control over human resources, as agency heads have managerial authority and responsibility under the Act.

While agency heads retain the powers of an employer, these powers are required to be exercised within a more consistent, centrally determined and monitored framework. Section 44 of the Public Service Act 1999 provides that the Australian Public Service Commissioner must issue a report each year to the agency's minister for presentation to the Australian Parliament. The report must include a report on the state of the APS during the year.

²⁷ http://en.wikipedia.org/wiki/Australian_Public_Service_Commission accessed on 7 October 2014

The Public Service Act 1999 is the principal Act governing the establishment and operation of the Australian Public Service. Its main objectives are to:

- establish an apolitical public service that is efficient and effective in serving the government, the Parliament and the Australian public;
- provide the legal framework for the employment, management and leadership of Australian Public Service employees;
- define the powers, functions and responsibilities of agency heads (particularly with regards to accountabilities between agency heads and ministers), the Public Service Commissioner and the Merit Protection Commissioner; and
- establish the rights and obligations of Australian Public Service employees.²⁸

New Zealand: New Zealand's civil service was initially based on the British model, set out in the Civil Service Act of 1866. In the 1980s, the country was a world leader in initiating the move towards a corporate model for government, splitting up departments into independent units. Heads of departments became chief executives, who now work under tight three or five-year contracts with their relevant ministers. The role of the State Services Commission (SSC) is to improve the performance of New Zealand's public sector organizations. The SSC's official responsibilities, as defined by the State Sector Act 1988, include:

- Review the machinery of government including allocation of functions between departments
- appointing and reviewing Public Service chief executives,
- promoting and developing senior leadership and management capability for the Public Service,
- providing advice on the training and career development of staff in the Public Service,
- reviewing the performance of each department,
- providing advice on the allocation of functions to and between departments and other agencies,
- providing advice on management systems, structures, and organizations in the Public Service and Crown entities,
- promoting, developing, and monitoring equal employment opportunities policies and programmes,
- any other functions with respect to the administration and management of the Public Service, as directed by the Prime Minister.²⁹

²⁸ www.ncoa.gov.au/report/phase-two/part-6

²⁹ Jonathan Boston et.al. 1996. *Public Management: The New Zealand Model*. Auckland: Oxford University Press. p. 61

Singapore:

Singapore offers another interesting case study, particularly in the way of a forceful public sector that has managed to provide deep strategic support to the private sector in the execution of a dynamic economic development blueprint. Singapore's civil service was set up by the British in 1855. The city-state initiated a major programme of change in 1995, called Public Service for the 21st Century (PS21), with a focus on continuous learning by staff, customer service, staff wellbeing and a review of organizational structures. That programme was itself updated in 2008, in part due to concerns that civil servants were focusing on administrative targets rather than the underlying programme of innovation and reform.

An independent organ of state, Public Service Commission of Singapore was constituted in 1961. It safeguards the principles of integrity, impartiality and meritocracy in the public service. Its website shows that it is responsible for the appointment, promotion, transfer, dismissal and exercising disciplinary control over public officers. It also has non-statutory functions such as the planning and administration of scholarships provided by the Government of Singapore and appointing and promoting Chief Executive Officers of statutory boards.

Malaysia:

The Chairman and other members of the PSC are appointed by the King of Malaysia. The Commission functions under Article 144(1) of the Federal Constitution stipulating six main functions: "Depending on the provision of any laws at hand and towards the provision of this Constitution, therefore it has become the duty of a Commission which is referred by this Section to appoint, confirm, confer into permanent or pension status, promote, transfer and to exercise disciplinary control over personnel for services covered by its jurisdiction."

Major reforms have been underway in the Malaysian public sector and wider economy since the 1980s. The desired paradigm is one of an innovative public sector which anticipates global change, is strongly customer oriented and supportive of the private sector in its efforts to compete globally and manage successfully an open economy (Malaysia is currently the 17th largest trading nation in the world). Intriguingly, this model of the public sector as an agent of change has been imposed by prime ministerial fiat and is credited in part to the stability of the Malaysian economic and social order since the 1980s:

Canada:

The contemporary Public Service Commission was created in 1967 as a politically independent agency reporting to Parliament and responsible for administering the *Public Service Employment Act*. The Commission is appointed by Cabinet, and its mandate -- modified in 2003 by the *Public Service Modernization Act* -- involves

cultivating a highly skilled public service through objective staffing, training and development.

The Public Service Commission consists of a President and two or more other Commissioners. The President serves on a full-time basis and the other Commissioners on a part-time basis. The President and other Commissioners hold office during good behaviour for a term of seven years, but may be removed by the Governor in Council at any time on address of the Senate and House of Commons. The President and other Commissioners, on the expiration of a first or any subsequent term of office, are eligible to be re-appointed for a further term not exceeding seven years.

The Canadian PSC is an independent government agency that safeguards merit-based hiring, non-partisanship, representativeness (aboriginal people, visible minorities, women, and people with disabilities) and the use of both official languages (English and French) in the Canadian public service. The PSC aims to protect the integrity of hiring and promotion within the public service. The Commission works to protect the political impartiality and non-partisanship of public servants. It develops staffing policies and provides guidance to public service managers and recruits Canadians into the public service. To ensure the staffing system in the government is properly maintained, the PSC has the power to audit, investigate and order departments and managers to make improvements. While typical government departments are headed by Ministers, the PSC is an independent agency that is headed by a President who reports to the Canadian Parliament. The PSC administers the part of the 2003 *Public Service Employment Act* (PSEA) that sets out the restrictions on the political activities of public service employees and department heads.³⁰

The appointment policy is developed in accordance with the PSEA which gives the Public Service Commission (PSC) authority to establish policy on the manner of making and revoking appointments and taking corrective action. It promotes a delegated appointment system in which merit and non-partisanship must be applied in accordance with the core values of fairness, transparency, access and representativeness. The appointment system is to be less rules-driven while providing greater scope for delegated organizations to customize their appointment processes to meet their respective current and future human resources requirements.

While providing greater flexibility in the appointment process, the PSEA also requires that those delegated and sub-delegated to make appointment decisions (e.g., deputy heads, managers) be accountable to the PSC for the proper use of their delegated authorities. The performance of the public service organizations which have delegated

³⁰ http://en.wikipedia.org/wiki/Public_Service_Commission_of_Canada

appointment authorities is therefore to be monitored on an ongoing basis. The PSC assesses their staffing performance through a risk management perspective and reports to Parliament on the health of the public service appointment system.

South Africa: The form of state is federal, comprising a national government and nine provincial governments, a situation similar to Sri Lanka. Legal system is based on the Roman-Dutch Law which again is similar to Sri Lanka. The Constitution of South Africa stipulates that there be a single *Public Service Commission* for the Republic of South Africa, consisting of fourteen members, five of whom are appointed on the recommendation of the National Assembly.

One member is appointed from each of the nine provinces, after nomination by the Premier of the province on the recommendation of a committee of the Provincial Legislature. The members are referred to as Commissioners. All Commissioners are appointed by the President. The PSC is accountable to the National Assembly and must report to it annually. It must also report to the Legislature of the province concerned on its activities in each province. It is an independent body which is instrumental in promoting professional ethics in the public service. The interesting lesson to us is that the South African PSC is accountable to both the National Assembly and the Provincial legislatures.

We have set out a number of main conclusions and a number of best practice points which we hope will be of assistance to those who find themselves having to grapple with these issues.

Issue Areas

This briefing paper focuses on three broad issue areas:

Issue 1: Independence: the extent to which the PSC is autonomous from the Executive's control

Issue 2: Accountability: the extent to which the PSC can be held responsible for its decisions and actions

Issue 3: Effectiveness: the extent to which the PSC is achieving its objectives/mandates

Issue 1: INDEPENDENCE

Powerless oversight bodies

In September 2010, Sri Lanka enacted the 18th constitutional amendment which abolished the Constitutional Council and replaced it with a purely advisory Parliamentary Council (PC). Thereafter, the President identifies suitable individuals for appointment and seeks the views of the PC that has a majority in it favourable to the President; so an issue of obstruction will not arise. The PC has been given a period of one week to convey its observations in respect of the nominees proposed by the President. After receipt of such observations and a consideration of any new names that the PC may have recommended, the President will finalize the names and make the appointments. Thus, the 18th amendment empowers the President to make direct appointments to the PSC and other key institutions at his unfettered discretion. This move destroyed what vestiges of political independence were left in the independent commissions. Without a public service insulated from politicization, Sri Lanka's crisis of governance will continue. Dysfunctional appointment process of the PSC Chair and Members is the first point that needs attention.

Article 54 (1) states that the President appoints the PSC Chair and Members and of whom not less than three members must have held the office as public officers for more than fifteen years. The total absence of checks and balances for the Presidential appointment was alluded to earlier. Beyond doubt, the amendment has made the President all powerful without any sound mechanism of checks and balances, which are absolutely necessary for a responsive democracy. The 17th Amendment had to some extent, provided for limited checks and balances. The 18th amendment has removed them completely. In order to strengthen the rule of law and justice in Sri Lanka, constitutional provision should be made for a totally independent Public Service Commission. Reintroduction of the 17th Amendment would protect and strengthen the PSC with greater independence to fulfill its mandate.

Our recommendation is for a single PSC that is common to both the central and provincial governments as found in South Africa. We would depart from the Indian

model of a Union PSC and State PSCs where the State PSC is appointed by the Governor of the State. For Sri Lanka, a PSC appointed on the basis of the provisions in the former 17th Amendment would ensure an impartial Commission for the public service as well as the provincial public service. A Constitutional amendment to give effect to this provision would entail corresponding amendments to the Provincial Councils Act which set up the present PPSC.

Article 54 of the Constitution may be amended to provide for 14 commissioners appointed by the President as follows:

- (a) Five commissioners approved by Parliament. Each commissioner must be
 - (i) recommended by Parliament or by a committee of Parliament that is proportionally composed of members of all parties represented; and
 - (ii) approved by Parliament by a resolution adopted with a supporting vote of a majority of its members; [alternative arrangement could be for a newly constituted Constitutional Council to tender names to the President] and

- (b) Nine commissioners appointed as follows. One commissioner for each Province nominated by the Chief Minister of the Province. A commissioner nominated by the Chief Minister of a province must be
 - (i) recommended by the Provincial Council (that is composed of members of all parties represented in the legislature; and
 - (ii) approved by the Provincial Council by a resolution adopted with a supporting vote of a majority of its members. [This is to ensure that Provinces are not sidelined in the PSC].

- (c) A commissioner is appointed for a term of five years, which is renewable for one additional term only.

- (d) A commissioner may be removed from office only on-
 - (i) the ground of misconduct, incapacity or incompetence;
 - (ii) a finding to that effect by a committee of Parliament or, in the case of a commissioner nominated by the Chief Minister of a province, by a committee of the legislature of that province; and
 - (iii) the adoption by Parliament or the provincial legislature concerned, of a resolution with a supporting vote of a majority of its members calling for the commissioner's removal from office.

- (e) The President must remove the relevant commissioner from office upon-
 - (i) the adoption by Parliament of a resolution calling for that commissioner's removal; or (ii) written notification by the Chief Minister that the provincial legislature has adopted a resolution calling for that commissioner's removal.

Lack of Financial Autonomy of the PSC:

Funding arrangement for the PSC is problematic, as participation in the Treasury estimates process is a limit on autonomy. Instead, the new committee to which the PSC would report could be granted authority for recommending funding levels. The existing financial procedure demands that the PSC formulates its own budget and submits it to the Ministry of Finance. After reviewing the budget, the MOF allocates the money to the PSC. Hence, for disbursing approved allocations and its day to-day expenses, the PSC requires constant interaction with the MOF, which allows MOF to maintain a certain degree of control over the PSC's budget.

Although the PSC is an independent body, its Secretariat is practically under the control of the government. The internal recruitments, disciplinary and administrative issues of the PSC are influenced by the government. It has no programme for capacity development of staff. The Commission lacks technical skill; most of the huge task of recruitment related activities are done manually. It lacks manpower while XX% sanctioned posts are vacant in the Secretariat.

Issue 2: ACCOUNTABILITY

Weak Accountability to the Legislature

Under Article 55 (5) of the Constitution, the PSC is required to submit an annual report to Parliament. The report should include a description of activities undertaken during the previous calendar year, a memorandum setting out the cases where the Commission's advice was not followed, and also the cases where the Commission ought to have been consulted. Instead of the current practice of a report to Parliament setting out a lot of statistics with respect to all routine functions attended to by the Commission, a comprehensive report which explains the achievement of the objectives of each and every relevant provision in Chapter IX of the Constitution should be made available to Parliament. A website should include all necessary information about the PSC, including its operations, upcoming activities, and the annual reports.

An improved reporting relationship with Parliament is required. To do so, we recommend creating a dedicated committee of Parliament to which the PSC would report. This special Parliamentary Committee should be formed to review the annual performance of the PSC.

Lack of Accountability to the Citizenry

The essence of a democracy is the accountability of government institutions to the citizens. So far, the PSC is considered a 'restricted zone' for citizens. Most citizens are

not aware of what and how well the services and functions are performed by the PSC. Access to both the PSC itself and the information that the PSC holds is difficult to obtain for an ordinary citizen.

Corruption: According to Transparency International, corruption is the abuse of entrusted power for private gain. Defined as the misuse of public or private office for personal gain, the problem of corruption can be found in every government. It is prevalent amongst public servants. Scarce resources are squandered on uneconomical projects because of their potential to generate lucrative payoffs.

The National Integrity System-Sri Lanka Assessment concluded that there are deficiencies in the Penal Code and the Bribery Act, and that whistleblower protection is non-existent; the Declaration of Assets and Liabilities Law lacked monitoring mechanisms.³¹ Sri Lanka's Commission to Investigate into Allegations of Bribery and Corruption (CIABOC) has only a limited mandate and does not have the power to instigate investigations on its own initiative. Government should take the required initiatives to introduce "Whistle-blower Protection Act' in Parliament.

COPE report had made shocking revelations about the robbing of public funds by various State Owned Enterprises but no action had been taken against those culprits. In June 2011, the sale of contaminated gasoline by the Ceylon Petroleum Corporation created a furore countrywide. The media reported that pre-shipment and post-shipment tests had revealed non-compliance with standard specifications. As to how the tender was awarded, who were responsible are facts unknown to date!

Another case that surfaced in the public domain in January 2007 is the hedging deal struck between the Ceylon Petroleum Corporation and several banks where no regard was made for fixing the upper and lower norms based on the past history of commodity price fluctuations. The upshot of the whole fiasco was for the Government to pay a claim amounting to around Rs 55 000 million. Ministers, institutions and officials had acted arbitrarily and capriciously exposing the people to colossal losses through this dubious transaction. Yet, neither the Minister nor any official resigned.³² Despite COPE exposures and the responsibility for acting on such reports rests primarily with Parliament, it is yet to take action on the findings of the oversight committees

Ethics: Public sector ethics are promoted, explicitly or implicitly, by:

- legislation and convention
- codes of conduct

³¹ Transparency International Sri Lanka. *National Integrity System Assessment Sri Lanka 2014*. p. 39

³² V.K.Nanayakkara. 2012. *In Search of a new Sri Lankan Constitution*. Pannipitiya: Stamford Lake Pvt. Ltd. pp. 189-190

- statements of public sector and organisational values.

The *Establishments Code* sets forth the provisions for the conduct of public officials in all their professional activities. In addition the code of conduct is laid down in Financial Regulations, procurement guidelines, PSC rules as well as in legislation such as, the Declaration of Assets and Liabilities Law and the Fiscal Responsibility Act. These compliance based codes of conduct must be distinguished from codes of ethics which are integrity based. A National Code of Ethics does not exist although there are a few Agency Codes such as the 'Code of Conduct and Ethics of the Ministry of Finance and Planning' dated September 2007. A code of ethics serves to strengthen respect for, and appreciation of, the role played by the Public Service within Sri Lanka's democracy.

Nonetheless, publishing a code of ethics, by itself will achieve nothing. For it to be enforceable, it must be based on legislation and reinforced by sanctions. A review of literature shows that codes of ethics, backed by legislation, exist in Australia, Japan, Canada and Philippines. Some codes, such as, the British Committee for Standards in Public Life are simple, relying on aspirational values to guide behaviour. Others, such as the US Office of Government Ethics, which rely on specific mechanisms to guide behaviour, are complex.

Service Charter for the Public Service Commission.

This Service Charter has to be prepared in the spirit of being responsive to citizens' needs, transparency and accountability. The Charter should spell out the role of the Public Service Commission, highlighting the services offered and the requirements therein, listing the service departments at which the services can be accessed. The proposed Citizen's Charter should reflect the details of services delivered by the PSC and their specification, clear identification of the department to be approached or where specific services can be obtained.

It should contain service standards, service delivery methods and timelines, grievance mechanisms. In this way citizens will know which office to approach and thus save time and energy. It should state clearly the time it takes to deliver each service. This provides citizens with useful information and will prevent them from going back and forth. This Service Charter should specify service standards in terms of timeliness, access, accuracy, reliability, affordability, responsiveness, fairness, sensitivity and courtesy in service delivery. On the basis of this, citizens can expect improvement,

This citizen's charter should show the vision and mission statements of the PSC which affirms its commitment to deliver the services with integrity, judiciousness, courtesy, understanding, objectivity, impartiality, transparency, accountability, promptness, efficiency and effectiveness. The development of this Charter clearly describing its duties and responsibilities to the public signifies PSC commitment to serve its clients

with a view to creating a better understanding and enhancing service delivery. The physical access to the PSC could also be made easier. For instance, a public information desk on its premises, staffed by appropriately qualified persons, could provide the public interface.

Right to Information

Currently, a lot of secrecy surrounds the activities of the PSC. Reasons based even for controversial decisions are not revealed to the parties concerned. Public officers are frightened to communicate with an independent commission like the PSC due to constitutional restrictions like article 61C (1) which makes any attempt to influence the Commission a punishable offence.

Apart from PSC matters, the citizens find themselves unable to access relevant information on how the government is performing in order to hold the decision makers to account for their actions. A well informed population strengthens democracy. In the absence of legal protection for whistleblowers, wrongdoing by those in positions of power is not being reported. As a matter of urgency, Sri Lanka must enact a right to information and whistleblower protection laws.

Right to Public Service

A hassle-free public services and redress of his grievances are a right of a citizen. Despite the display of service charters at the entrance to a government office, enforceable statements of peoples' entitlement to public services are not available. We can learn a lesson from India in this respect. Legislation with respect to right to public services in India comprises statutory laws which guarantee time-bound delivery of various public services rendered to citizens and provides mechanisms to punish an errant public officer for his neglect of duties. The Right to Services Act represents the commitment of a state government towards standard, quality and time frame of service delivery, grievance redress mechanism and accountability. Several state governments enacted 'Right to Services Acts' to clean up the system to ensure smooth delivery of services to the people and to crack down on erring public officials.³³ According to this law if a lethargic officer fails to provide a service in time, he will have to pay a fine.

On failure to provide the service by the designated officer within the given time or rejected to provide the service, the aggrieved person can approach the First Appellate Authority. The First Appellate Authority, after making a hearing, can accept or reject the appeal by making a written order stating the reasons for the order and intimate the same to the applicant, and can order the public servant to provide the service to the applicant.

S.K.Agarwal. 2014. *Right to Public Service : A Guide*. New Delhi: Transparency International, India. p. 7

An appeal can be made from the order of the First Appellate Authority to the Second Appellate Authority, who can either accept or reject the application, by making a written order stating the reasons for the order and intimate the same to the applicant, and can order the public servant to provide the service to the applicant or can impose penalty on the designated officer for deficiency of service without any reasonable cause, which can range from Rs. 500 to Rs. 5000 or may recommend disciplinary proceedings. The applicant may be compensated out of the penalty imposed on the officer. The appellate authorities has been granted certain powers of a Civil Court while trying a suit under Code of Civil Procedure, 1908, like production of documents and issuance of summon to the Designated officers and appellants.

Issue 3: Effectiveness

Central Personnel Agency: The principal task of the PSC is to regulate public administration so that the government agencies/ministries are able to meet their respective mandates. The public personnel policies and administration require arrangements for providing a sound organizational base for the performance of key personnel functions at a central point in the machinery of government. In many developing countries, including Sri Lanka, the personnel management system has been characterised by a lack of uniform central direction.

According to Glen Stahl, a central personnel agency (CPA) should perform tasks such as policies and instructions, job analysis and evaluation, recruitment, promotion, placement, salary and wage administration, performance standards, counselling, training, union bargaining etc.³⁴ Evidently, powers and responsibilities of a CPA are so varied and vast that it should be located at a nodal point in the political system. Consequently, in many countries there is a close link of the CPA with the office of the Chief Executive. In Australia, the PSC reports to parliament through the Prime Minister. In Philippines, the Civil Service Commission forms part of the President's office.

What are the significant features of the personnel system in some countries? In Malaysia, the PSC which comes under the office of the Prime Minister controls the entire civil service including the terms and conditions of service of government officers and the establishment and grading of posts within Federal and State departments. In India, the Department of Personnel was set up in 1970, as a separate department under the Cabinet Secretariat .

In some countries, the PSC has been made the constitutional authority responsible for aspects of human resource management. In Sri Lanka, until 1970, these functions were located in the General Treasury under the Ministry of Finance. Currently, an

O.Glen Stahl. 1976. *Public Personnel Administration*. New York: Harper and Row. Ch XXIV

Establishments Division and a Combined Services Division function under the Ministry of Public Administration. Cadre approval and salaries are the responsibility of several branches in the Treasury, Salaries Commission etc. Service minutes and schemes of recruitment are the responsibility of the PSC.

Complaints management: Without improvement in the quality of public service delivery, efforts to improve the performance of the bureaucracy will not be effective. Complaints management is one of the vital components in ensuring effective public service delivery. Managing public complaints in a prompt, fair and courteous manner complements efforts in improving the quality of service delivery. The Government should no longer view complaints as an impediment, but consider it as a source of innovation. Therefore, public complaints should always be welcome.

A critical analysis of complaints provides a valuable feedback to systemic improvement of the existing Government policies, procedures and work practices. Should the PSC be entrusted with not only managing public complaints on services provided by them, but also about public servants who are administering or rendering such services to the public. With the enhancement of ICT, a web portal could provide a main gateway for the public to lodge complaints against Government agencies.

Scope of the PSC

Human Resource Management comprises the following components:

- 1) HR guiding principles to be adopted in managing people.
- 2) HR strategies defining the direction in which HRM intends to go
- 3) HR policies, which are the guidelines defining how these values, and principles should be applied
- 4) HR processes consisting of the formal procedures and methods used to put HR strategic plans and policies into effect
- 5) HR programmes, which enable HR strategies, policies and plans to be implemented

Should the PSC handle all five functions above? In the alternative, a Central Personnel Agency could handle the first four functions and leave the implementation to the PSC as recommended by the Administrative Reforms Committee, 1987. It recommended that the policy functions of public service management and administrative reforms be organized in a Ministry of Public Service to be established directly under the President.³⁵ In that event, the PSC will handle the following limited functions:

- Advise the Government on leadership structure for the government sector.
- Advise the Government on appropriate strategies, policies and practices in relation to the structure of the government sector workforce.
- Develop and advise the Government on service delivery strategies and models for the government sector through collaboration with the private business sector, the not-for-profit sector and the wider community.
- Set standards, subject to any legislative requirements, for the selection of persons for appointment as members of boards or committees of public authorities (including Government business enterprises)
- Executive functions of appointment etc.

Should recommendations be implemented by enacting a comprehensive enabling act governing the PSC that would replace various rules and regulations that currently govern the PSC?

³⁵ Sri Lanka. *Reform of the Personnel System. Report No. 4 of the Administrative Reforms Committee.* Sessional Paper No. VI-1987. p. 10

Summary of Issues, Suggestions and Recommendations

The PSC, as a key pillar of the National Integrity System, has a critical role in establishing and promoting transparent and accountable governance in the country. The Constitution under Articles 54-61 has assigned the Commission the role of selecting the most competent persons for the public service of the country through competitive examinations and tests in a fair and transparent manner. The PSC is also mandated to advise the Government in framing recruitment rules; promotion, transfer and disciplinary matters; employees' appeals and memorials; and other matters related to the public service. The degree to which the country will have a professional, honest, neutral and fair public service rests on the integrity, effectiveness and credibility of the PSC.

What proposals could minimise political interference and restore the independence of the PSC? Specify the qualifications and standards of competence of the members of the PSC.

It is also important that the appointment of the members of the PSC should be completely free of political sponsorship in order to eliminate possible political manipulation of members.

PSC is one amongst the few institutions which should function with both autonomy and freedom along with the country's higher judiciary and the Election Commission. To give effect to this the following recommendations are made:

1 Re-Constitution of the Commission: The appointment of the Chair and the Members of the Commission. The PSC's autonomy and independence lies in the selection process of its members. The PSC should be reconstituted immediately composed of a Chairperson and Members with impeccable professional excellence and undisputed integrity, efficiency and credibility.

It is incumbent to restore the appointing procedure in the 17th Amendment. The selection of Commissioners should be on the basis of objective criteria laid down by the Constitutional Council paving the way for a group of persons who could act with integrity and impartiality.

2 With respect to Heads of Departments, whilst it is admitted that the Cabinet of Ministers exercise the right of appointment and disciplinary control, it must do so after ascertaining the views of the Commission, which was the position under the 17th Amendment.

3 PPSC appointment should be depoliticised. Each Provincial Council to send a nominee to the centrally constituted PSC as in South Africa. Consequently, there will be

one PSC, independently constituted, for both the national and provincial public services. Provincial appeals can also be directed to the AAT. [There is one Supreme Court for the whole Island, central and provincial]

4 Should the PSC exercise the rights of a Central Personnel Agency? It means advisory, executive and policy making roles combined in one body. (HR planning, policy and strategy development; powers of appointment, transfer, promotion and disciplinary control of public officers)

5 Should all the policy matters be integrated under a Ministry of Public Services separated from the PSC?

6 Entrench constitutionally the vesting of the powers of appointment, transfer, promotion and disciplinary control of public officers in the PSC.

7 Constitutionally entrench the powers of delegation. Any delegation to other authorities should be specified by the PSC. [Can a delegatee sub-delegate?]

8 A Service Charter should spell out the services offered by the Public Service Commission with a clear identification of the divisions to be approached or where specific services can be obtained.

9 A Special Parliamentary Committee should be formed to review the annual performance of the PSC.

10 The PSC must be granted full autonomy in terms of administrative and financial matters.

11 PSC should also be made responsible for screening and appointing Chief Executive Officers of statutory boards and Ambassadors. (PSC Singapore considers the suitability of candidates for appointment as Chief Executive Officers of Statutory Boards)

12 Procedural Rules under article 61B?

13 Officers in middle and upper managerial levels in the public service should be given appropriate training in all aspects of disciplinary procedure. Such training courses could be conducted under the aegis of SLIDA.

14 Should the above recommendations be implemented by enacting a comprehensive enabling act governing the PSC that would replace various rules and regulations that currently govern the PSC?

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Annexe A: List of Persons Interviewed

01 September 2014	S. Ranugge, ED, TISL
09 September 2014	D. Amerasinghe, Advisor to the President
29 September 2014	Vidura Kariyawasam, Secretary PPSC, Southern Province
02 October 2014	Ms V. Rakapaksha, Secretary PPSC, Western Province, Ms Lalitha Perera, Assistant Secretary
03 October 2014	Thillai Nadarajah, Member PSC
20 October 2014	W.M.P.G.Wickramasinghe, Additional Secretary, Ministry of `Local Government and Provincial Councils

Annexe B: Focus group meeting on the PSC held on 10th November 2014 at the Organisation of Professional Associations

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