

PARLIAMENT WATCH – SRI LANKA*

2nd QUARTERLY REPORT (JULY-SEPTEMBER 2010)



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Sri Lankan parliament passed the 18th amendment to the constitution by 161 votes to 17 when it was debated in the house on 8th September 2010. The amendment which was presented as an 'urgent bill,' giving the general public only 72 hours to petition the Supreme Court for the purpose of arguing that the Bill has any infringement with the constitution, was approved by the court. Only the Democratic National Alliance (DNA) and Tamil National Alliance (TNA) voted against the bill¹.

The report reviews the business of parliament from July to September 2010. These are the months in which the government held discussions with opposition parties to discuss constitutional amendments while conducting back room negotiations with MPs to secure a two thirds majority in parliament.

Background and Objectives

This report focused on parliamentary activity from July, 04, 2010, to September, 24, 2010.

The objectives of SAHR and TISL's Parliament Watch are to examine the legislation which would affect human rights of citizens, transparency and accountability of government, the parliamentary system and responsibilities of the executive in ensuring the rule of law and human rights.

Highlights

Accountability and governance

The 18th amendment to the constitution

Sri Lanka has previous experience in ad hoc constitution making. Whenever a political party gets a two thirds majority it has carried out constitutional changes to suit their political agenda which in hindsight have been disastrous. Both 1972 (Colvin R de Silva's) and 1978 (JR Jayawardane's) constitutions and the amendments made to the latter, barring the 17th amendment, were carried out with limited opportunity given to the public to present oral and written submissions.

The 18th amendment followed the example of its predecessors although the United Peoples Freedom Alliance (UPFA) government assured the citizens of a more people friendly constitution during the general election campaign. After obtaining 144 seats in the April 8th General Election, six seats short of two thirds in the house, the government spent the coming months in discussions with various political parties about the constitutional amendments. Opposition political parties who attended these discussions told media the positive outcomes of these discussions.

However by the end of August the government managed to secure two thirds majority in parliament, not by the consent of the political parties through discussion but through back room negotiations to enlist the support of eight MPs of the Sri Lanka Muslim Congress (SLMC,) seven

¹ PASSED - Sri Lanka 18th Amendment to the Constitution, 9 September 2010.
<http://www.lankanewspapers.com/news/2010/9/60136.html>

MPs from the UNP and one MP from the Tamil National Alliance (TNA) for the amendments which were debated on 8th September 2010².

The main features of the 18th amendment are the removal of laws which restrict the number of terms of any President and replacing the ten-member Constitutional Council with a five-member Parliamentary Council and bringing the Independent Commissions under the authority of the President.

GL Peiris, Minister of External Affairs explained and justified the government's position on removing the restrictions on presidential term limits by equating it to bowing down to the will of the people. He argued that the 18th amendment strengthens the franchise of the people of Sri Lanka. Peiris went on to criticize the Constitutional Council (CC) established by the 17th amendment to appoint members to the independent commissions which controlled the appointments, promotions, transfers and termination of employment of all vital state institutions. The CC been defunct for several years since president kept delaying the appointment under various excuses, a move which has been constantly criticized by the opposition in parliament. These views were furthered by the government MPs and opposition MPs who crossed over.

With the UNP, the largest opposition political party, boycotting the debate and losing a valuable opportunity to voice its objectives, it was up to the Democratic National Alliance (DNA) and the Tamil National Alliance (TNA) to voice the opposition's objections. TNA's MP MA Sumanthiran and DNA's Anura Kumara Dissanayake were the two main speakers for the opposition. Both MPs were continuously interrupted by the government MPs.

Both MPs tried to point out that from the late 1980s there was a consensus among the citizens that the executive presidency is harmful for Sri Lankan democracy. They claimed that the 18th amendment is not only an affirmation of the all powerful post but also it takes JR's constitution one step further by removing the two term limit. While pointing out that the existence of an executive president who stands above the law, is a violation of democracy which assures equality before the law, they criticized presenting the bill as an 'urgent bill' to parliament. They added that the government did so in order to avoid a public discussion of the matter.

"The manner in which this Bill is rushed through is itself an indictment and an indication of the anxiety of the Government to have it passed with little or no public discussion on the matter," the TNA MP said³.

The TNA MP pointed out that the Sri Lanka Freedom Party (SLFP) the largest constituent party of the UPFA government, had opposed the executive presidency from the 80s. He added that even the cabinet of ministers did not have a copy of the amendment until the morning of the debate⁴.

² Sri Lanka parliament approves constitutional reforms with two-third majority.

<http://www.lankanewspapers.com/news/2010/9/60121.html>

³ Hansard, Volume 193 - No. 2, September, 8, 2010, pages 192-212.

<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2792>

⁴ Hansard, Volume 193 - No. 2, September, 8, 2010, pages 192-212.

<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2792>

Anura Kumara Disanayake of DNA claimed that with the removal of the term limit for presidency and end of the CC and the independent commissions, the entire state sector will be politicized to hitherto unseen levels. When an individual has the entire state machinery, including the police and the state officials who play a main role in the election process, under his control, he has a great advantage, an advantage which makes the electoral process a joke. This coupled with the recent encroachments on the independence of the judiciary will further weaken the people's belief in democracy.

“When people lose faith in the democratic process they resort to other means, do you want the future generations to rebel?”⁵

Rule of law

Independence of the Police and the Judiciary

The observance of the rule of law is fundamental to the maintenance of democratic order in a country. The concept embraces the punishing of the guilty to ensure good governance and fundamental rights that are guaranteed by the constitution promulgated in 1978.

The Police as the enforcement agency of the law at the ground level are sometimes equated to the law itself by ordinary citizens. This belief tends to extend itself to include the judiciary, the adjudicators of justice and the Parliament, as the central legislating body.

However incidents which involved both the police and judiciary have raised serious concerns regarding the independence of the police and the judiciary.

The behavior of the police, specially after the way it conducted itself when Minister Wimal Weerawansa obstructed the UN office in Colombo, became the subject of discussion in Parliament. Opposition MPs alleged that government politicians disregarded the law or attempted to interpret the law in a self serving manner in violation of the citizens' collective rights. United National Party (UNP) MP Dayasiri Jayasekara moved an adjournment motion on the issue.

He claimed that the non implementation of the 17th Amendment which established seven independent commissions to de-politicize the public service sector and to enhance governance has caused the public servants to play a subservient role to those wielding political power. The non functioning NPC has made the police accommodate every whim and fancy of government politicians.

Therefore the re - appointment of the NPC is of great importance not only for the restoration of dignity of the police service itself but also to restore the people's faith in the police force.

The National Police Commission (NPC) was given the powers of appointment, transfer and disciplinary control of police officers by the 17th amendment. Also by Article 155 G(2), it

⁵ Hansard, Volume 193 - No. 2, September, 8, 2010, pages 236-270.

<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2792>

established a mechanism of lodging public complaints against police officers and the NPC was directed to recommend appropriate action against police officers found culpable in the absence of the enactment of a specific law, whereby the NPC itself could have provided redress.

Opposition MPs drew attention to the growing hesitancy of the judiciary to stand up to state authority and protect the rights of not only the average citizen but also of parliamentarians as the Judicature (Amendment) Bill was presented to parliament to increase the maximum number of High Court Judges from 60 to 75 on August, 4, 2010.

UNP MP, Mangala Samaraweera proposed that the opposition should work towards impeaching judges who have prima facie compromised their independence. "I urge, especially my colleagues in the opposition, to seriously consider moving an impeachment motion against some of these errant judges so that members could be in a position to place before this House, the exact details of certain judges who have compromised their independence,"⁶

In response to the oppositions accusations External Affairs Minister GL Peiris stated that denigrating the judiciary will only help those who wish to harm Sri Lanka in different ways in the international arena.

"If we denigrate our judiciary, if we attack our judiciary, if we lower the judiciary of this country in the esteem of Sri Lanka's people, then, that is a course of action which has very significant international repercussions."⁷

Subsequent to the appointment of Sarath N Silva as Chief Justice, the judiciary had been systematically undermined externally by the presidents and internally by judicial officers themselves while the majority of the legal professionals, legal academics and the civil society remained silent. Apart from a few media institutions, others do their best to ignore the deterioration at Huftsdorp even when members of the judiciary are being accused of alleged bribery, corruption and serious charges of sexual abuse. In certain instances, such judicial officers have been allowed to exert influence on continuing police investigations.

Transparency

Right to Information Act

United National Party (UNP) deputy leader Karu Jayasuriya had to withdraw his Private Member's motion to present a Bill providing Freedom of Access to Official Information. On 23rd September Jayasuriya was requested by the government to withdraw this bill as the government itself planned to present such legislation. Chief Government Whip Dinesh Gunawardena told parliament that the government was drafting a bill and therefore it was not possible to entertain Jayasuriya's Bill.

⁶ Hansard, Volume 190- No 4, July, 2, 2010, pages 647-52. Access the document at <http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2660>

⁷ G.L. Peiris, page 531, Hansard Volume 192 - No. 3, August, 4, 2010.

“The government is working out a Bill. Therefore, we cannot accept the one presented by Mr. Jayasuriya. But he can give suggestions to be incorporated in the proposed Bill. We are ready to discuss the matter. Please withdraw this Bill. Then, we can talk. This is not a matter for confrontation,” he said.⁸

The right to information bill was approved by the cabinet way back in 2002 but that government was defeated before it could be brought before Parliament.

Human Rights

Language rights of estate sector workers

One of the main points of discussion at the Lessons Learnt and Reconciliation Commission (LLRC) is the importance of language rights. Although Tamil is spoken by almost 20% of the country’s population there is only a small number of state administrators who can speak Tamil. This has made many Tamils, not only in the North and the East but also in Central Sri Lanka feel left out, and many people cannot access the basic services by the government because of their lack of Sinhala skills.

Although the government claims that they are doing their best to appoint facilitators UNP MP R. Yogaraja raised parliament’s attention to the situation in the estate areas. To address this issue in the Estate sector around 500 facilitators were appointed for Plantation areas in order to assist the public, who lack knowledge in Sinhala language, in transacting business with government institutions in 2008/2009. But almost within one year half that number has left for greener pastures, but the government has not taken any action to replace them.

“You have already received about 12,000 applications for the said 212 posts. Originally it was decided to appoint 2500 such facilitators, but you appointed only 500 and out of that 212 have left. What are you going to do about this since people in these areas have rights too. Basic human rights,”⁹

Conviction of Sarath Fonseka and intimidating the opposition

On 13th August 2010 the first Court Martial found General (Ret.) Sarath Fonseka guilty and sentenced him for a dishonorable discharge from rank pending approval of the President as Commander-in-Chief. The president ratified this days later. In September the second Court Martial probing Hicorp procurement malpractices allegations against Fonseka found him guilty of the charges and sentenced him to three years imprisonment.

Since the arrest of Fonseka on 8th February 2010 his arrest and the courts martial which followed were widely discussed in parliament. The decision to initiate military proceedings and

⁸ Hansard, September, 23, 2010., volume 193-vol4., pages 557-560.

<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2819>

⁹ Hansard, September, 23, 2010, volume 193-4, pages 531-533.

<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2819>

the composition of the court martial judges were challenged several times, and the nomination of judges had to be changed several times.

Opposition leader Ranil Wickremesinghe claimed this conviction a grave violation of Fonseka's Human Rights and a breach of the Sri Lankan constitution and the International Covenant on Civil and political Rights (ICCPR) to which we are a party to.

“How can you now ask the Hon. Sarath Fonseka, whom they have declared a person no longer coming under the Military Law, be summoned before any other court martial or tribunal? These courts martial have violated Fonseka's rights as a MP.”¹⁰

Opposition MPs also brought parliament's attention to violations of Fundamental Rights assured by the constitution. DNA MP Anura Kumara Disanayake claimed that the government is slowly stripping the people of their right to association and join a political party, pointing at the arrests of opposition activists for pasting/printing posters and the attempts of the police to frame those who are arrested for other illegal activities.

“On one hand the government says that people in the North are free to engage in politics but when we opened an office in Vavuniya the OIC comes and intimidates our members. Two of our cadres in Jaffna were arrested for pasting posters against the 18th amendment. But since pasting posters is not illegal the police tried to frame them for burglary. This is the human rights situation in the country,”¹¹

Conclusion

The UPFA government managed to pass the 18th amendment which solidifies and extends the power of the Executive Presidency. Coming months will tell the impact of further politicizing of the state sector at a moment when an independent civil service and a judiciary has become a must to face the local economic challenges and governance and human rights issues raised by the world.

Recommendations

1. Assure more transparency regarding new legislations
2. Appoint a media resource person so that the media have better access to drafts and bills
3. Address the inadequacies of the committee system, considering that the two main committees, COPE and PAC, are headed by two government ministers which was a breach of parliamentary norms. Previously these were headed by members of the opposition.

¹⁰ Hansard, September, 23, 2010, volume 193-4, pages 574-576
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2819>

¹¹ Hansard, September, 23, 2010, volume 193-4, pages 576.
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2819>

4. Appoint a committee of advisors, consisting of senior government servants, to help each parliamentary committee. These advisors would provide valuable information and guide the committees to address the real issues.
5. Make sure that the recommendations of these advisors are used.

Business of parliament

Date	Business
July 5	Privilege: Precluding Participation at Parliament Sitting moved by Palitha Tewarapperuma
July 20	Question by Private Notice: Problems Faced by University Teachers moved by Anura Kumara Dissanayake Adjournment Motion: Non-publication of New Register of Electors Ravi Karunanayake)
August 4	Judicature (Amendment) Bill: Read a Second, and the Third time, and passed presented by Athauda Seneviratne - Minister of Justice
August 6	Adjournment Motion: Evacuation of People from Homes: Ravi Karunanayake)
August 17	Privilege: Assault by Police at time of Lodging Complaint DNA MP Vijitha Herath
September 7	Eighteenth Amendment to the Constitution Bill: Read the first time
September 8	Eighteenth Amendment To The Constitution Bill: Read a second and the third time, and passed as amended
September 23	Private Members' Bills: Freedom of Information – [Hon. Karu Jayasuriya] - Withdrawn Question for oral answer. Persons transacting with government institutions with lack of Sinhala knowledge : facilitators moved by UNP MP R. Yogarajan