

PARLIAMENT WATCH – SRI LANKA*

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September was a busy month for the Sri Lankan Parliament with the month's highlight being the enactment of the Eighteenth Amendment to the Constitution with a whopping two thirds majority in the House.

For weeks, the moral validity of the said amendment was debated with strong opposition being lodged by some for the proposed removal of the restriction on the number of terms one may service as Executive President. On September 8, Parliament passed the said amendment with 161 votes in favour with just 17 members voting against.

The amendment, presented as an 'urgent bill,' provided its detractors only 72 hours to oppose the bill's constitutionality by petitioning the Supreme Court, a constitutional provision that largely removes the possibility of a robust debate on any proposed legislations as an urgent bill and reduces the opportunity to study a bill in order to oppose the constitutionality of the same, if required.

At least one website recorded, referring to the backdrop in which the ruling was announced on the bill's constitutionality by the Supreme Court, that the draft bill set in circulation was not the bill presented to parliament.¹

A Constitution for all purposes is the collection of supreme laws in a country and sets out the legal framework of nation states. It sets out principles agreed for the furtherance of democratic governance and practices, space for a multiparty system, a healthy electoral process and an independent judiciary that people trust to have their basic freedoms guaranteed. Yet, Sri Lanka suffers from a recent history of coming up with ad hoc constitutional amendments that serves only the wishes of the party at the helm at the time of its introduction which have, on the long run, proved detrimental to national interest.

One of the main election promises of the United Peoples' Freedom Alliance (UPFA) government during the presidential and parliamentary elections was to create a more people friendly constitution. It was also promised to depoliticize the state machinery and limit the power of the executive presidency. After falling just short of 150 seats, the number required to muster two thirds in the house, the newly elected government spent the remaining months locked in discussions with various political parties on constitutional amendments.²

By the end of August the government managed to secure two thirds in parliament, not by winning the support and blessings of opposition political parties but through back door negotiations with several political parties. In the end, eight Members of Parliament (MPs) of the Sri Lanka Muslim Congress (SLMC,) seven MPs from the United National Party (UNP) and

¹ "Public Debate" on 18th Amendment was an exercise in shadow boxing by Dr. Nihal Jayawickrama. Accessed at http://transcurrents.com/tc/2010/09/public_debate_on_18th_amendmen.html

² Mahinda and Ranil engage in engagement of convenience by Namini Wijedasa. Accessed at http://transcurrents.com/tc/2010/07/mahinda_and_ranil_engage_in_en.html

one MP from the Tamil National Alliance (TNA) pledged their support for the amendments which were debated on September, 8, 2010.³

Prime Minister D. M. Jayaratne opening the debate for the government highlighted the main changes proposed to the 1978 Constitution. These include the amendments to Article 31(2) and provision (c) under Article 92 which restricts the number of terms of any President and the replacement of the ten-member Constitutional Council with a five-member Parliamentary Council thus bringing the Independent Commissions under the direct purview of the President.⁴

Prof. G. L. Peiris, Minister of External Affairs, justified to the House the government's decision to remove the restriction on the number of terms of the Executive President. His explanation was that the decision was in keeping with the people's aspirations to re-elect a popular president without limitations on the number of terms. Peiris argued that the Eighteenth Amendment sought to strengthen the franchise of the people of Sri Lanka. "What is wrong in allowing a person to be elected a third time if that is the declared wish of the sovereign people of this land?"⁵

Peiris also made critical remarks on the Constitutional Council (CC) established by the Seventeenth Amendment to the Constitution. Prof. Peiris' contention was that the composition of the Constitution Council was flawed as it comprised merely representatives of the political firmament and not distinguished people recognized for their service to the nation. The CC has been defunct for several years with the incumbent president postponing the appointment, a practice that had drawn constant criticism from the parliamentary opposition.⁶

In September, Leader of the Sri Lanka Muslim Congress (SLMC), Rauff Hakeem, who joined the government a few days earlier, was heard staunchly defending the Eighteenth Amendment. Hakeem argued that the said amendments were introduced to ensure that President Rajapaksa enjoys a stable and trouble-free second term and to put an end to the political polarization of the country. He added that the UPFA leadership has assured him that the independence of the judiciary will be guaranteed.⁷

³ 18th amendment passed in parliament, The Sunday Leader,
<http://www.thesundayleader.lk/2010/09/08/18th-amendment-passed/>

⁴ Hansard, Volume 193 - No. 2, September, 8, 2010, pages 185 -192.
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2792>

⁵ Hansard, Volume 193 - No. 2, September, 8, 2010, pages 280- 284.
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2792>

⁶ Hansard, Volume 193 - No. 2, September, 8, 2010, pages 280- 284.
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2792>

⁷ Hansard, Volume 193 - No. 2, September, 8, 2010, pages 277-280.
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2792>

The political insecurities of the main opposition, the UNP came to the fore at the same time. The UNP boycotted the debate on the important constitutional amendment amidst fears of several opposition crossovers to the government and tactically withdrew from the House. This left only the Democratic National Alliance (DNA) and the TNA to voice the opposition's objections in the absence of the country's main opposition party.

Among the key arguments brought against the proposed constitutional amendment was that the opportunity now provided for an already powerful executive president who is above the law to further concentrate power in both law and practice. The manner in which the bill was moved, as an "urgent bill", was also critiqued as a step that prevented a vibrant public discussion on the matter.

"The manner in which this Bill is rushed through is in 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."⁸

The TNA MP Sumanthiran pointed out that the Sri Lanka Freedom Party (SLFP), the largest constituent party of the UPFA government, had opposed the executive presidency since the 80's. He added that even the cabinet of ministers did not have a copy of the amendment until the morning of the debate hinting at the secrecy associated with the process of introducing a controversial bill.

"It is a fact that this House also did not have a copy of this Bill until I had raised a Point of Order yesterday. Mr. Speaker, you will recall that when I referred to Clause 20 and Clause 22, none of the Hon. Members of this House had a copy of the Bill in their hands and it was distributed to them only at that stage. Even the copy that was taken up at the Cabinet is different to the one that was referred to the Supreme Court."⁹

With government MPs chanting "kotiyek kotiyek", (tiger, tiger), it was evident that name calling, the tolerance of innuendos and acid comments have indeed become part of the Sri Lankan Parliament's sub culture.

The TNA MP also criticized the SLMC legislators who crossed over and MPs of the traditional left wing who have extended their support to the amendment. Despite their earlier objections to any amendment that may enhance the presidential powers, the Lanka Sama Samaja Party (LSSP), the Communist Party (CP) and the Democratic Left Front (DLF), these very same political parties, were heard in Parliament stating that although they were against the contents of the Eighteenth Amendment in principle, that they felt compelled to extend support due to the fear that the administration will be overthrown by unpatriotic forces.

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

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

⁹ Hansard, Volume 193 - No. 2, September, 8, 2010, pages 192-212.

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

“For a brief moment, we deluded ourselves into thinking that perhaps the leftists had some conscience left in them. It is perverse to say that you are opposed to this in principle but will vote for it! If not, will we see this sad spectacle of so many back-stabbings and defections from the UNP? Surely the consideration for this mass movement cannot be principles?” averred Sumanthiran.¹⁰

Anura Kumara Dissanayake of DNA claimed that with the removal of the restrictions on the number of terms on running for presidency and the other changes to the Constitution, this day signified the end of the independence of the Constitutional Council and the commissions that were set up with so much hope to depolarize the vital state sector.

When an individual has at his or her disposal the entire state machinery, including the police and the public service, such person is able to make democracy a redundancy and the electoral process one that draws public wrath and ridicule. When all of the above is linked to possible attempts to dilute the independence of the judiciary, public trust in democracy would be further weakened.

“When people lose faith in the democratic process they resort to other means, do you want the future generations to rebel?”¹¹

He pointed out that in 1978 President J R Jayawardena introduced a similar constitution, a constitution he promised will stabilize the country politically and propel the country towards economic development. Nevertheless both the 1972 and 1978 Constitutions are considered anti democratic and harmful to the spirit of democracy, in hindsight. And those who supported such amendments are not favourably viewed by the people and are considered authoritarian, noted MP Sumanthiran.

“None in our party has bowed down to any pressure. It is only the Democratic National Alliance and the Tamil National Alliance that can proudly say that in this House today. When today's history is written, at least, there will be a record of the fact that the Tamil National Alliance did not betray this country for parochial, short-term considerations for our own community.”¹²

Since the introduction of the 1978 Constitution, the public perception on the said constitution in furthering democracy has been significantly low. It had always been considered by most as a constitution De Gaullist in design and authoritarian when put to practice.

¹⁰ Hansard, Volume 193 - No. 2, September, 8, 2010, pages 192-212.
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2792>

¹¹ Hansard, Volume 193 - No. 2, September, 8, 2010, pages 236-270.
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2792>

¹² Hansard, Volume 193 - No. 2, September, 8, 2010, pages 192-212.
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2792>

The exercise of powers conferred upon the Chief Executive had been oft criticized as a devaluation of the spirit of democracy in which constitutions should be promulgated.

Analysts believe that the Eighteenth Amendment is not only an affirmation of the 1978 Constitution that sought to concentrate power on the Executive President but in fact, is a move to further concentrate power on the same office. The full impact of this constitutional amendment will be experienced only in the coming years testing the strength of the pillars of our democracy. But the question that begs an answer is whether our institutions have a strong enough foundation to withstand possible pressures now that the Chief Executive's powers have been further amplified through the Eighteenth Amendment to the Constitution.