

PARLIAMENT WATCH – SRI LANKA*

AUGUST 2010



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In post 1978, mustering the two thirds majority in the Sri Lankan Parliament was achieved only at rare occasions. There was only one political leader, Sri Lanka's first Executive President J. R. Jayawardene who received a two thirds majority in the House and therefore enjoyed unfettered legislative power owing to the majority his administration enjoyed since the introduction of the 1978 Constitution.

In the more recent history, the Seventeenth Amendment to the Constitution also received the support of a full house, with a rare demonstration across the divide by the legislators to enact legislation that envisioned a mechanism that sought to depoliticize the public service.

Political changes

In August 2010, some serious political changes took place impacting on the country's legal frameworks with far reaching socio-political implications. Chief among them was the spade work done to replace the Seventeenth Amendment with an Eighteenth that also proposed sweeping changes to the electoral system.

The incumbency requirement to amend the Constitution however was curtailed by the lack of a few votes. However, with eight Sri Lankan Muslim Congress (SLMC) parliamentarians pledging allegiance to President Mahinda Rajapaksa, the goal of mustering 150 votes in Parliament appeared almost possible.

On August 27, 2010 the said SLMC members expressed solidarity with the incumbent administration based on a party decision to support the proposed constitutional reforms. According to reports, the reforms are to be limited to the executive presidency and the Seventeenth Amendment to the Constitution.¹

The reforms that received Cabinet sanction on August 30, 2010 proposed the removal of the constitutional restriction placed on any President from contesting for a third term. It is documented political history that President J. R. Jayawardene wished to continue for a third term but the constitutional provisions prevented him from seeking an extension, that resulted in the then ruling party, the United National Party (UNP) to successfully field the then Prime Minister Ranasinghe Premadasa as the presidential candidate in 1989.

However, the political landscape has altered significantly in the recent years and President Mahinda Rajapakse, owing to multiple defections by UNP legislators today finds himself in an enviously comfortable position with a full majority in the Legislature. It appears that the good practice of limiting presidency to a maximum of two terms by many of the countries in the world is lost upon the Sri Lankan political decision makers.

As such, in addition to being able to contest for a third time, as per the Eighteenth Amendment, the President is able to call for a Presidential Election after the lapse of four years. The previous

¹President Sri Lanka lifts term limit on presidency. http://www.china.org.cn/world/2010-09/09/content_20894525.htm

constitutional provisions provided for the announcement of such an election only during the first term.

The reforms have effectively rendered the Seventeenth Amendment null and void for most purposes and some of the most progressive provisions contained in the said amendment are have been excluded in the Eighteenth Amendment, a fact that continues to draw serious criticism from political analysts.

Constitutional Council

Particularly alarming is the fact that the new reforms have effectively replaced the present 10 member Constitutional Council (CC) with a five-member committee comprising of the Speaker, the Prime Minister and the Leader of the Opposition as ex officio members.

The original provision under the Seventeenth Amendment empowered the Constitutional Council with the required constitutional authority to appoint members to the seven independent commissions. The new committee will only be consulted by the President who enjoys the power of appointing members to the independent commissions which allows direct presidential intervention in making the top public service appointments.

Meanwhile, the Inspector General of Police (IGP) will have the power to appoint and transfer personnel in the national police service, while the Cabinet of ministers will be vested with powers to appoint, transfer, promote, take disciplinary action and remove from office the heads of the government departments, which is a clear indication of sufficient scope for politicization.

The appointment of the IGP by the President also signifies that such an IGP could be placed under immense political influence denying the opportunity to make independent decisions in relation to the police force.

This political dependence on the part of the IGP and the clear opportunity to identify the police force gave rise to serious concerns among opposition legislators in August as they debated what they termed the unhealthy aspects of the Eighteenth Amendment.

There were mounted attacks on the police service especially with regard to the lack of progress made in the investigations on the attack on Siyatha TV on July 30, 2010 and the police inaction against Deputy Minister Mervyn Silva who tied a Samurdhi official to a tree while a senior police official looked on. The opposition has been arguing the point that anarchy was setting in as every attempt was made by the incumbency to consolidate political power in a way that threatened to affect the rule of law in the country.

Police service

SLMC Leader Rauff Hakeem criticized the government and the police for the little progress made on investigations carried out to look into attacks made against media institutions, "This takes

place within yards from the "Temple Trees", His Excellency the President's residence, and strangely the culprits are not yet found and the police today say, "We are still investigating".²

The opposition Members of Parliament (MPs) claim that the present IGP, who was appointed and had received a one -year service extension by the President has been rendered ineffective by the powerful Defense Secretary Gotabaya Rajapaksa. The incident in front of the UN head quarters in July where the Defense Secretary reportedly threatened to remove him if he were to interfere with a demonstration by a constituent party of the government, the IGP's attempts to force charges against a Ruhuna University student, Nishantha Basnayake, despite evidence clearly indicating that the police was indeed responsible for the death that he is accused of, and the fabrication of evidence against Democratic National Party (DNA) MPs who visited the Galle police station all point to the politicization of a police force which appear to be mindlessly following the government's orders.

"The IGP makes statements as per the wishes of the Defense Secretary. The Secretary is taking decisions that should be taken by the IGP. So what's there to talk about the independence of lower ranking officers? Until the independent police commission is re-established, there will be no independence in the police service," charged UNP MP Dayasiri Jayasekara during a parliament debate.³

According to the new amendment, all the powers vested in the Police Commission by the Seventeenth Amendment were transferred to the IGP who is to be a presidential appointee. This provision therefore has nullified the independence of the police service envisaged under the previous law and creates an immediate opening for political manoeuvrings.

The National Police Commission (NPC) established under the Seventeenth Amendment enjoyed powers of appointment, transfer and the exercising of disciplinary control over police personnel. Also by virtue of Article 155 G (2), a mechanism was created for the facilitation of public complaints against police personnel. It was the NPC that was authorized to direct or to recommend appropriate action against police officers found culpable in the absence of the enactment of a specific law and thereby including a redress mechanism.

Judges increased

The judiciary functions not only as the interpreter of the Constitution but also as an intermediary in disputes between organs of the State and is called upon to adjudicate upon causes of action relating to the rights of citizens guaranteed by the Constitution.

The Opposition drew attention to the growing hesitancy of the judiciary to resist State authority and its perceived failure to protect the rights of not only the average citizen but also

² Rauff Hakeem, pages 339-40 Hansard Volume 192 - No. August, 3, 2010
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2725>

³ Dayasiri Jayasekara, pages 371-2, Hansard Volume 192 - No. August, 3, 2010
<http://www.parliament.lk/news/ViewPublication.do?published=Y&documentID=PUB2725>

of parliamentarians when the Judicature (Amendment) Bill was presented to Parliament on August 4, 2010 to increase the maximum number of High Court Judges from 60 to 75.

Speaking during the said debate, Opposition Leader Ranil Wickremesinghe referred to the infamous incident of a Samurdhi official being tied to a tree by Deputy Minister of Highways, Mervyn Silva on the officer's alleged failure to attend a dengue prevention programme. The said programme was reportedly organized by the Minister in his electorate.

Wickremesinghe criticized both the Police and the Government for the non-implementation of the existing laws which are there to ensure the rights of the citizens.

"You say that we need to increase the high court judges to 75. But does the government care about the law? We saw what a government minister did to a Samurdhi officer who could not attend a dengue eradication programme because his child was sick. Freedom from torture is guaranteed by our Constitution and Section 186 of the Penal Code deals with threat of injury to a public servant. Why aren't the existing laws used against wrongdoers?" demanded the Opposition Leader.⁴

In response to the oppositions' allegations with regard to tampering with the law and its non-implementation, External Affairs Minister, G. L. Peiris stated that 50% of judges were his students and of high integrity. He insisted it was "profoundly unsatisfactory to see them attacked" by the Opposition. Peiris added that denigrating the judiciary would only help those who wished to harm Sri Lanka in different ways at the international level.

"It is a matter of deep regret that in the recent past there have been vitriolic attacks on judges on the floor of Parliament. If we denigrate our judiciary, if we attack our judiciary, if we lower the standing of the judiciary of this country, it will reduce the esteem of Sri Lanka's people. It is also a course of action which has very significant international repercussions."⁵

"I believe most people would agree that there is no logical reason to exclude confessions which are true and which are voluntary, simply because those confessions were made to a police officer," he said noting that voluntary and truthful confessions were admissible in court.⁶

He also noted that confessions formed part of the evidence in the case involving journalist J. S. Tissainayagam.

⁴ Ranil Wickremesinghe, page 527, Hansard Volume 192 - No. 3, August, 4, 2010.

⁵ G.L. Peiris, page 531, Hansard Volume 192 - No. 3, August, 4, 2010.

⁶ G.L. Peiris, page 532, **Hansard Volume 192 - No. 3, August, 4, 2010.**

Independence of judiciary

Countering Peiris' logic, Tamil National Alliance (TNA) MP M.A Sumanthiran pointed out that the best way that external forces can be prevented from interfering with the internal systems of this country was by setting the flawed system to right. "Persons earn respect by their conduct; it cannot just be artificially conferred on them. The society judges the character, the impartiality and the integrity of our judges by the way they go about their business, the way they act, hear cases and so on."⁷

The debates in August evolved strongly around the replacement of the Seventeenth Amendment to the Constitution with the Eighteenth which is largely seen as a derogation of the legislative process.

Despite the existing consensus that the 1978 Constitution merits an overhaul, also included as an election pledge in the *Mahinda Chinthana*, however the Eighteenth Amendment is viewed by most as one with negative impact and one that would threaten the independent institutions.

With President Rajapakse taking over the power to appoint members to the 'independent Commissions' and the Department of the Attorney General being brought directly under his authority, the independence of democratic institutions is being questioned by many. The tying up of a Samurधि officer by a Minister and seeking to deliver 'Instant justice' according to his thinking is perceived by some as a manifestation of the growing power of the politician at the risk of citizens' rights.

Despite the ongoing debate, albeit a small one, about the country's flagging record in democracy and governance, the incumbency appears to have secured public truth in its attempts to concentrate power through legislation and in practice.

Right to information (RTI)

As the House discussed legislation that sought to concentrate power on the presidency, The Island newspaper on August 23, 2010 reported that the UNP Deputy Leader Karu Jayasuriya was giving notice of a Private Member's Motion with regard to a Bill seeking to provide Freedom of Access to Official Information. It was also reported that the said bill was sent for gazetting and it was to be included in the Order Book by early November.⁸

This Bill, formally titled as "An act to provide for freedom of access to official information" deals with specifies instances where access may be denied and calls for the establishment of the Freedom of Information Commission. The right to information bill was approved by the Cabinet way back in 2002 but the then government was defeated prior to the bill being presented to Parliament.

⁷ M.A. Sumanthiran, pages 535-36, Hansard Volume 192 - No. 3, August, 4, 2010

⁸ Freedom of Information Bill soon in order book. <http://www.tsrilanka.org/?p=5905>

However, Sri Lanka's promotion of the right to information barring the 2002 attempt is far from satisfactory. There has been much lip service and some personal efforts but none that had worked in creating the necessarily momentum for promote a strong RTI law In Sri Lanka.

The RTI act is seen as a measure to minimize corruption and promote good governance. The Indian adaptation of the RTI has been hailed as an example for the developing nations as the law's implementation and is usefulness receiving much praise.

Since its introduction in 2005, the Indian public officials are unable to arbitrarily deny information except classified information. This has also resulted in the mobilization of the Indian public with the average citizen being empowered by the available information to an extent that aids fighting for their collective and individual rights.

While the government obtained a two thirds majority in Parliament with the pledging of support by the SLMC and some additional defections by main opposition legislators, it was ironic that the government proposed the introduction of a constitutional amendment aimed at discarding Article 32 (2) of the 1978 Constitution which deals with the limiting of a president's term and the alteration of the composition of the Constitutional Council CC at the same time when the main opposition was tabling a bill demanding right to information.

The fate of any right to information law is anyone's guess. At present, there is no need for a strong and confident Government to introduce legislation that would enhance democracy and pluralism. It is presumed by analysts that any RTI bill would suffer the same fate of the Protection of Victims and Witnesses Bill which is currently lying somewhere in Parliament without seeing the light of day.