
APPEAL TO FELLOW CITIZENS

Civil Rights Movement

We have witnessed thirty years of armed conflict and the erosion of democratic values entrenched in the first post-independence Constitution. The end of the armed conflict brought with it high expectations of a just peace, strengthened democracy and development. The proposed changes to the Constitution do not merely disappoint these expectations, but in themselves give rise to grave apprehensions.

Major changes affecting the scope of the President's powers are being rushed through as "urgent in the national interest". They were approved at a special meeting of the Cabinet on Monday 30th August, and referred immediately to the Supreme Court. We understand that the final form of the Bill was made available to concerned citizen groups and legal counsel only halfway through the Attorney-General's submissions to the Supreme Court at the hearing on 31 August. We see no justification for having certified the Bill as "urgent in the national interest". Such certification gives the Supreme Court very little time to reach its determination, and restricts the opportunity for members of the public to intervene and make representations at the hearing.

"What is contemplated is a *judicial decision* as to whether a provision of a Bill is inconsistent with the Constitution. A judicial decision means that the court must judge conscientiously and as correctly as it possibly can. To do this the court must first inform itself regarding the arguments for and against, read the authorities cited, and make up its mind. The human mind is not an automaton which can be called upon to make a decision in a limited time without regard to arguments, reasons or precedents. A judge should be convinced of the correctness of his decision before he decides. If he decides with a mental reservation that he has not had time to explore all aspects of a question, he should not decide, as he may decide wrongly, and thus the citizens may be deprived of the benefit of an important safeguard." (*S. Nadesan QC address to the Constitutional Court, 1972*)

The Bill is reportedly to be debated to a finish on Wednesday 8 September. All this within the space of ten days! Political parties, civil society groups, concerned citizens and the media have had no adequate time to discuss the provisions of the Bill or express views on its content and implications for

future governance. To engage in informed public discussion is surely a basic right of the people. Its denial indicates a cynical disregard of citizens' rights and the public interest.

Main Objections to the Bill

- (a) It seeks to eliminate the limitation placed by the Constitution on the Executive President's term of office; and
- (b) It dilutes, to the extent of negating, the effect of the Constitutional Council responsible for nominating and/or approving suitable candidates to the Supreme Court, the Court of Appeal and the independent Election, Public Service, Police, Judicial Services and Human Rights Commissions.

The 1978 Constitution confers *near absolute* powers on the executive presidency, coupled with immunity from legal action. This has contributed to an erosion of the key institutions necessary for good governance. This is evidenced by the reality of political interference with law enforcement agencies such as the police as well as the public service and the conduct of elections to legislative bodies. For these reasons abolishing the Executive Presidential system was incorporated in election manifestos of many parties over the years, including in the Mahinda Chinthanaya of 2005.

Democratic governance requires adequate checks on state power. The only existing checks on the Executive President of Sri Lanka are (a) the limitation of the presidency to two terms and (b) the Constitutional Council (as created by the Seventeenth Amendment to the Constitution). We are of the opinion, that the presidential immunity was conferred in view of that term limit. If the term limit is to go, then the immunity conferred on the President must also be removed. For the knowledge that at a definite time within the foreseeable future the President will once again be legally accountable for acts committed whilst in office is a powerful deterrent against misuse of power.

The reality of abuse of executive powers that the country witnessed in these key areas was addressed to some extent by the Seventeenth Amendment which provided for independent commissions. While recognizing the weaknesses in the Seventeenth Amendment with regard to

the method of appointment of the Constitutional Council, we must appreciate that it was for the purpose of introducing mechanisms to prevent abuse of Presidential powers and minimize political interference with key institutions. The proposed amendment once again gives the President untrammelled power to make direct appointments to bodies that should, *in the interests of the people*, be independent of political pressure. If this becomes law, a President will only have to obtain “the observations” of others; and will not be bound to follow those observations. We unreservedly oppose this move.

The President will be required to attend Parliament at regular intervals, but this cannot be considered an arrangement that will make him accountable to Parliament in the manner of a Prime Minister.

A check on the executive is the only way to protect citizens’ rights. Hence the importance of fundamental rights challenging state action, and the limited term of the presidency. That a person may be a Prime Minister or a Minister or an MP or Leader of the Opposition any number of times is irrelevant because they do not exercise the same near-absolute powers. More important, they do not have the immunity from legal action that the Presidency enjoys.

Current arguments on the need to re-elect a President for unlimited terms personalize the issue and focus on the importance of permitting *President Rajapaksa* to be a Presidential candidate for many terms given his landslide electoral success. However, Constitutional amendments

will incorporate conditions that will apply irrespective of personal considerations, to any successor to this office.

The proposed amendment will further entrench the worst features of the Presidential system of government under the present Constitution. The government did not receive a two thirds majority with a mandate from the people to introduce these major changes to our political life.

Development is about the rights and wellbeing of the people. To deny to the people accountable governance and democratic space is to make a mockery of the development process, especially in the context of a post-conflict society.

OUR APPEAL

We seek the support of all Sri Lankans, in calling upon Members of Parliament to exercise their right to vote against the Bill;

We appeal to fellow citizens and civic-minded organisations to prevail on the government to postpone the enactment of the Amendment until the public has time to be properly informed, to debate, and to respond to its implications;

We appeal to the President to even at this stage halt the process that has been set in motion, and to revert instead to the long-hoped-for and many-times-promised abolition of the Executive Presidency.

Suriya Wickremasinghe, Civil Rights Movement

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