

18th Amendment and the 8th Parliament

During the late 70s and early 80s Mr. R. Premadasa was the Prime Minister while Messrs A. Amirthalingam and M. A. Bakeer Markar were the Leader of the Opposition and Speaker of the Parliament respectively. Could the government or its supporters kindly explain if the proposed 18th amendment to the constitution had been implemented by that time, which ethnic groups should have been represented by the persons nominated to the Parliamentary Council (PC) by the Prime Minister and Opposition Leader? Considering the ethnic ratio of the country, what percentage of population would have been represented by those 2 members nominated to the 5 member PC? Because certain sources have indicated that the two nominated members of the PC have to be elected Members of the Parliament, it would be an interesting exercise to identify the names of the MPs who could have been nominated to the hypothetical PC of the 8th Parliament. While we have had different kinds of rulers, it should also be kept in mind that the PC of the 8th Parliament would have functioned when Mr. J. R. Jayewardene was the President.

One can argue that the PC of the 18th amendment is not as powerful nor as significant as the Constitutional Council stipulated in the 17th amendment, but we should not be blind to the fact that Mr. Mahinda Rajapaksa is not going to be the last President of this country and even Mr. Rajapaksa, who defeated the LTTE, lacks courage to disregard the imperialist tradition created with the Colebrook constitution in 1833, when the practise of guaranteeing seats in legislative assemblies for non Sinhala members began in order to deprive the Sinhalese of their due place in the country.

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Transformation of the Police Department

Given this context the Police Department may undergo an ominous transformation. Up to now it has always been regarded as a civilian department. All personnel matters were handled under the direction of a civilian PSC or, later, Police Commission. Appointments and promotions to senior positions, other than the IGP, were the direct responsibility of these Commissions. The IGP played only an advisory role. In the future, the situation could change with the IGP controlling all appointments and promotions. Though nominally all police officers are deemed to be public officers, they will function under a military style command structure with the IGP at the apex. Appeals will lie to the PSC and AAT, but the feature of command control will be more pronounced.

Conclusion

There are three features in the 18A which taken in isolation are innocuous, but when taken together cause concern. The first is the natural desire of any politician to perpetuate his power (the present UNP leader is also a case in point). For this purpose the restriction on the number of terms any person can be President is to be removed.

The second is the ability of the EC to conduct free and fair elections. This will depend on the integrity of the three Commissioners. Very probably initially three good choices will be made in consultation with the Council. But the crunch time will be about five years hence when the first set of Commissioners will go out of office and the parliamentary and presidential elections will begin to show on the horizon. Who will be the Commissioners at that stage? Will they be persons of integrity or malleable persons who could be influenced? We must not forget the perennial wisdom handed down to us by Charles Montesquieu that every person vested with power tends to abuse it.

The police department is getting ominously into a semi-military command structure. The person at the top is nominally powerful but lacks security of tenure. And, we know from the experiences of the Referendum of 1982, and the Wayamba PC election that the fairness of an election process is very much dependent on the impartiality and integrity of the police service. The EC can do very little without the unstinted cooperation of the police to ensure a free and fair election.

Taking all these features together the unmistakable trend is that we are drifting towards unfettered presidential dirigisme. The present writer has consistently maintained that the presidential system linked to a robust Parliament is the best for the country, but the checks and balances are very necessary. These checks and balances are not there in the draft 18A.

Our legislators have only a few hours left to discern and decide whether to vote for or against the fateful 18th amendment to the Constitution.

I humbly make this final appeal to all our legislators as a simple citizen of this country who is loyal to it and to its people. I have no axe to grind, no profit to gain, no privilege to acquire except the welfare of the majority women and men of this country who were battered by thirty years of war and are now disillusioned of any worthwhile peace dividends. I have no other motivation.

First I appeal to the Sri Lanka Freedom Party members of the legislature. Please remember your great Founder, Mr S.W.R.D. Bandaranaike, the gentleman and patriot with a broad global vision who brought the common touch to politics in Sri Lanka. What would he think of this 18-A? Can you sincerely say in your hearts he would approve it? Forget the rest of the family, but this man

deserves your respect and your loyalty. Even if you are so small minded that you do not see the welfare of the people as top priority at least be loyal to the erstwhile Party Leader who brought you in to politics and power.

Secondly I appeal to the members of the United National Party. Please remember the Father of the Nation,

best of your Grand Old Party and defeat the 18-A.

Thirdly I appeal to all the Tamil, Muslim and Leftist Parties. After thirty years of suffering do you wish for your people to live in a Sri Lanka that is more just and more peaceful? That will offer equal opportunities to all and hope for the future? Then please

patriotic why a Ministerial cabinet post was a sine qua non to support the government? Whatever the public may say you know in your hearts who you are. But at this point in the history of our country, please give your conscience and your sense of loyalty to the people who voted for you, a chance. Show you have some

semblance of vertebrae and independence and vote accordingly.

Finally I want to gratefully remember the JVP and the DNA.

They have consistently opposed the 18-A for they were always against the Executive Presidency and called for its abolition. They are transparent, reliable and brave. The people will not forget them and their stance. And one day history will vindicate the present persecution and vilification they are undergoing fearlessly for a truly just and democratic country.

Fr J.C. Pieris
Galle

A Final Appeal to Our Legislators

affectionately called DS and his gentle, kind hearted son, Dudley Senanayake. Remember the other leaders of your Party, like the Father of Free education, who were gentlemen of integrity and political giants. Do you think they would ever vote for 18-A? I am thinking of your pre-'77 Party. Not the Party that hung this Albatross of a constitution around our necks. Your present day Party and its antics are the laughing stock of the world; forget it and be true to the

avoid cheap selfish politics and let your conscience and high principles guide your decisions.

Finally I appeal to all the turncoats from various parties who are supporting the government. Some of you must have sincerely wanted to support a government that was determined to bring the war to a conclusion and save the country. But some are disgustingly selfish opportunists. What I cannot understand is that if your motives were so selfless and



Controversy over the 18th amendment

President Mahinda Rajapaksa (MR) and his government are going all out to introduce the 18th amendment to the constitution of Sri Lanka, which provides, inter-alia, for the removal of sub-clause 31 (2) of the constitution, which, in turn, stipulates that 'no person who has been twice elected to the office of President by the people shall be qualified thereafter to be elected to such office by the people', and the opposition (mainly the United National Party and the Janatha Vimukthi Peramuna) is hell-bent on scuttling the intention of the government. Their main argument is that the proposed amendment is being introduced in order to perpetuate the presidency of MR. The contention of the government is that the said sub-clause inhibits the right of the people to re-elect a person if they so wish if that person has already served two terms as president.

One can very well understand the concerns of the opposition. By their objections to the proposed amendment they display their impotence. They have already conceded victory to MR in any future presidential elections because they very well know that they cannot even think of a leader who could successfully stand up to challenge MR. Surely the leader of the opposition would never object to the amendment if he is confident of winning a presidential election ever in his lifetime. That was why they propped up Mr. Sarath Fonseka at the last presidential elections against MR and what happened is history.

It can be argued that the proposed amendment would neither provide for the extension of the term of the incumbent president nor would enable MR to become president automatically for a third term. If he wants to become the president for a subsequent term he will have to contest and the people of this country would decide whether to elect him as president or not. Similarly even CBK (the only ex-president among the living) could contest for the presidency again and again if she wants and if the people so wish she could be elected and we can once again look forward to bask in those halcyon days which we experienced during her past presidency!

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Reconsider decision to introduce 18th Amendment to the Constitution

We, the undersigned academics attached to different universities in Sri Lanka, call upon the government to re-consider the proposed 18th Amendment to the Constitution for the reasons set out below.

Constitutional reforms, like elections, go to the heart of what it means to be a democracy in the modern-day world. Any changes that are introduced to a country's constitution should be undertaken after due deliberation and consultation while having at its centre, the will of the People. In a pluralistic society such as Sri Lanka, ascertaining the will of the People can be a time-consuming and complex exercise. While the will of the People must be given due consideration, the essential features of a democracy, such as the rule of law, accountability of the government and transparency must be preserved and promoted through any constitutional reform.

By choosing to amend the constitution through an urgent Bill, the entire process of reform has been expedited, if not short-circuited, and no room has been left for any kind of

public debate, let alone public consultation. Under a Constitution that explicitly recognises the "Sovereignty of the People," that process is not acceptable, especially when no convincing reasons have been given as to the need to expedite this process. Indeed, the most distressing aspect to this whole process is the lack of interest in government ranks on the need to raise awareness, let alone build consensus, among the general public on the need for such urgent reform.

The substance of the proposed reforms is also problematic. History provides many examples of the need to limit not only power, but also access to power. The limit to the number of terms that the head of the executive can hold has emerged as a best practice, through those bitter lessons. The introduction of the Parliamentary Council instead of the Constitutional Council is not satisfactory as it contains no clauses to promote accountability on the part of the President in whose hands come to be concentrated the power to make several key appointments that promote governance, accountability and due process of law.

This is the first attempt at constitutional reform in the post-war era of our country. We hope that it would therefore signal a break from the constitutional reform experiences of the past, where powerful executive Presidents "reformed" the constitution to serve their personal political agendas.

We therefore call upon the government to re-consider their decision to introduce constitutional reforms in such a hasty and ad-hoc manner and to open avenues for greater participation and consultation before setting in motion a process that is of utmost importance to the political culture of Sri Lanka.

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Why 18-A must be opposed

The people of Sri Lanka are about to undergo the test of their lives. The 18th amendment to the country's constitution has been drafted and will soon come before Parliament, which if passed with a 2/3 majority will become law.

If the 18th amendment is passed on Wednesday Sri Lanka will go down in the annals of history as the country which has blindly bestowed unprecedented powers on one single person to wield the reins according to his/her whims and fancies.

This "horrendous act" to put it in the words of Chandrika Bandaranaike Kumaratunge, has for the past few weeks been hotly debated in the media and elsewhere, with many of the so called the people's representatives giving various arguments to justify or oppose it. Listening to these media debates one gets the impression that this vital topic, the 18th Amendment which will determine the direction in which future

Heads of State and governance will drift seems to be treated as a school debate where arguments for and against are presented, for the sake of winning the debate without considering the seriousness of the possible outcomes of such changes.

Before I go further, it would be relevant to understand what the priorities of a politician should be and compare it with what we see today in our own local set up. We have over and over again seen in the media politicians calling themselves "people's representatives" who are elected to Parliament by the people to take decisions on their behalf in matters that affect their wellbeing. Very true, but it might be worth taking the time to ponder whether these "people's representatives" are living up to the expectations of the people in terms of keeping to the mandate that was promised in their election manifestoes, which the people endorsed and sent them to Parliament to implement.

From what we see happening today it is abundantly clear that once they are comfortably ensconced in their parliamentary/ministerial seats the lofty ideals they stood for during their election campaign vapourises into thin air and their priorities change from implementing the people's mandate, to doing whatever it takes to ensure their own political survival. The conduct of both government and opposition parliamentarians in relation to the promise to abolish the Executive Presidency is a glaring example of the callousness and insincerity of those who have taken on the mantle of people's representative. To say the least it is a blatant insult to the intelligence of the people who voted for them.

Sri Lankan politicians are also bestowed with the unique distinction of vixing eloquent on democracy, which they claim to be the cornerstone of all their dealings. The arrest and detention of General Sarath

Fonseka without a charge sheet in Feb 2010 and the manner in which Mervyn Silva was exonerated on the basis that there was no complaint against him in spite of visual evidence, speak volumes on how democracy is practiced in Sri Lanka.

The argument that the current powers of the Executive President enabled President Mahinda Rajapaksa to implement the war effort expeditiously, has been brought up by government politicians as a justification to further enhance these powers under the 18th Amendment. The opposition parliamentarians who have declared that they will support the Bill have shown the accelerated Mahaweli project which was implemented using the presidential powers as an example to illustrate the virtues of the having such unlimited power. Indeed, there is some legitimacy to these arguments, in relation to matters which benefit the nation at large, However, the adverse

effects that can ensue when one single individual is vested with such unprecedented powers in being able to make appointments to the public service including the elections department, the judiciary, etc. seem to have eluded the vision of these great visionaries of development. They seem to have overlooked that fact that not only President Mahinda Rajapaksa but all future presidents will enjoy these unlimited powers.

It is said that "Power corrupts. Absolute power corrupts absolutely." It is therefore before those who raise their hands tomorrow to weigh the merits and demerits of the 18th Amendment in the interest of the nation and exercise their vote judiciously. As for the people it is time they woke up and decided to be more vigilant about the representatives they elect to parliament. Finally it boils down to the fact of whether you want to see or not to see.

Shiranee Dissanayake