

MEETING DEMANDS OF THE PRO-DEMOCRATIC FORCES AND 21ST AMENDMENT

The move to amend the Constitution was a decision taken recently. The new Justice Minister, Prison and Constitutional Reforms President's Counsel Dr. Wijeyadasa Rajapakse said that the 21st Amendment seeks to remove most of the clauses in the 20th Amendment and re-introduced some provisions of the 19th Amendment. It will also strengthen the powers of the existing commissions and make them independent as well. The 21st Amendment is expected to annul the 20A which gave almost unlimited powers to the Executive President after abolishing the 19th Amendment which had made Parliament more powerful over the President. The major Constitutional Reform System Change - is the top most demand made by the protesting youths, University students, professionals and various other groups who continue their protest campaign outside the Presidential Secretariat.

The erosion of Constitutional checks and balances will also adversely impact on the efficient, effective, and transparent use of public funds. However, the 'system change' should take place without violating the Constitution. The principle change brought about by the 20A was to remove the check and balances on the Executive Presidency. In particular, it abolishes the binding limitations on Presidential powers in relation to key appointments to Independent Institutions through the pluralistic and deliberative process of the Parliamentary Council.

19th A in outline

It is pertinent here to outline many salient provisions of the 19th Amendment, before making our proposals for 21st A and thereafter.

- Inserting a long felt fundamental right of access to information as Article 14A in the FR Chapter of the 1978 Constitution.
- Elaborated list of duties, powers and functions of the President (Article 33 (1)).
- The limitation of number and tenure of office of Ministers and Deputy Ministers: For Cabinet Ministers maximum of 30 and non-Cabinet Ministers maximum 40 subject to exception. (e.g National Government).
- Official Oath and Affirmation as set out in the Fourth Schedule and Seventh Schedule (Article 53).
- The five year term limits on both the President (Article 30(2)) and Parliament (Article 62 (2)).
- Banning election to the office of President more than twice.
- To restore the Constitutional Council with Independent Commissions with adequate powers, with the addition of the Audit Service Commission and National Procurement Commission. (Article 41(A)).
- A number of National Aspirations as the duties, powers and functions of the President (Article 33 (1) – Clause 5 of the 19th Amendment).
- The removal of the powers of the President to retain Ministries in his / her charge (Article 44-Clause (9)).
- The dissolution of Parliament which the President can only after 4 ½ years after the Parliamentary Election, unless Parliament requests the President to do so by a resolution passed by not less than two – thirds of the whole number Members (including those not present), voting in its favour. (Article 70(1)- Clause (17)).
- Disqualification for election as a Member of Parliament – a citizen of Sri Lanka who is also a citizen of any other country – Clause 20 of the 19th Amendment. Article 91 (4). (It is necessary to further amend this clause banning all members of elected bodies and at least top officials of the Government).
- By the repeal of Article 85 (2) of the Constitution, the President's right to submit to a referendum any



Bill, which had been rejected by Parliament has been excluded.

- Every Bill to be published in the gazette at least 14 days prior to it being placed on the Order Paper in place of seven days as earlier provided.

It is stated at the outset that our proposals includes our appreciative comment on some positive proposals put forward by the Main Opposition Party in Parliament, Samagi Jana Balawegaya (SJB.) and Bar Association of Sri Lanka (BASL) in this connection.

Our proposals in outline

- From the independent point of view with regard to the current political and economic crisis, the writer's view is that the poor public finance management/ poor public policy framework among others, over the years not exclusively last two years which led to the current economic crisis. Economic crisis was created by aforesaid defects of the present and past governments. But admittedly it was worsened during the past two years due not only to poor public finance management/ poor public policy framework of the political leadership guided mainly by the Finance Ministry and assisted by the Central Bank as the economic Advisor to the Government but also World crisis such as Corona Pandemic etc. which made and spoiled the country, people and even the President and his governing party a victim too. Therefore the present economic crisis is linked to current political/ constitutional issues. Therefore the economic crisis has to be addressed first followed immediately by 21st A and so on/ system change.
- It is noted here that remedying the economic crisis alone is not adequate at all. 21st A is also essential for ensuring political stability to maintain and consolidate economic recovery.
- There is no doubt that the 19th A, though not without its flaws, was one of the most progressive pieces of legislation in recent times. It drastically pruned down the powers of the Executive President and enabled Parliamentary supervision over most matters of State via the Constitutional Council which had both Members of Parliament and Civil Society representatives. The 20thA that came next,

perhaps in response to a few perceived weaknesses of the 19th A, however reversed most of the salutary provisions contained in the 19th A and concentrated a profusion of powers in the presidency.

- There should not be a division of opinion among the political circles as to whether to give priority to either constitutional amendment or the economic crises. The government must give first priority as it is giving now correctly to address the acute economic crisis.
- The economic crisis has to be resolved first. Indeed, it is imperative that Dollars are secured and the shortages of fuel, gas and essentials are eased to afford relief to a weary public. From the people's point of view, there indeed is a sentiment in society for a 'system change' per se, but even then addressing the people's difficulties must be the priority for all concerned. This does not mean that enactment of 21st A should be delayed because of its urgent necessity as an interim measure till the full constitutional reforms. It is also essential that 21st A should not be mixed with the abolition of Executive Presidency / full constitutional reforms. Because it will lead to dragging debate among political circles including serious issues such as electoral reforms, devolution of power, threatening even the current unitary status of the country. However, the work on the new Constitution / abolition of Executive Presidency should commence soon after the enactment of the 21st A.
- After all, even to negotiate or receive aid from foreign Governments and multi-lateral lending agencies, political stability is also essential. Given that it is virtually impossible to hold a General Election right now due the state of our finances, the best option is to ensure a semblance of stability in the present political landscape until such an election can be held perhaps one and half years down the line.
- The enactment of 21st A should finish soon. It means that it should not drag on even more than two months including the Supreme Court's determination if any. Soon thereafter, the constitutional reform process for a new Constitution must commence, perhaps based on the 2015 and 2019 constitutional reforms made during the two regimes within a prescribed time frame as suggested by the BASL. Possibly, the enactment of a new Constitution may not be concluded within a couple of months due to grave issues that may occur such as electoral reforms, devolution of power debate, structure of the government etc. Our own experience records that one proposed Draft Constitution (2000) was burnt in

Parliament; 2015 and 2009 Constitutional Reform documents are still pending indefinitely due to many other national issues coming in between unexpectedly. However, during the whole period of this constitutional making process, the economic recovery process should continue.

- With regard to the abolition of the Executive Presidency, in any case the pros and cons of abolishing it should be carefully weighed by all political parties and other stakeholders. It should not be done solely with the aim of targeting the present President either, for the sake of political expediency.
- The main Opposition party in Parliament, SJB has presented a proposal some of which in our view are considered to be salutary to remedy the crisis. Such salutary proposal includes : to appoint all Members of the Monetary Board (not just the Governor of the Central Bank of Sri Lanka) based on the recommendations of the Constitutional Council (CC); to establish an independent 'National Priority and Evaluation Board' to evaluate and prioritize development projects around the country; to make it mandatory for the President, the Prime Minister, all MPs , Local Government Members and Concillors, and Provincial Governor to declare their assets and enact provisions to nationalize/ retrieve assets stolen from the country. It is hereby suggested that the aforesaid SJB proposals also be included in the proposed 21stA.
- The Bar Association of Sri Lanka (BASL), has proposed to establish an Interim Government of National Unity consisting of 15 Cabinet Ministers to create political and economic stability in the country. Although the BASL's this part of the Proposal could not be implemented by the Government but its Advisory Council and Time Frame still be pursued by the Government if it could be properly fitted into a present setup in time to come through consensus. BASL's proposal to hold elections at the latter part of its Time Frame after the specified period of the Government of National Unity, and not now – as a Caretaker Government is also a timely and salutary proposal to be considered by the government.
- Although there is some truth in the criticism that amending the Constitution would not solve the current economic crisis overnight, the aims of the proposed 21st A is to ensure political stability and to achieve competent, efficient, transparent and accountable Government, which is an essential requirement for economic recovery as well.
- It is not the time to go for a National Election and to abolish the Executive Presidency and it could be done on the second stage only after the recovery of the acute stage of economic crisis and after enacting the 21st A and then within a given period of time through a process linked to Referendum.
- The duel citizen should not be in Parliament and in any other elected bodies but also not at least in the top State / Public Officials. After the enactment of this provision Parliament is empowered to make relevant statute to give effect to this.
- The President should not hold any Ministerial Portfolio other than Defence. So long as Executive Presidency remains in the Constitution, it is necessary to go for a referendum to release Executive President from holding Defence Portfolio under the present Constitution.
- The President should not remove Prime Minister unless with the majority votes for in parliament.
- In addition to the above, salutary provisions of the 19thA as stated above in outline should also be incorporated into the 21stA.

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