

Prof. **RAJIVA WIJESINHA**

In the eighties the Council for Liberal Democracy initiated a seminar series entitled 'Ideas for Constitutional Reform' which was the first challenge from a centrist perspective to the destructive constitution which JR Jayewardene had introduced. Previous challenges from the left, though well presented, were dismissed by the government as efforts to return to the bad old days of the seventies, when economic deprivation had led to Jayewardene's massive victory at the 1977 General Election.

The seminar series led to a book which was recognized as seminal, and was indeed prescribed for Law Students in Colombo, the only resident university to offer a law degree in those days. Perhaps in recognition of Chanaka's systematic analysis, he was asked by Gamini Dissanayake to draft his manifesto for the 1994 General Election, when Gamini realized that changes were essential to cut down on the autocratic power of the Presidency.

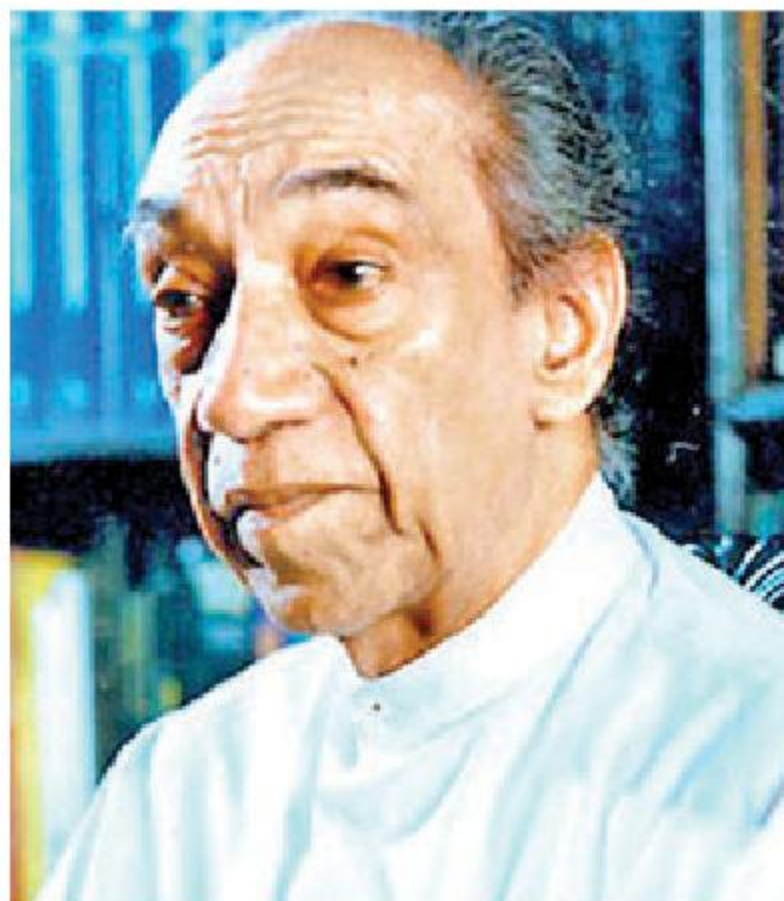
Chanaka wanted to abolish it but Gamini, in the one major change he made to the draft (Chanaka had got me involved, initially to Gamini's worry that I would not wholeheartedly support him given my relationship to Ranil Wickremesinghe) wanted alternatives, a return to Westminster or a modified Presidency. He said he would offer these at a referendum, and with his characteristic charm told Chanaka he could canvass for Westminster but he himself would support a modified Presidency, and he would win.

STRUCTURAL REFORMS

I was reminded of all this by the current consensus that we need radical structural reform. But what is not discussed is the fact that, while everyone agrees that Parliament should be strengthened, this cannot be done by enhancing the power of the Executive within Parliament. That, as the seventies showed, can be as bad as an unbridled Executive Power outside Parliament.

Chanaka, who wrote an impressive article called 'In Praise of Parliament', understood this well, which is why he wanted stronger checks and balances through the non-Executive component of Parliament. Those have been eroded, and the 19th Amendment did nothing to strengthen Parliamentarians as opposed to strengthening the power of the Executive within Parliament. Thus we had a Constitutional Council dominated by appointees of the President and the Prime Minister (and the then Leader of the Opposition who in effect represented the government), and which included Ministers. This travesty of the power of the legislature passed unnoticed, and the various amendments I proposed to the draft were dismissed with contumely by government and opposition, with the honourable exception of Dinesh Gunawardena.

IDEAS FOR CONSTITUTIONAL CHANGE



Former President **J. R. Jayewardene**



Public Administration, Home Affairs, Provincial Councils and Local Government Minister
Dinesh Gunawardena



Former Minister **Gamini Dissanayake**

When structural changes are brought in, which everyone agrees is essential, I would suggest therefore amendments on the following lines.

a) There should be a High Posts Committee of Parliament to approve all appointments to important positions. When such appointments are proposed, they should be accompanied by a statement of reasons for such appointments.

b) The High Posts Committee shall consist of the following:-

(i) the Speaker of the House who shall be Chairman of the Committee

(ii) five members of Parliament who do not hold office, elected by the House on the Single Transferable vote system at its first session following a General Election

(iii) five individuals not in Parliament elected by the House on the Single Transferable vote system. Any Member of Parliament may nominate persons for election, following the election of members under (b) above. These nominees shall be persons of eminence and integrity who have distinguished themselves in public or professional life, and are expected to represent the diversity of Sri Lanka including in gender. They shall submit Declarations of Assets to the Secretary General of Parliament, to be placed on the website of Parliament when their names are proposed.

The system of Single Transferable voting is designed to ensure that membership of any committee represents all interests. Thus in a committee of five members, to be elected a candidate requires the support of 20% of the whole body. Candidates getting

over 20% in the first ballot are declared elected, and their surplus as also the votes of the candidate who got least support are redistributed (the surplus proportionately) until another candidate gets 20%. This continues until 5 have been elected, the last person being the one who has more votes than the other candidate remaining.

For increased professionalism there is provision for membership from outside Parliament. No citizen today apart from diehard supporters of politicians has much faith in politicians on any side, and while their involvement, given that they have been voted in, cannot be avoided, it is obvious that wider interests too should be represented.

MEMBERS OF THE ADVISORY BOARDS

To strengthen professionalism further I would stress not only that the Secretary to the Cabinet of Ministers should be appointed by the President with the concurrence of the High Posts Committee of Parliament but also that there should be an Advisory Board for each Ministry, consisting of nine members selected by the President's Advisory Council after calling for applications from suitable professionals in relevant fields. Members of the Advisory Boards shall not be paid any stipend, save an allowance for attendance at meetings, or for preparation of any reports by individuals commissioned by the Board. Members of the Board shall elect a Chair at its first meeting, who shall preside at meetings of the Board in the absence of the Minister.

The idea of an Advisory Council for the President is to limit the burden on the High Posts Committee, but of course the Advisory Council should consist of able professionals. It should I suggest consist of the five members of the High Posts Committee who are not Parliamentarians, plus the President and the Speaker.

The High Posts Committee however should constitute the independent Commissions. Amongst these the most important in terms of serving the public is of course the Public Service Commission, and it should be mandatory that the Secretaries of Ministries be appointed by the President only if approved, after reasons for the choice have been provided, by the Public Service Commission.

I should mention that I tried to introduce this as an amendment to the proposed 19th Amendment, since it was clear that to talk of an independent public service was ridiculous is the head of every ministry was appointed at the whim of the President. But both former President Maithripala Sirisena and former Prime Minister Ranil Wickremesinghe fell on me like a ton of bricks, with anecdotes intended to illustrate that the arbitrary power should continue with the President.

