

21A to meet demands of pro-democracy forces

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New Minister of Justice Dr. Wijeyadasa Rajapaksa took the initiative to move the draft of 21st Amendment to the Constitution forward within days of assuming office. Although he was planning to present it to the Cabinet of Ministers last Monday, it was decided to refer the draft to the Attorney General to obtain his views first and it will then be discussed in the Cabinet without much delay.

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 Constitutional Reform 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.

Constitutional Amendments

The move to amend the Constitution was a decision taken immediately after the resignation of Prime Minister Mahinda Rajapaksa and appointment of United National Party (UNP) Leader Ranil Wickremesinghe as the Prime Minister last week.

The Justice Minister said that the 21st Amendment seeks to remove most of the clauses in the 20th Amendment and reintroduce some provisions of the 19th Amendment. It will also strengthen the powers of the existing Commissions and make them independent as well.

In addition to the existing Constitutional Council (CC), the Judiciary, Police, Public Service and other Independent Commissions, the National Audit Commission and the Procurement Commission will also be added to the list of Independent Commissions under the proposed legislation. Minister Dr. Rajapaksa said the new Amendment also proposes the appointment of the Governor of the Central Bank of Sri Lanka (CBSL) to come under the Constitutional Council.

The adoption of the 21st Amendment expeditiously is expected to mitigate the current relay of demonstrators as it will meet one of the topmost demands. Pointing out that Sri Lanka is Asia's oldest democracy, President Gotabaya Rajapaksa said it is crucial that the solutions to our present national crisis are supported through our nation's democratic framework. Addressing the 27th International Conference on the Future of Asia organised by Japanese premier media research outfit Nikkei, President Rajapaksa said a positive aspect of recent events in Sri Lanka has been the increased engagement of our youth in the nation's politics.

"We have seen similar activism in other countries too, where the loss of confidence in prevailing systems has led to strong displays of opposition against Governments. It is important to ensure that these systems undergo the

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reforms that are essential to their improvement, so that future generations will benefit from better opportunities in education and employment, leading to an increase in their productivity," the President emphasized.

Democratic institutions

In the draft of 21A, it has been proposed to bar those with dual citizenship from holding Seats in Parliament, a feature that was contained in the 19A. Justice Minister said those Members of Parliament (MPs) who hold dual citizenship would be unseated from Parliament after the 21st Amendment is approved. Minister Dr. Rajapaksa said considering the major socio-economic crisis the country is going through, it is imperative that the Constitution be amended giving more powers to Parliament and also certain powers to the Prime Minister in order to strengthen all democratic institutions.

When the draft was discussed at the Cabinet, it was pointed out that the final approval for it should be given after the Party Leaders study the draft and give their feedback. Hence, President Rajapaksa has instructed that the draft be shared with all Party Leaders prior to final approval by the Cabinet of Ministers. Accordingly, the Cabinet took the decision to distribute copies of the Amendment amongst the Parliament Party Leaders for their observations and this will be discussed on Friday (today) following which the Amendment will be sent back to the Cabinet for final approval.

Minister Dr. Rajapaksa explained that some clauses of the 20th Amendment such as the increase in the number of Judges of the Supreme Court (SC) brought by the 20th Amendment will remain.

There is a consensus on the demand for major Constitutional amendments. President Gotabaya Rajapaksa, in his address to the new Cabinet of Ministers recently said, "I take the current crisis as an opportunity to bring about the change that the people expect."

He pointed out that the legislative power of the country lies with Parliament. Therefore, there is an opportunity to discuss in Parliament the views expressed by various political parties on the upcoming changes in the Constitution and to approve the necessary Amendments. "I am ready to extend my full support to Parliament at any time in this regard," he promised.

The Opposition parties also expected to extend support to the move as they too are emphasizing that there should be checks and balances among the three branches of Government – Executive, Legislature and Judiciary. They lamented that the powers of the August House that were strengthened by the 19th Amendment were diluted by the 20th Amendment. They all stressed the need to strengthen Parliament by restoring the 19A. The Opposition Leader said that a large amount of executive power should not be centralized on any person.

It is proposed to amend the Constitution to meet the aspirations of the people by incorporating the positive aspects of the Executive, the Legislature and the Judiciary will find support from most of the leaders who spearhead the current protest movement too.

Most of the political parties representing minorities also demanded the strengthening of the Legislature. They feel the President has been given a great deal of power. Many political activists supporting the current 'Aragalaya' (Struggle) protest movement also said that the 21st Amendment rolled back democratic reforms introduced by the 19th Amendment. The principal change brought by the 20A was to remove the checks and balances on the Executive Presidency, they commented. 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 Constitutional Council, the critics said.

The view of the critics was that Parliament was disempowered against

the Executive by the restoration of the President's power to dissolve Parliament at will at any time after the first year of its term. These fundamental changes to the Constitutional Separation and Balance of Powers will seriously undermine the accountability of Government, and pose a significant challenge to existing democratic norms embodied in the Constitution.

Checks and balances

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. President Gotabaya Rajapaksa said, "I pledge to respect the Supreme Constitution of the country and to make necessary changes in the future and to salvage the country from this crisis. I earnestly request all of you to extend the necessary support in this regard."

He made a special note of the youth involvement in politics. "I believe that the majority of these protesters are young people who truly love their country. I also see their coming forward on behalf of the country as a positive sign for the future. We can only find solutions if we understand the problems. For that, we need the support and consent of all of you."

"I believe that most people who love the country, regardless of race, religion or political affiliation, want to rectify the mistakes of the current governing system to build the country, instead of destabilising the country at this stage. Therefore, I urge these young people not to allow opportunists to move your democratic protests towards a violent path."

That is the most sensible message to those who protest against the prevailing Governance structure at various places in the country.

Cabinet Spokesman and Minister of Transport and Highways and Mass Media Dr. Bandula Gunawardena confirmed that the draft 21st Amendment to the Constitution Bill was sent to all Party Leaders in Parliament, and ideas and revisions pertaining to it will be taken up this week. "We hope to end those discussions this week and discuss it in the Cabinet again next week," he said.

Meanwhile, the Bar Association of Sri Lanka (BASL) proposed that the 21A should restore all provisions of the previous 19th Amendment. In a letter to the Premier Wickremesinghe, the BASL has proposed a number of additions to the draft Bill, key among them being the removal of the power of the President to retain Ministries and assign themselves any subjects or functions, and to restore the provision in the 19th Amendment to the Constitution regarding the dissolution of Parliament, which the President can, per the latter Amendment, only do so after four-and-a-half years, after a Parliamentary Election.

Although the 21A was further delayed at the Cabinet meeting on May 23, Minister Dr. Rajapaksa is determined to obtain the proposals of Party Leaders and bring a revised draft as early as possible. The enactment of the 21st Amendment will certainly go a long way to resolve the current political upheaval in the country.