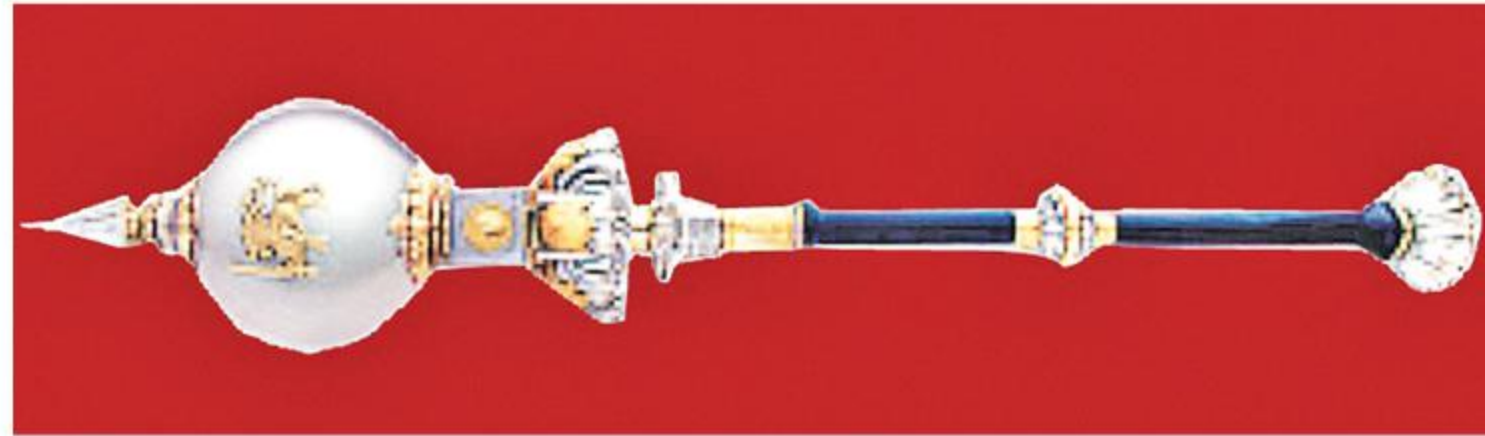


# Flawed 19A and effort to improve it



Prof. **RAJIVA WIJESINHA**

I have over the last few weeks been concentrating on the current mess in the country, but the rot has been going on for a very long time. This was brought home to me vividly when I had home for dinner an African friend who had served in Geneva in 2009 and been a solid supporter when we were under attack by several Western countries. He said that that had seemed the highest point of Sri Lankan diplomacy whereas now he saw us lower than we had ever been.

It took me some time to realize that course correction would not happen, so at the end of 2014, having informed Mahinda Rajapaksa well in advance that I could not support him if changed were not made, I decided to support Maithripala Sirisena to implement a reform agenda. That that all went disastrously wrong is now part of history.

But at that same dinner, I was reminded by Dayan Jayatilaka of the amendments I had proposed way back in 2015 to the confused and confusing 19th Amendment, which did very little to fulfil the pledges in Maithripala Sirisena's manifesto about cutting down on executive power.

I did my best to correct things, but no one was interested except for the Speaker and also Dinesh Gunawardena who as I think Chief Government Whip at the time had the grace to ask me what I felt when particular clauses were taken up. That is one reason I still have a soft spot for him, despite his regrettable commitment now to Ranil Wickremesinghe. For others, and in particular those who kept shouting, were simply anxious to get the whole business over and done with, regardless of the confusion it engendered and the failure to strengthen Parliament as had been pledged. Little use in this I suppose, given the general quality of Parliamentarians, for despite lip service no one else bothered at this stage about electoral reform.

Dayan urged that I revive my amendments since it is clear that the proposed 22nd Amendment does little to overcome the problems raised by the 20th. And this finally pushed me to seek for the complete text, which I had not stored systematically so I could not find it after the computer I used then collapsed.

But I finally traced it in an email, and sent it to him, in case he is in touch with political leaders who might want to propose changes to the current amendment. I have no intention now of going to see anyone, but I do respond to queries for assistance and I am surprised that no one in Opposition has bothered to consult someone they know was more knowledgeable about constitutional principles than anyone else in Parliament. Recent complaints from the Opposition about what Government is doing are ironic given that these come from people who cared not a whit about corrective measures I had suggested seven years ago. But failure to seek advice from those who



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know has been the besetting sin of those in authority, as we saw exemplified so disastrously over the last few years.

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I also proposed abolishing the completely dotty 3rd Amendment J. R. Jayewardene had introduced, to give the President the power to bring forward the Presidential Election, a provision that no other country has. As we have seen repeatedly since then, successive Presidents, confident of their own popularity but not the popularity of their Governments,

have used such early elections as a substitute for productive action.

My next proposal was to stop premature dissolution, which should not be at the whim of the President. We had agreed on fixed terms, and such dissolution should only be permitted if it is clear to Parliament – a sensible Parliament elected on the new system – that it has outlived its usefulness.

I also tried to and to stop arbitrary pardons, something that has been much abused over the years by successive Presidents.

## Fundamental principles

I would like to propose the following amendments to the clauses as numbered below of the proposed Bill to amend the Constitution, in the latest version issued in Parliament on April 21st 2015, but dated March 16th 2015.

**1(2)** Instead of current text, replace with 'This Act shall come into force following the amendment of Sections 95 to 99 of the Constitution, save that Sections 11, 17, 19, 24 shall come into force on the date

of first meeting of Parliament after the General Election held under the new system introduced by the above amendment'.

*This is to ensure that electoral reform occurs simultaneously with the introduction of these new elements into the Constitution*

**2.** Amend the first sentence of 14 A (1) (d) to read 'being information that is required for the exercise or protection of the rights of any citizen or the public good

Amend Section (a) to read 'established or created or recognized by or under any law'

*To extend the right to information to cover the public good and to ensure that Non-Governmental organisations functioning officially are subject to this Right*

**4.** (2) Instead of amending 31 (3A) Delete the whole of 31 (3A)

*The President should not be allowed to bring forward his election. This is not a privilege enjoyed by other elected Presidents, and leads to confusion as with the winner of such election taking office at different times depending on who wins.*

**5.** Replace 33 3 © with To summon and prorogue Parliament

*The President should not be able to dissolve Parliament, nor should we allow Parliament to be dissolved before the end of its five year terms. I think we agreed on fixed terms all round*

**Insert a new 5A** – Delete the words 'where any offender shall have been condemned to suffer death by the sentence of any court'

*It was decided at the meeting of party leaders in March that there should be controls on the President's power to pardon, and that this should be on the basis of consultation.*