

# AN ALL-POWERFUL PRESIDENT AND A 'RUBBER STAMP' PARLIAMENT?

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Gotabaya Rajapaksa

When the Sri Lankan government recently gazetted the draft 20th Amendment (20 A) to the Constitution, it was merely keeping an election promise — to repeal the 19th Amendment of 2015 that clipped the Executive President's unfettered powers, in turn empowering Parliament. With the necessary two-third majority on their side, President Gotabaya Rajapaksa's government is now closer to enacting it.

However, Opposition parties are strongly opposing the move that, they fear, will take the country back by a decade, to the days of the 18th Amendment. Brought in by former President and current Prime Minister Mahinda Rajapaksa in 2010, it added wide-ranging powers and sweeping immunity to the President's office, while removing its term limit. Among the very few key features that the 20th Amendment Bill retains from the 19th Amendment are the five-year terms for the President and Parliament, and the two-term limit to presidency.

Following its parliamentary group meeting on Monday, the main Opposition party Samagi Jana Balawegaya (SJB, or United People's Front) resolved to challenge the government's move. "The [proposed] 20th Amendment will lead to concentration of all power in the President's office, whereas Parliament will be a rubber stamp with no powers. The President is trying to do away with the legislature and judiciary," said Harsha de Silva, the party's Colombo MP.

## 'Virulent form'

In addition to reducing judicial review and curbing citizens' right to challenge Bills, the proposed amendment allows the President to dissolve Parliament after one year. Further, it discards the Constitutional Council that vetted appointments to the judiciary and independent commissions, instead opting for a Parliamentary Council whose approval the President will not require while making key appointments.

The prospect of significantly greater presidential powers without restraint has raised alarm within Sri Lankan civil society. The Colombo-based Centre for Policy Alternatives noted that denying the citizen the opportunity to challenge the Executive's actions through fundamental rights applications suggested that "the President is above the law". The amendment Bill underscores a "particularly virulent form of Presidentialism", said senior constitutional lawyer Kishali Pinto Jayawardene in the *Sunday Times* recently.

## Ceremonial PM

While on the one hand, the Bill explicitly seeks to make the President way more powerful, it also drastically reduces the authority and functions of the Prime Minister, sparking speculation over the power dynamic between the ruling Rajapaksa brothers in such a scenario. The PM "has been reduced to a mere functionary consulted in most cases only "if necessary", the *Sunday Times* noted in its editorial.

Despite growing opposition from many quarters, the government, assured of the required

numbers in the 225-member legislature, is likely to go ahead with its pledge. Asked how the SJB might oppose it, with only 54 members in the House, Mr. de Silva said the party would mobilise other parties and seek public support. “We will oppose the move inside and outside Parliament,” he said.

Meanwhile, Jaffna legislator and Tamil National Alliance spokesman M.A. Sumanthiran cautioned against getting trapped in the technicalities of the 19th Amendment or its likely replacement, for it might take the focus away from the historic promise to abolish Executive Presidency.

Ever since the 1978 Constitution — under the United National Party (UNP) government — was enacted with a 5/6th majority in Parliament, there has been consistent opposition to Executive Presidency, from the then Opposition Sri Lanka Freedom Party (SLFP) and all other opposition parties. Even the UNP, which initially brought in such a powerful presidency, in 1996 resolved to abolish it, paying heed to the growing public opinion against the system.

Since the 1990s, almost every presidential election — including when Mahinda Rajapaksa ran in 2005 — was won on the promise of abolishing Executive Presidency, except that none of the leaders kept their word. “The 2015 election too was fought on the same assurance by the Maithripala Sirisena-Ranil Wickremesinghe coalition. The 19th Amendment that imposed substantial curbs on presidential powers was the first step in that direction,” said Mr. Sumanthiran, a senior constitutional lawyer.

## **Power struggle**

The Rajapaksa camp — most of whom voted in favour of the 2015 legislation — subsequently blamed the 19th Amendment for the power struggle between the President and the PM in the last government, which, they argue, led to the grave lapses in the intelligence apparatus, leading to the Easter terror blasts in April 2019.

The Rajapaksas made the abolition of the 19th Amendment a key poll pledge in the November 2019 presidential race, and the August general election this year, seeking a super majority for the same. “While it is true that the draft 20th Amendment seeks to enhance executive powers, just as the 18th Amendment did, we should not lose sight of the need to abolish the extremely problematic Executive Presidency system itself. The Opposition to the draft Amendment should be centred on this,” Mr. Sumanthiran said, adding: “By focussing on the technicalities of the 19th Amendment, the Rajapaksas are trying to quietly erase the historic pledge from public discourse.”

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