

ANOTHER CONSTITUTIONAL MONSTER IN THE MAKING?

Unable to throw one bad egg away Sri Lankans are in for another constitutional rotten egg.

A country's constitution is its fundamental law from which all other statutory laws flow. It is also meant to represent a social contract between all stakeholders, meaning all those who have a stake in sharing its outcome. This is why it is normally hard to make amendments to constitutions once they are made. Constitutional amendments generally require a very special process unlike the case with changes to ordinary statutory law where all one needs is a simple Parliamentary nod. On the contrary, typically amendments to a Constitution require a two -

"Sir, we know you will do the right thing..... But, what if an unsuitable person becomes President? If he abuses power?" JR's reply: "I don't care what happens after I am gone.." Such is the arrogance of those wielding authority in any country or clime. Authority is like opium that blinds its holder and propels him or her to disregard consequences and norms. Its wearer is like a jockey riding a wild horse that runs on blind speed until it is inevitably brought down. Adolf Hitler is the oft-cited example but history has shown up numerous illustrations. It is a cliché to quote Lord Acton when he said: "Power corrupts and absolute power corrupts absolutely." The important thing to remember is that Lord Acton was referring to a very normal human condition. Saints don't become rulers; nor do they remain saints given they assume power.



This time, too, Sri Lanka is in for a similarly manipulated change in Constitution. The architects this time are President Mahinda Rajapakse and Leader of the Opposition, Ranil Wickremasinghe. The latter are strange bedfellows. We are in for another patched-up monster. What is wrong with this move?

third approval of the Legislature or Parliament, leaving aside other kinds of restrictions that are normally laid down. Sri Lanka- a country that breaks records- has shown a notorious appetite to change constitutions like changing shoes. The current document was hatched secretly by Lanka's former President JR Jayawardena along with his lawyer brother. Out came a monster giving powers to an Executive President which no other President in the world enjoys. It was Nazi-like powers. I remember attending a meeting at Royal College when JR was asked a question from the audience about his Constitution. The interrogator politely and meekly sought clarification:

He is willing to change his title if he could guarantee for himself the chance of continuing as long as he pleases or until his son, Namal is ready.

Firstly, Ranil cannot be trusted in his judgement. We saw how when he became Prime Minister he entered into a ridiculous agreement with Prabhakaran called the ceasefire according to which boundaries had been earmarked as 'LTTE-held territory.' Prabhakaran later thought that Ranil had some canny and cunning tricks



up his sleeves to be worked out along with the international community and he issued a fatwa in vain against him getting his people to abstain from supporting his Presidential bid.

Old Left regaining some quantum of the glorious image they once enjoyed.

What precisely is an Executive Prime Minister? One cannot find anyone of that genre anywhere in the world. The proposal does not include provision for a separate Head of State who will have powers such as the power to summon or dissolve parliament, approve legislation, appoint judges and independent commissioners, send and receive ambassadors, declare emergency, declare war and to be Commander in Chief. These powers were formerly exercised by the Governor General and later by the non-Executive President. The 1978 Constitution invested both powers in the elected President.

Mahinda himself for one whole year tried the same Ranil approach flirting as he did with the same peace agreement, holding peace talks etc until he found a General who showed him that the LTTE could be beaten in battle. Ironically that General is now put behind bars by Mahinda himself! If Ranil has proved his incompetence Mahinda has shown a singular lack of guilt in abusing power. That is not the attribute of the kind of man who would like any genuine tinkering with the constitutional privileges that he has on his table. A ruler with incumbent power should avoid being on a panel that may have to consider change to that power for the public good. Mahinda Rajapakse has agreed to Ranil Wickremasinghe's proposal for an 'Executive Prime Minister' to replace the Executive President. The reason is obvious to all but the gullible: Such a position will preserve for Mahinda the right to be elected over and over again - the thing he had wanted to do at the very start when he sought to rescind section 31(2) of the Constitution that prohibits an incumbent to seek to be President after two terms. He is willing to change his title if he could guarantee for himself the chance of continuing as long as he pleases or until his son, Namal is ready. It would all amount to little but a change in nomenclature. It was President Mahinda Rajapakse who mooted the proposal to change the Constitution but this was solely to rescind Article 31 (2). He had no other concerns about the genuine need to change the way Sri Lanka is to be governed. The need for greater Parliamentary control, the need for checks and balances, the need for an independent Elections Commissioner like in neighbouring India and for an independent police, judiciary and Public Service- none of these imperatives bothered him.



Shyamon Jayasinghe

Thus in the absence of an institution like a non-executive President it might mean that the Executive Prime Minister will be vested with such powers. This will make the position of the Executive Prime Minister equivalent to the position of the current Executive President. May be Ranil envisages that being part of Parliament the Executive Prime Minister will be a much more devalued position. But, then, the Executive Prime Minister if elected separately by the people cannot be thus devalued. Hence, there is a dilemma here, too.

We have defined a Constitution as a social contract. If that be so, its making and remaking cannot be left to the manipulations of two leaders. There must be a structured process of broad consultation and participation by the diverse significant groups and communities in the island. The latter are the stakeholders and they include Parliamentary leaders, business leaders, Provincial leaders, etc. The media must run a public education process so that people get involved. Extensive legal consultation should take place. For all this a steering committee in the nature of a Constitutional Assembly comprising such stakeholders must be set up. Finally, the approved draft it must go to the people at a referendum. This kind of approach will give a sense of legitimacy to the new constitution. There is no other appropriate path to constitution making.

It was a surprise move from the ranks of his coalition partners of the Old Left to stand up and be counted at last that had stymied the President's move and made him seek the hand of a strange bedfellow- Ranil Wickremasinghe. It is good to observe the

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