



Constitutional Reforms in Sri Lanka: Impediments and Implications

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The Government of Sri Lanka passed the 19th Amendment to the Constitution in April this year and recently the Sri Lankan Cabinet took a decision to finalise the broad contours of 20th Amendment to the Constitution, which will replace the present electoral system of Proportional Representation (PR) to a mix of First Past the Post (FPP) and PR system. This move by the government is one of the promises made during elections in its first 100 day agenda. The question is whether these constitutional changes will provide enough space for all communities to participate in the decision making process.

The new government, which came to power in January 2015 amidst lots of expectations from opposition parties representing the majority and minority communities, has been facing a tough task in implementing the promises made in its 100 day programme. The most significant political promises made were the abolition of executive presidency; formation of National Government with Mr Ranil Wickramasinghe as the Prime Minister (PM); formation of various independent commissions; change in the electoral system and dissolution of the Parliament. These changes in the political system have to be brought about through consensus among all the political parties representing the National Government.

The implementation of the 19th Amendment (which annulled the 18th Amendment that provided for delimitation of the term of the President and curtailed the powers of the Constitutional Councils) limited the term of the President to two terms and formed a Constitutional Council, which would have the power to setup independent Commissions, such as the Election Commission, National Police Commission, Public Service Commission, the Commission to investigate allegations of bribery or corruption, Judicial Commission and the Human Rights Commission of Sri Lanka. Another important feature is that the President can dissolve the Parliament only after four and half years (previously it was one year). The Tamil National Alliance (TNA) also supported the bill. This Amendment was passed with clear majority in the Parliament, which gave much impetus to put forward the 20th Amendment to the Constitution.

As expected, in the second week of June 2015, the Sri Lankan Cabinet approved the 20th Amendment to the Constitution, which would change the present electoral system. According to the reports, present Parliament seats would increase from 225 to 237. Of these, 145 MPs would be elected on the basis of FPP, 55 from PR and remaining 25 members would be elected from the national list. However, the next Parliamentary elections will be conducted based on the present electoral system.

The composition of the Cabinet dominated by the United National Party (UNP) helped in getting approval for the bill. Cabinet's decision received a mixed response within Sri Lanka. Even though there is general consensus among all the political parties about the need for change in the electoral system, difference of opinion regarding the number of seats to be increased under the mixed system in the Parliament and the delimitation process, may stall the approval process. While small political parties, such as the Tamil Progressive Alliance (TPA) and TNA supported the 19th Amendment, but apprehensions about the nature of the change might become a hurdle. For example, according to TNA, this move would reduce the 'minority member representation in the Parliament, particularly from the Jaffna Peninsula' due to the displacement of people from their original habitat owing to war. Some of the members of the Sri Lankan Freedom Party (SLFP) are in favour of increasing the Parliament seats to 255.

Opposition to the 20th Amendment by minority parties is also based on the issue of delimitation. The Delimitation Commission, which was constituted in 1978, proposed electoral districts and the number of seats to be allotted. Some parties are demanding that a detailed study should be undertaken to demarcate constituencies based on the present situation.

The Sri Lankan President, after assuming power, addressed the domestic social and economic issues promised during the elections. Some of the initiatives are: increasing salary in public services and addressing the pension and high cost of living issue through bringing down prices of 16 essential items, such as gas and fuel by reducing excessive taxes. Apart from these, the government also gave benefits to the small and medium industries by reducing taxes and increased the free health care budget from 1.8 to 3 percent of the budget.

These measures by the President made reasonable progress in satisfying people's needs, but steering his way through the constitutional amendments would be an arduous task. Maithripala Sirisena's manifesto mentions about change in the electoral system, which will be followed by the dissolution of Parliament after 100 days of National Unity Government. The President dissolved the parliament last week and called for fresh elections in August before the implementation of promised reforms. Getting support in Parliament is not an easy process, given the history of Sri Lanka's constitutional reforms, Rajapaksa factor and foreign policy choices. In the past, major constitutional changes in 1972 and 1978 took place through obtaining two-thirds majority in the Parliament or through referendum. Those changes consolidated the majoritarian rule. Thereafter, issues such as the implementation of the 13th Amendment to the Constitution that laid emphasis on the devolution of power to provinces and changes in the unitary nature of the state remain controversial even today due to lack of bipartisan approach and lack of consensus among minority parties.

In a context where the former President, Mr. Rajapaksa enjoyed considerable support from areas dominated by majority Sinhala population, as was evident from the

January election results and also from some of the SLFP MPs in the Parliament, the implementation of constitutional reforms will not be an easy task. For example, the extent of support that Rajapaksa enjoyed in the Parliament was evident when 112 MPs signed no-confidence motion against the PM based on several issues. These included “remarks against the former President that Rs. 25 billion, which was obtained by the Highway Ministry during Rajapaksa tenure, was used for personnel purpose; appointment of the Central Bank Governor; politicisation of the police; halting development projects leading to job loss for thousands of people and following foreign policies that have alienated friendly nations, who supported Sri Lanka during difficult times.” The President is not in favour of the motion because he has to choose a candidate from the majority party in the Parliament, which is the SLFP. A National Government with all party representatives will not work in this scenario.

The Sirisena government is aware of the support Rajapaksa has; hence, it tried to avoid referendum, which might provide a chance to dissent groups to defeat the reform agenda. For example, on the question of giving more power to the PM on the appointment of Cabinet Ministers, the government opted for support in Parliament by changing some of the provisions, such as making the President the head of the cabinet, not the PM.

There is also a possibility that Rajapaksa would like to come back to active politics and the effort is on to project him as the Prime Ministerial candidate. The split in SLFP might make it possible. If this materialises, the issue of terrorism will take a place of pride in the national politics. For instance, during recent rallies, he pointed out that ‘the government’s decision to remove 59 army camps in the North-East will provide space for the re-emergence of terrorism’. Recent decision by the government to review the ban on Diaspora organisations and release of political prisoners may also be used for political consolidation by opposition groups.

The foreign policy choices of the government are also a mobilisation issue. Currently, the United States (US) sees an opportunity to engage with Sri Lanka to counter China’s influence in the Indian Ocean region. The US is keen on improving its relations with

Sri Lanka by helping Sri Lanka to strengthen good governance through improvement in judicial and financial institutions. Cooperation in maritime security in the Indian Ocean is another objective, which is drawing the US close to Sri Lanka. The US is also helping the government of Sri Lanka in dealing with corruption charges against the previous regime. For example, the US Attorney General's department has sent its officials to Sri Lanka to advise the government on corruption charges against the Rajapaksa family and investigations into illegal assets of the family. During his recent visit to the island, the US Secretary of State, John Kerry told President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe that his country 'would provide the technical support needed to curb corruption'.

The UN report on Sri Lanka's Human Rights violations during and after the war in 2009 will be released in September. In a situation where neither the government nor the majority of Sinhala population believe in international investigation into war crimes, the report's findings may not help in pushing for ethnic reconciliation. Another aspect is that ethnic reconciliation does not figure in the 100 day programme of the government. The minority parties' resentment towards the Rajapaksa regime worked in Sirisena's favour and they are hopeful of putting pressure on the government for ethnic reconciliation through more say in the decision making process. Whether this would be possible through changes in electoral system is uncertain.

Given the present scenario, support to constitutional reforms is fragile. To implement the reform agenda, the President increased the number of the Cabinet members to give representation to his own party members. That helped in getting support to the 19th Amendment in the Parliament. However, the main challenge is to formulate a national policy framework as promised by the government, which can incorporate ethnic reconciliation issues. The support to political reforms in the future will depend on the support the present government will get from the majority Sinhala population. Apart from above developments, getting support in the Parliament for constitutional reforms in future will also depend upon the support the government will get on a number of issues, such as

dealing with the issues of corruption, economy, ethnicity, and the issue of foreign policy choices.

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