

Let's think about 20A

The 20th amendment to the Constitution of Sri Lanka will make many changes to the constitution. Many think that the Constitution only matters to lawyers and Politicians – that is not true.

The Constitution affects your rights, your security, your livelihood and your life.

Do not let your member of parliament forget that YOU elected him or her.

Your representative cannot take your vote and then vote against your interests

Here's a look at how Sri Lanka will be governed if 20A is passed:

1. The President will have absolute powers

- **Under 20A, President is immune from all legal proceedings**

Citizens will not be able to file fundamental rights applications against the President to protect their rights – the President is above the law.

Recently, presidents in Brazil and Peru and a prime minister in Malaysia have been charged for corruption and human rights abuses. This should be a warning to future Presidents against abusing their powers and breaking the law. But this cannot happen in Sri Lanka

The President is not accountable for any actions – even criminal actions

- **Under 20A, President no longer has the duty to uphold the constitution or promote reconciliation**

Shouldn't a primary duty of our President be to bring people together and unite all Sri Lankans?

- **Under 20A, President dominates the cabinet**

The President decides on the number of ministers, assigns ministries and selects all the ministers. This includes Cabinet ministers, deputy ministers, state ministers and acting ministers - and the President can dismiss them at will.

The President can take on any ministry that he wishes, and any number of ministries that he or she wishes.

Can the President, a single individual, address all issues such as environment, land, labour, trade?

Can all citizens be confident that their interests are protected by one central authority?

The 20th amendment is all about 'I, the President' - what happens to 'We, the People'?

2. Return of the jumbo Cabinet

Sri Lanka holds the record for having the largest cabinet in the world - bigger than cabinets in India – a country with 1 billion people

In 2005, Sri Lanka had 52 cabinet members. In 2007, 33 non- cabinet members and 19 Deputy Ministers were appointed.

Out of a parliament of 225 members, 104 persons had some ministerial position

Under 20A, the President can break Sri Lanka's past record for large cabinets if he or she wishes

- **What is the need for jumbo cabinets?**

The purpose is to give perks and privileges to many parliamentarians and secure their loyalty.

We, the People then must pay for this - there will be less money for schools, hospitals and the essentials to make life better for ordinary people.

Is this what citizens want?

3. The President dominates over the Prime Minister and Parliament

The President is elected by the People

The Prime Minister is a member of Parliament and the Prime Minister and other members of Parliament are also elected by the people.

Electing Parliament is also an expression their sovereignty.

Notwithstanding this,

- **Under 20A, the President can dissolve parliament**, dismissing the Prime Minister and Parliament and calling for new elections.

The President can do this one year after a General Election, although the Prime Minister may have the majority support of the parliament

- **Under 20A, Prime Minister no longer has a deciding voice on matters relating to the Cabinet**

The President will consult the Prime Minister IF the President thinks it is necessary.

The President does not have to follow the advice of the Prime Minister

- **Under 20A, the President can remove the Prime Minister without dissolving Parliament.**

The President can appoint a replacement Prime Minister from Parliament who, in the opinion of the President, will have the confidence of Parliament.

The President can also assign to himself the powers and functions of the Prime Minister.

- **Under 20A, the president can undermine the Prime Minister**

The Prime Minister will have limited powers - what then will be the purpose of the office?

A simple majority in Parliament can pass a resolution to request the President to dissolve Parliament

These are ways of controlling parliament – an institution that is elected by the people.

We, the people, must question if we are ready to do away with Parliament:

Sri Lankans started voting in 1935 and we have been a Parliamentary democracy since 1948

We take parliamentary elections seriously

In 2020, despite the Covid – 19 pandemic, 70% of the electorate went to the polls to vote

Can Sri Lanka afford to have frequent parliamentary election every time the President chooses to dissolve Parliament?

Can Sri Lanka deal with the costs and instability that frequent elections create?

Are citizens ready to do away with parliament?

4. Citizens are shut out of the law-making process

In a functioning democracy, the public must have the opportunity to make inputs to legislation.

They should study the bills, discuss them, and make recommendations to parliament through the media and their representatives.

- **Under 20A, the public will have only 7 days to study and challenge the Bill.**

If the President classifies it as an ‘Urgent Bill in the national interest’ and refers it directly to the Supreme Court, the Supreme Court has 24 hours or 72 hours to decide on its constitutionality.

It is the President and not the Courts that decides if the Bill should or can be reviewed in 24 hours or 72 hours.

This short time frame shuts citizens out of the process of reviewing Bills.

Sri Lanka has confronted many instances of poorly drafted laws - do citizens want this rushed legislative process to continue?

5. Impact on independent Constitutional Commissions

The politicised selection of officials to key posts leads people to lose trust that public officials would be neutral and impartial.

The 19th Amendment introduced Constitutional Council that is politically inclusive to make recommendations to the President on key appointments.

These key appointments included the 9 independent constitutional commissions and to judges of the Supreme Court, Court of Appeal, Attorney General, Auditor General, Inspector General of Police, the Ombudsman and Secretary General of parliament. The removal of these officials also requires the approval of the Constitutional Council.

These are the checks and balances built into make democracy strong.

- **Under 20A, the Constitutional Council with 3 eminent persons is replaced it with a Parliamentary Council**

The Parliamentary Council is a political body that will work on party lines.

It can make observations on appointments but the observations are not binding.

It has no powers and cannot be independent and make independent and impartial decisions - what purpose will it serve?

- **Under 20A, the independence and the powers of the Election Commission are impacted**

The President alone would appoint the Election Commission, the Chair of the Commission and any temporary members.

The Election commission may not issue guidelines relating conduct during an election to the public service, such as it has done to the media during recent elections.

The general failure to comply with the guidelines or directions of the Election Commission is no longer an offense.

Can the Election Commission ensure that elections conducted are free, fair and transparent if it may not issue guidelines relating to the public service and there is no penalty for non-compliance?

Are you concerned how this may influence the powers of the Election Commission to conduct free and fair elections?

- **Under 20A, the independence and the powers of the National Police Commission are impacted**

The President alone will have the power to appoint and remove members of the National Police Commission

The Inspector General of Police is no longer present at Commission meetings.

There is no appeal against the decisions of the commission.

The National Police Commission has no powers to appoint, promote, transfer, dismiss or discipline police officers.

The Commission may only investigate complaints against police officers made by the public, and that too in accordance with laws drafted by parliament.

- **Under 20A, the independence and the powers of the Judicial Service Commission are impacted**

The role of the JSC is the appointment, transfer, dismissal and disciplinary control of judicial officers such as District Judges and Magistrates, and the appointment of scheduled public officers.

It therefore helps maintain impartiality in judicial decisions and frees them from Executive control.

The President may appoint any two judges to the Judicial Service commission. They do not have to be senior judges or have any experience serving as a Judge of a Court of First Instance (i.e. a Primary Court or a Magistrates Court.)

The President may appoint or remove such member without any reference to the Parliamentary Council.

There are no criteria for appointments to the Judicial service commission – e.g. age, qualifications, experience, seniority etc.)

The Parliamentary Council does not have the opportunity even to make an observation on these appointments and removals.

Unfettered powers of the President over the Judicial Service Commission give the President unfettered power over the Judiciary

Will citizens be protected by the rule of law?

- **Under 20A, the independence and the powers of the Commission to investigate Allegations of Bribery and Corruption are impacted**

The 20th amendment removes the constitutional recognition of the Commission to investigate Allegations of Bribery and Corruption, therefore allowing for a future Parliament to abolish the commission altogether.

Sri Lanka is the 93rd least corrupt nation out of 180 countries

According to The 2019 Corruption Perceptions Index reported by Transparency International, out of 180 countries Sri Lanka ranks 93rd.

Do we citizens not want to resist the bribery and corruption that is ruining the economy of the country, the quality of services, political institutions and social structures?

Do we not want a body to ensure this does not take place, and detect it if it does?

- **Under 20A, the National Procurement Commission and the Audit Service Commission are abolished**

Sri Lanka will have an unregulated and non-transparent procurement (tender) process, opening doors to more corruption.

The lack of an independent Audit commission will ensure that waste, fraud and money laundering will not be detected or made public and therefore will not be punishable.

Sri Lanka has been on the watch list as a haven for money laundering and if this becomes an issue again, Sri Lanka will be under international scrutiny, not as a favoured destination for foreign investment but rather as shady economy.

- **Under 20A, the independence and the powers of the Public Service Commission are impacted**

The Public Service Commission (PSC) has the powers of appointment, promotion, transfer, disciplinary control and dismissal of public officers, as well as to formulate rules, regulations and procedures relating to the Public Service.

The members of the PSC would be appointed and removed by the President without the approval of the Parliamentary Council.

This PSC may appoint a Committee of 3 persons who are NOT members, and delegate to them the powers of appointment, promotion, transfer, disciplinary control and dismissal of certain categories of public officers.

The Cabinet of Ministers will specify the categories of officers that fall within the mandate of this Committee.

No court or tribunal can inquire into or question the powers or actions of the Commission of the Committee.

The PSC will be a shell with the Committee having more powers. This is likely to lead to the politicization of the Public Service and undermine the service conditions of public officers.

Public officers are employed by the State and the state is the largest employer in the country.

However, successive governments have interfered with the public officers and the ways in which they work.

Will they have security of tenure and fair terms of employment?

- **Under 20A, other Independent Commissions are at risk.**

Members of the Human Rights Commission, Finance Commission, Delimitation Commission, University Grants Commission, the Official Languages Commission, the Auditor General and the Commission to Investigate Allegations of Bribery and Corruption are no longer Public officers.

Are you as a citizen concerned that key commission are being dropped and other commissions being neutralized?

15963 persons have at various times appealed to the National Human Rights Commission for redress between 2016 and 2018.

- **Under 20A, the Office of the President and Prime Minister are not required to be audited by the Auditor General**

Waste, fraud and corruption are controlled through Tender Boards and Audit commissions.

The potential for waste, fraud and corruption may impact on your rights and security as a citizen.

Are you concerned?

- **Under 20A, Dual Citizens can become parliamentarians and even be elected as president**

When a person becomes a citizen of another country, they have to swear allegiance to that country. In some countries they may even have to bear arms for that country. If such persons have to decide on a matter that affects Sri Lanka and the country in which they acquired citizenship, to which country will they be loyal? How will we have full confidence in that person?

Questions to ask your Member of Parliament

Give us 09 good reasons why you are voting for the 20th Amendment

Citizens elect our MPs to represent our issues and demands in the Parliament - we need you to be our representatives.

1. **Parliament is being side lined under 20A.**

Will you support legislation that takes your voice away so you can't represent your voters' aspirations anymore?

2. **All powers are centralized with the President under 20A.**

Is it safe to allow one person to take all the responsibility and powers? What happens if the President falls ill? He may be replaced by someone who we did not vote for and who will have all these powers.

3. **The Audit Commission and the Procurement commission would be removed by 20A.**

Shouldn't the government be accountable for how it spends the citizens' money?

4. **Other commissions may also be removed under 20A.**

Who can we go to resolve land issues, promotions and harassment by local officials? Court proceedings take too much time and money. Poor people cannot afford to go to the courts.

5. **Do you feel responsibility to the citizens who voted for you, or only to the President and Prime Minister?**

6. **In 2015, you agreed to reduce the powers of the President and make the Parliament more independent by voting for the 19th amendment. Can we trust your judgement and trust you to be consistent if you agree to 20th amendment which reverses all that?**
7. **The Public Service does not seem to count for anything. Is this what you want?**
8. **We do not like the haste and secrecy in which this amendment is being brought in. No one will tell us who drafted it. Are you are wasting time with these amendments when you should be focussed on fixing our economy, creating jobs, looking after our workers who are stranded overseas?**
9. **Dual citizens are to be allowed to sit in Parliament**

When a person becomes a citizen of another country, they have to swear a vote of allegiance. In some countries they may even have to bear arms for that country. If they have to decide on a matter that affects Sri Lanka and the country in which they acquired citizenship, who will they be loyal to? How will we have full confidence in that person?

Law and Society Trust
3, Kynsey Terrace, Colombo 08, Sri Lanka
Tel: + 94 (0) 112684845
Fax: +94 (0) 112686843
Email: admin@lstlanka.org
www.lstlanka.org

