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CHALLENGES OF A NEW CONSTITUTION

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**Even the name
"Sri Lanka" needs a
re-think**

- Professor Jayadeva Uyangoda

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**The Constitution
should be developed
with public
participation**

- Eran Wickramaratne



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Editor:

Lionel Guruge
Jayasiri Jayasekara

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Nalinda Seneviratne

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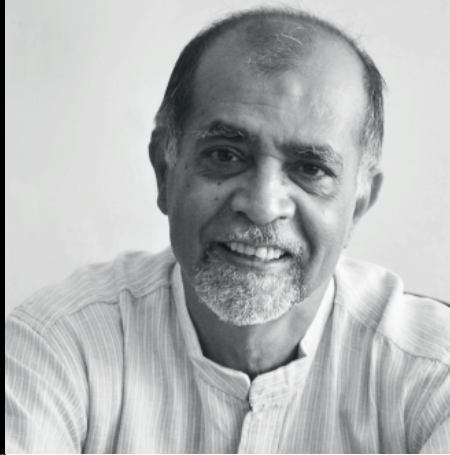


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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

Address : No. 6/5, Layards Road, Colombo 5, Sri Lanka
Tel : +9411 2081384, +94112081385, +94112081386
Fax : +9411 2081388
Web : www.cpalanka.org
Email : info@cpalanka.org
Facebook : www.facebook.com/cpasl
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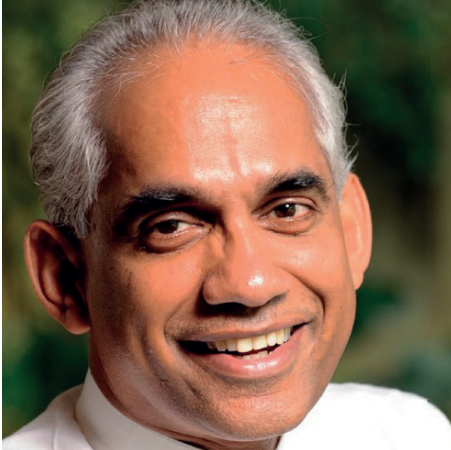
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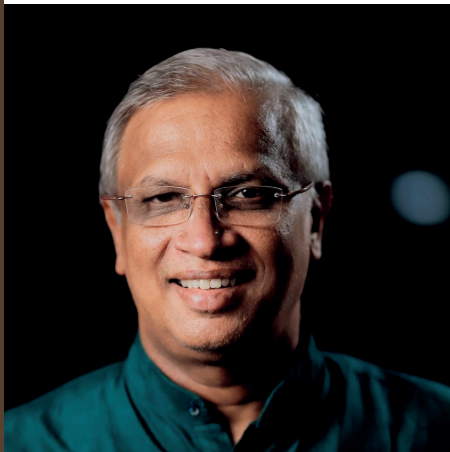
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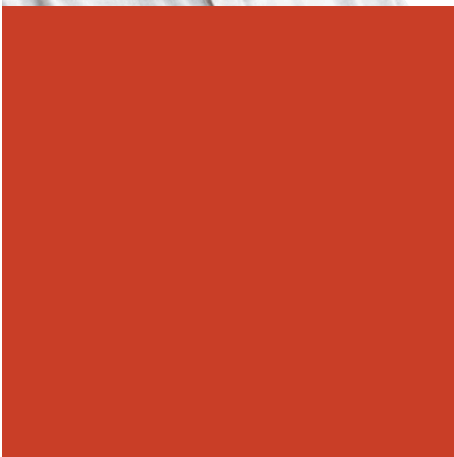




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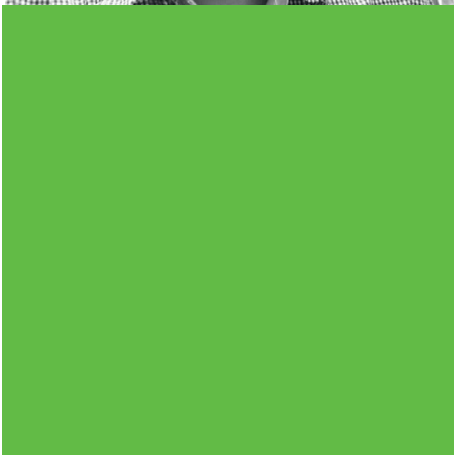
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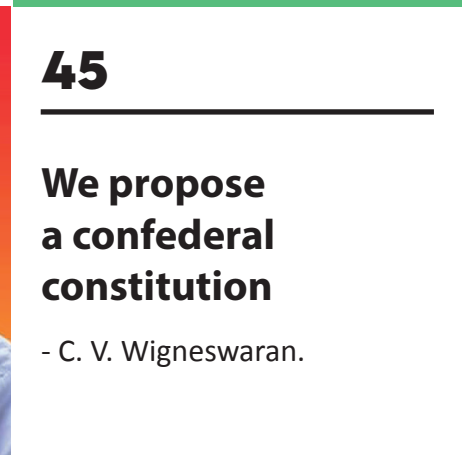
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Understanding the signals from the Aragalaya



'Purawesi Handa' is a publication aimed at dissemination of the voices of citizens of this country and to build a wider discourse on issues significant to citizens. We believe that the social discourse that Centre for Policy Alternatives has developed over 25 years should be further intensified at this moment. Therefore, we aim to release this publication in all three languages and plan to publish these conversations as videos in social media.

The drafting of a constitution is a very important feature for a country. It is evident that the genuine aspirations of the people living in this society were not represented in any of the constitutional development processes that took place from the Soulbury Constitution to the 1978 Constitution and from then until now. The constitution of 1972 did not seem to have understood the signal stemming from the insurgency of 1971. The 1978 constitution, which has been amended for the 20th time and is in force until now,

was challenged by two insurrections in the north and the south during the period of more than 40 years. The state failed to provide an acceptable fair solution to the northern people who demanded their rights as citizens until the problem escalated into a thirty-year war. More than ten years have passed since the end of the armed war and still there have been no solutions provided to those problems of the people. The rulers also failed to understand the messages emanating from the youth insurrection in the south during 88-89. It seems that none of the rulers for almost 75 years since independence have been able to understand the signals given from the society.

The recent public agitation is one of the most pivotal agitations in recent history. It had very positive as well as some negative aspects. What makes it unique is the non-violent and highly creative characteristic of the agitation. The uprising in the '71 and '88-89 were to some extent armed rebellions. The young

people who contributed to the agitation this time can be considered the children of the '88-89 generation and grandchildren of the '71 generation. Their method employed to display dissent was completely non-violent. They had the capacity and strength to assemble together in unity without the divisions of race, religion, class, rural-urban divides, gender, etc and there was equal value for all within the agitation. The agitation reflected a number of such salient features.

However, even after this agitation, it is sad that the government is attempting to continue with the same old mechanism without understanding the messages given by the people.

It is clearly evident that there is a response of vengeance to the current agitation that led to the resignation of the Cabinet, the Prime Minister and finally the President. This is a situation that can develop extremely disastrous consequences. In such a context, our effort is to discuss the concerns for 'making a system change' voiced by the protesters. The constitution of a country should evoke respect and acceptance of all its citizens. The constitution drafting process is not limited to the work of the elite regime or political parties but should expand and be formulated with the inclusive participation of the public representing various strata of society and through a broad dialogue. It cannot be completed simply in a couple of days. Not one draft but several drafts may have to be prepared and the final draft should be subject

to a wide discussion among the public. Our effort, therefore, is to contribute to the dialogue on drafting of a new constitution.

As the first stage, we inquired into how far the leaders of the political parties who are currently engaged in active politics are sensitive to the issue. We inquired regarding their thoughts on political reforms, strengthening democracy and internal democracy of political parties.

Their method employed to display dissent was completely non-violent. They had the capacity and strength to assemble together in unity without the divisions of race, religion, class, rural-urban divides, gender, etc and there was equal value for all within the agitation.

It is our hope to conduct further conversations on similar subjects in the future. In particular, we hope to take the thoughts and opinions of experts and scholars to society and to engage in conversations.

Due to the challenging situation faced by the publications industry regarding printing, initially, we can

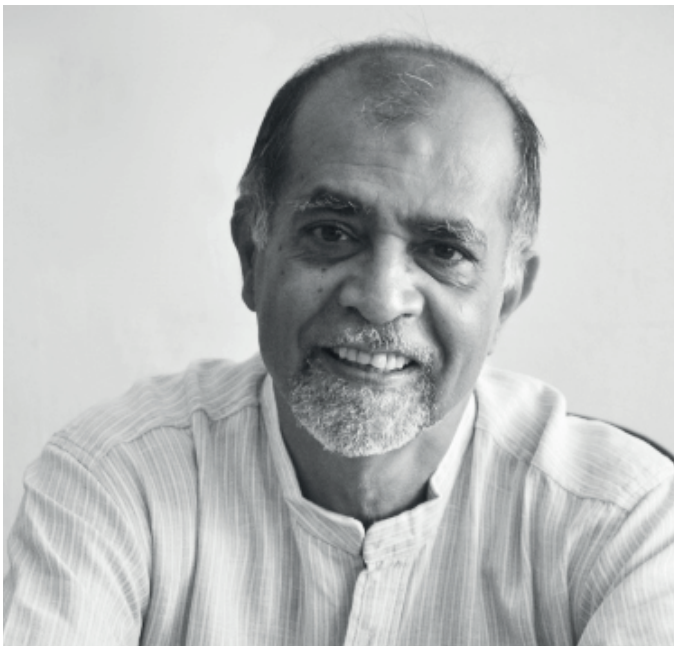
only publish this as an electronic magazine. However, our expectation is to conduct open public discussions on these main subjects in the future.

We invite the university fraternity, professionals and interested citizens to join in order to enrich these conversations.

Editor

Even the name “Sri Lanka” needs a re-think

Professor Jayadeva Uyangoda



There is a renewed debate on constitutional reforms in Sri Lanka. It is important to understand the new context, in order to identify the nature and content of a new constitution. The Sri Lankan citizen movement during the last four to five months is a very important moment in Sri Lanka's democratic process. This is because the citizens have been politically awakened and the opinion that reforms are needed has emerged very powerfully. Previously, the

idea of constitutional reform came from the political elite, political parties, or civil society activists. The remarkable turnaround this time is that the proposal for constitutional reform came from ordinary citizens. Ordinary citizens raised two main themes; this should be our consideration.

Another slogan surfaced in the citizen's agitation, some people did not like it. This was the call for not only the president, prime minister and ministers but for all the 225 representatives in the parliament to go. This meant that the citizens' trust in the Parliament, which is the main institution of representative democracy in Sri Lanka, had collapsed.

The first is that they were extremely critical of the political system, governance and political structures prevailing in Sri Lanka. The slogan for the agitation calling for a 'system change', the request for a new political structure and the refusal to trust the existing political parties and representatives came as an expression of their frustration and criticism of the existing political system. One of the characteristics of Sri Lankan democracy is that it is an extremely eroded and degraded democracy. There was strong criticism of this degraded democracy. This degraded democracy basically works by revolving around parliamentary representative democracy.

Signs of the Civil Struggle

Another slogan surfaced in the citizen's agitation, some people did not like it. This was the call for not only the president, prime minister and ministers but for all the 225 representatives in the parliament to go. This meant that the citizens' trust in the Parliament, which is the main institution of representative democracy in Sri Lanka, had collapsed. This is because, there is a belief among the citizens, that the MPs who are elected to the parliament are corrupt, and they obtain a public mandate to serve themselves rather than to serve the public. The citizens feel that the elected officials are not representing them through the mandate given but instead, political authority is used without any responsibility. The public is of the opinion that the elected groups represent others, the leaders of their parties, the bureaucracy of the party, or the businesspersons who finance the party's election campaigns and activities. Therefore, the public requires representatives who understand their grievances and who

truly represent their concerns and demands. The citizens have become extremely disappointed that the given mandate is violated. What can they do to the MPs who violate the mandate? Have they got to wait for 5 years? Is there any way to remove them before this period? Therefore a strong criticism has emerged from the citizens regarding the shortcomings of representative democracy and parliamentary democracy in Sri Lanka.

If we are thinking about a new constitution in Sri Lanka, we should not only think about issues such as reintroducing the 19th amendment or returning to parliamentary democracy, but base it on certain fundamental objectives. The 19th Amendment should be brought back with revisions and we need to go back to parliamentary democracy based on the fundamental objective. In my opinion, this is one of the most important arguments that emerged from the citizen movement in the past four or five months; Democracy in Sri Lanka is ill-liberal, a democratic system that has been distorted by a very strong authoritarian presidential system. What we need is not temporary fixes or surface changes. It should be linked with a process of rebuilding, deepening and widening democracy in Sri Lanka, undergoing fundamental reforms.

Limitations of Representative Democracy

We are in a new era of democratisation of Sri Lankan politics. How can this new momentum be utilised for constitutional reforms? We should look at the constitutional reforms not with the aim of making changes on the surface of the constitution, but

The idea that there should be constitutional provisions and power to recall the people's representatives appointed by the people, is emerging from some political parties and groups. It is a very important idea to consider.

fundamental reforms that connect issues such as the politics of Sri Lanka in its entirety, the complete constitutional structure, the political culture, the relationship between the state and the citizen, and the restoration of the relationship between the rulers and the people. We need to look at a holistic framework.

The conceptually fundamental dimension is what I think is the principal component of the constitution. I strongly believe that there should be a discussion about it in Sri Lanka. The reason is that many people still think that if the constitution is to be reformed, it should be done only within the limited framework of representative democracy. But looking at the comments from some political parties in the past, it can be seen that those comments suggest that we should go beyond the limits of traditional liberal representative democracy. Let me give an example, the idea that there should be constitutional provisions and power to recall the people's representatives appointed by the people, is emerging from some political parties and groups. It is a very important idea to consider. But there is a problem in this matter since the 'Right to Recall' is not allowed in liberal democracy. Most of the

people in Sri Lanka who think about constitutions and generally look at those issues only through the liberal democratic framework, are against this proposal. I know it very well. The reason is that there is no room for the Right to Recall in the liberal theory of democracy. The Right to Recall comes within the republican political theory and the direct democratic tradition.

In Sri Lanka, if we are reforming the constitution, listening to the demands of our citizens and working to fill the shortcomings of the democratic system, we cannot stay within the limited framework of democracy and liberal representative democracy. We need to deepen it or expand it. For that we have two sources, one is republican democracy and the other is direct democracy. Direct democracy is a way of directly participating in the legislation and governance process.

A creative approach to reform

When thinking about a constitutional reform process in Sri Lanka, as I suggested earlier, there needs to be a discussion on how to creatively connect the elements of direct democracy and republican democracy while maintaining liberal democracy and representative democracy without abandoning them. However, that discussion has still not surfaced in Sri Lanka. It can sometimes be an obstacle to the construction of constitutional reforms based on the new political thinking of what we are discussing. I think that the first thing we have to do is to think fresh, taking into account not only the criticism of the political system and governance of Sri Lanka which emerged through the citizens' movement but the overall criticism of the existing democratic system. In fact, we need to

explore examples from other countries of the world as well for a new way of thinking. I will give some examples.

India: The Constitution of India was formulated by a Constituent Assembly in 1947. It is actually formed by combining three traditions of constitutional and political thought. There is liberal democracy, republican democracy, socialism or social democratic traditions. All those three characteristics have been added. It was never confined within the boundaries of liberal democracy represented by Britain. So we have to learn most of the time from such traditions. When considering the US Constitution, one thing many people forget is that the US Constitution is not just a liberal constitution. It has strong republican characteristics. The same is true in Switzerland.

As an example of a third-world country, Chile has recently experienced a large public uprising similar to Sri Lanka. It has been going on for two or three years, and

now there is a wide discussion for a new constitution, taking the ideas that emerged from the mass movement in Chile. These days, the Constituent Assembly is drafting a constitution. The ideas that emerged from the citizens' movement are also being linked to strengthen the concept of constitutionalism of the ruling authoritarian liberal democracy, and to fill in its shortcomings. But traditional liberal constitutionalists and right-wing parties do not agree. This can happen in Sri Lanka too, the right-wing sections in Sri Lanka, people in the social class who are currently benefiting from the degraded parliamentary democracy, will not want to amend it. That's why I think that even though Sri Lanka's citizens' movement is currently in decline, it should stand as an important factor in Sri Lanka's politics in the future.

A robust coverage and balancing system

I will mention another reason for this, a very important argument emerges in the constitutional debate, the fact that a system of checks and balances determined by the constitution itself should be created to prevent the abuse of political power by the rulers for personal gain and the space available to be used as an oppressor of the community. There are such strong checks and balances in the US constitutional tradition. Neither the legislature nor the executive can arbitrarily act in a way that is oppressive to the public. One organisation controls the other. Also, an important proposal in Sri Lanka is that independent commissions should be appointed. Independent commissions are very important and also act as a system of checks and balances. But there is a very important idea that emerged from the past citizen's

first thing we have to do is to think fresh, taking into account not only the criticism of the political system and governance of Sri Lanka which emerged through the citizens' movement but the overall criticism of the existing democratic system. In fact, we need to explore examples from other countries of the world as well for a new way of thinking.

movement. I don't know if the activists in the citizen movement have thought about this, but what I see as an observer is that if the state power and politics are misused by someone, if it is used as a community oppressor, the citizens who are organised to prevent it can be a very strong accountability check. This is supervision that emerges from society, from the citizens.

Then we want to see if there is room for us in the next constitution and how to include the ideas suggested by the citizens of Sri Lanka, from their own political creativity, in addition to the traditional institutional checks-and-balancing methods. Many people who think traditionally about constitutions can say in places like this, that this is not democratic and technically very difficult. For example, they could oppose the power to recall what we are discussing, saying it is technically very difficult and complexity can be cited as a reason. There are experiences from numerous countries such as the USA and Switzerland. We need to learn from those experiences and see how democratic strength can be given to the citizens with the necessary amendments in a way that there is no room for the citizen to be exploited or misused, regardless of the complexity.

Democratisation of the constitution-making process

The citizens are the source of political power. In this struggle, it emerged that sovereignty belongs to the people. In that case, we need to see how to incorporate the power of the sovereign people, their criticisms, and the important ideas raised by them from time to time into our constitutional thinking. These ideas have to be included in the

constitutional theory and thinking before the constitution. After that, they have to be made into constitutional provisions. My suggestion is that before we think about the provisions of a constitution, we should be clear about the conceptual principles of the constitution. A big mistake with these constitutional reforms in Sri Lanka is that a lawyer drafts a constitution by himself as the first step. How were the last (21st and 22nd) amendments drafted? At least the Galle Face agitation had a large number of representatives. No one has gone and met them and asked what their views are. One lawyer or a group comes together and prepares a draft constitution and submits it. Then sent to the Supreme Court to get its validity. People are not asked what their thoughts are on these reforms. It is completely undemocratic. My argument is that the content of a constitutional amendment process should be democratic, the process of the constitutional amendment should be democratic, and the process of how to prepare the content and what should be included in the content should also be democratic.

So, if we take the meaning of the word democracy, who is this "Demos"? Demos means "common people". So, a People's government. One of the mistakes in the people's governance is the representative system. Historically, not only in Sri Lanka but in every country since Britain, this system has allowed a limited, privileged political elite to hijack the entire political process and keep it under their monopoly. This is what has happened in Sri Lanka. Today, Sri Lanka's democracy has been seized and hijacked by a political class that uses extremely corrupt power for its own selfish interests. One of the strongest arguments that emerged from the citizen's movement is to free the country's

democracy from the clutches of the corrupt and selfish elite class. This should be taken back to the people, to the citizens. This is a matter for those drafting the constitution to think about. This is the strongest message of the citizen movement. That is why I think the year 2022 has historically opened to guarantee democracy in Sri Lanka once again. This is a historic moment. We must not miss that moment.

A New Fundamental Approach

How can we use this historical moment to re-democratize Sri Lanka? We have to think about how we can incorporate the rich and creative ideas that have emerged from the citizen's movement towards the drafting of a new constitution, and we must not be limited to the ideas of the degraded political elite.

The question that arises for us is how to make a fundamental conceptual framework incorporating the political history of Sri Lanka, the past experiences of the citizens, the criticisms that we have at present and the criticisms and new ideas that have emerged through the citizens' movement. The next question is how to move forward from this point. We can talk about several areas here, the first is that the constitution formulation process should be democratic. Another historical opportunity we have is to obtain a mandate of the people through a parliamentary election, for the fundamental framework that will be the basis of the constitution-making process. This is not for a drafted constitution: that took place in 1970. They obtained a fresh mandate only for the concept of abolishing the Soulbury Constitution and formulating a republican constitution. One thing we have learned from citizens' movements and our country's

experience is that in the next election, each party should include its party's basic proposals, principles and policy framework regarding the drafting of a new constitution in their election manifesto, and obtain a mandate. This will be the most democratic process. One of the most important principles of a constitution-making process is to obtain both the people's participation and the people's consent in the constitution-making process. Constitutions should no longer be the work of an expert or a political activist.

Adding value to the official name

The other important thing is how the principles we are discussing for a new constitution will be included as chapters and provisions of the constitution. There should be a discussion around this matter. The main reason is that we have to overcome the limitations of liberal democratic principles in the constitution-making process this time. One stimulant we have for that is to rethink the official name of the state of Sri Lanka. Many people have forgotten the three words that officially identify the Sri Lankan State. The words are Democratic, Socialist Republic. Sri Lanka is neither democratic, socialist, nor a republic. We really have a golden opportunity now to give these three pseudo words a real meaning. Sri Lanka needs to be truly democratised, historically there is no room for socialism, but social democratic principles can be included. We can learn lessons from India regarding this matter. What are the principles of republicanism?

We have to start thinking about the provision for recalling elected officials, systems parallel to the Parliament for drafting

legislation, and how to provide the people's representatives the opportunity to comment on the legislation. There is the question of political authority; should the legislative power be vested only in the representatives elected by the parliament, or should it be with the people and by the people, i.e. how to engage the representatives chosen by the general public organisations such as trade unions, women's organisations, farmers' organisations, etc. in the process of drafting legislation. Sri Lanka currently has a unicameral legislature. This means a single-house legislative system. Earlier in Sri Lanka, there was a Senate and the House of Representatives, a secondary house of representatives that was inherited from the British. It was only abolished. You can introduce this back creatively as an alternative. Now many people in Sri Lanka have an idea of a Janasabha (People's Council). We need to think fresh about the secondary house of parliament, with the idea of the People's Council. In Sri Lanka, there is a large number of trade unions, farmers' organisations, and many women's organisations, there are organisations of the oppressed castes (they are mostly in the lower stratum and have not yet emerged prominently) and there are organisations representing minorities. How to choose their representatives separately? Trade unions are asked to elect 10 of their representatives, such people are direct representatives of the people. Those who are directly elected by their own votes in their boards or councils. You can start to think creatively in this way.

Technical issues in the matter of constitution-making are inevitable, they are bound to surface. The main reason for technical problems is the limitations of liberal parliamentary democracy. We can overcome

them. My proposal does not mean that liberal democratic principles should be abandoned. It is the shortcomings and limitations that must be overcome. One thing we should be careful about is that when direct democratic principles are introduced, questions about fundamental rights may arise, for example; If we have a chapter on fundamental rights, it should be subject to its limits, let's say that the proposals emerging from the People's Assembly should be prepared in such a way as to be determined within the provisions of the fundamental rights chapter of the Constitution. We should not think that liberal democratic principles, social democratic principles, and republican principles are mutually exclusive principles that reject each other. We need to create a dialogue regarding these principles.

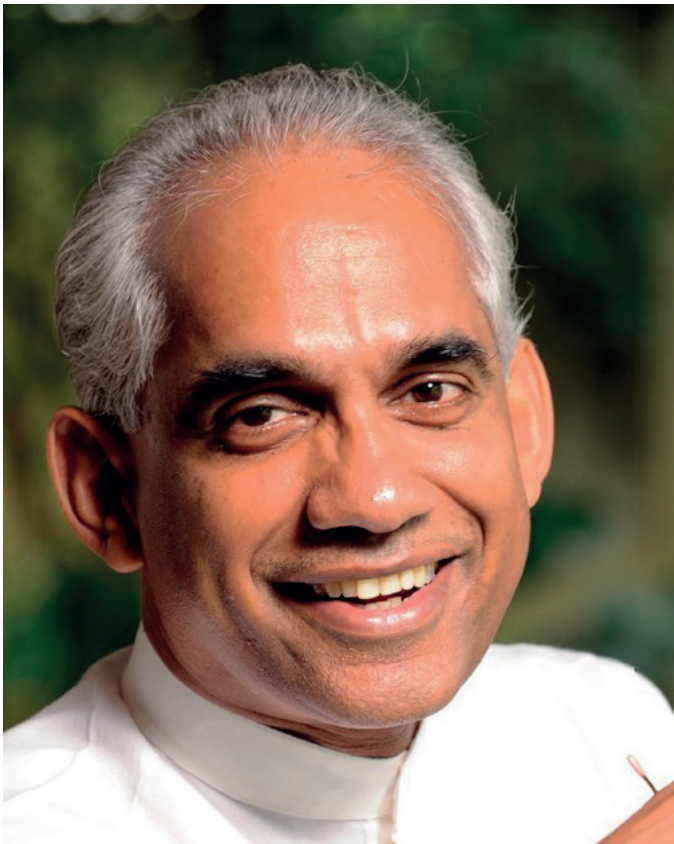
One of the problems in Sri Lanka is the lack of constitutional thinking. It is not evident among our politicians or among the lawyers. When the constitution was drafted in 1972, neither Dr. Colvin R De Silva nor the Sama Samaj Party theoretically explained why a republic was needed in Sri Lanka. If you refer to the reports of the Constitutional Drafting Committee, you can see that it has not been theoretically explained why socialist principles were introduced to Sri Lanka. It can be observed that the 1972 constitution was an excellent opportunity to develop Sri Lanka's constitutional thinking process. But it did not happen then, or even after. Recently, the 19th amendment was introduced. The constitutional principles that were the basis of the 19th amendment to the constitution could not be ascertained. Political theoretical thinking cannot be identified. There are only technical explanations. Let us suppose that when a draft constitution is taken to

the Supreme Court, only the basic technical matters are argued there. If we argue in the Supreme Court about fundamental issues without technical issues, the judges will definitely tell the lawyers that we don't need them, we only decide on technical legal issues. It shows the limitations of Sri Lanka's constitutional thinking and judicial approach. These must also be overcome; my argument is that the technical issues are a challenge because there is no fundamental clarity about them.

The Constitution should be developed with public participation

Eran Wickramaratne

M.P. Samagi Jana Balawegaya (SJB)



If we are to proceed with drafting a constitution for a country and a society we should start with actually looking at the values of a society. What are our values?

I did not choose to be born in Sri Lanka. I did not choose to be born to the Sinhala race. I did not choose to be born to the Wickremeratne family. I did not choose my father's religion. None of this. This is all given to me. So what are the values actually in constitutional making that precedes, constitutional making.

We are born equal and there have to be values to acknowledge this. Dignity and respecting each other has to be a value. The rule of law and justice has to be a value. Democracy is also a value because there are totalitarian states in the world. Therefore,

We don't have an independent Bribery Commission. That is why no significant politician or no significant official in this country has been convicted.

democracy is also a value. Then the whole issue of social justice, since there is inequality, poverty, vulnerability, the elderly and the children.

So what are the values? And the values must be reflected in the constitution. Then we look into democracy and we have often referred to democracy as majoritarianism. If you have the majority votes, that's what is accepted. It doesn't work like that, for example if you look at the justice system, it's not a question of majoritarianism. Jesus Christ was brought before Pontius Pilate, the Roman governor, who was also governor and the chief justice of the country, because it was not a new, modern political theory, it was an old theory. What did the crowd say? The crowd said to get rid of him and to crucify him which was Majoritarianism. So majoritarianism is a problem because there are values and there's justice, which is beyond majoritarianism. We need to understand all of these in constitutional making, idealism versus second best. I don't believe in quotas, quotas for women, quotas for youth, but women and youth must be represented.

So we go for the second best solution. We say a quota for women. We say a quota for youth and I believe in that and for a period of time, we should have it because that's the way to correct a system. Thereafter, women and youth will not come based on quotas allocated by us, they will come by their own right and by their own ability. People are talking about system change and we have been talking about this whole system change for the last few months. Why is the system change needed? Because those who govern must govern with responsibility and accountability. That is the major issue. The 19th Amendment

We cannot run away in a democracy by just pointing fingers at each other. We are all responsible, including all the people who have cast a vote. They are also responsible for the situation that prevails in the country now.

increased accountability. We had an independent constitutional council. We had commissions. Some of these were done away and accountability was eliminated. The executive was not accountable and therefore we have to bring the 19th Amendment back. The question also surfaces whether we need a presidential system or a parliamentary system? Whichever system you adopt there is a need for accountability. Independent commissions are important with checks and balances on the executive. The President can nominate. The President can appoint, but who is he appointing? Somebody independent needs to actually check who is appointed. Is the person fit and proper? This principle needs to be established. We need an independent police commission and independent bribery commission.

We had independence in the 19th Amendment and that is why a very close staff member of the former president was apprehended and brought through the justice system and judgment was given. Why do we need an independent police system? We don't have an independent Bribery Commission. That is why no significant politician or no significant official in this country has been

convicted. Why is this? Because the officers investigating are assigned by the government and by the police. When governments change all the investigators are changed and things are pushed back. Independence needs to be brought in quickly. We need independent procurement, independent audit and independent public service, these are absolutely essential. Power-sharing is awesome. People are shouting and screaming and saying that they are not a part of the governance process. That's what this protest has been about. So you need genuine power-sharing, it needs to be taken to the grass root level.

Everything can't be decided in the centre, there has to be power-sharing. People don't like the word devolution, but devolution is power-sharing. We don't need to have the same tourism policy in Matara replicated in Trincomalee or Jaffna, those decisions can be taken locally. Central decisions are required for matters such as Foreign Affairs, Defence & Monetary Policy. That is very clear, but otherwise the principle of power-sharing

I believe in a public accountability system, we can have an assembly of those who come in. We have to determine how those people will come into that assembly and ensure that their voices will be heard and their advice is taken by those who are elected and those in government informing policy and execution of policy.

should be looked at. Justice is important. Legal delays have caused most of these problems though it is not recognised. People do not have confidence in the legal system in this country: seventeen and a half years with two appeals on average for a case to be heard. What kind of ridiculous process is this? You have the Attorney General and when I am a minister he is an advisor to the government or to the minister. So if I steal or rob he is supposed to be prosecuting me. It does not happen. Cases are filed and when governments change, these cases are withdrawn. So the Attorney General's department should remain as advisor to the government. We need an independent prosecutor's office where once a case is in place it should be independently determined, irrespective of governments being in office or not. System change is about accountability and responsibility that people are asking for. Fundamental rights – there are lots of cases, I think we should increase the time period from one month to reasonable time periods. Access to justice – People must be able to access justice. Justice should be affordable. We should even consider the court of appeal and maybe we should take it into the provinces. It's hard work and needs a lot of change, but these things are necessary to make it more accountable and to also make the executive accountable. We brought the 21st amendment and we said a council of state because people in the protest were shouting that they are not being represented. Even though they are the ones who have voted for all these people. The people voted for candidates accused of murder. People voted for candidates who are trafficking drugs. Responsibility goes two ways. The people voted in candidates and now they are saying that the candidates are not accountable. You are also accountable. I am

also accountable for this situation. We cannot run away in a democracy by just pointing fingers at each other. We are all responsible, including all the people who have cast a vote. They are also responsible for the situation that prevails in the country now. We need people who will not come into politics. We need to hear their views. We need to get their ideas. I believe in a public accountability system, we can have an assembly of those who come in. We have to determine how those people will come into that assembly and ensure that their voices will be heard and their advice is taken by those who are elected and those in government informing policy and execution of policy. The other question that arises is where, often people say the parties put forward candidates who are not suitable, and therefore we have to vote on those candidates. No, you have a right to form your political party. Form a democratic political party. You can come through a democratic political party. You decide on the constitution. That is the way it should be. You cannot handle all of these cultural changes that are needed only by the law. You have to demand from the existing political parties. You have to demand that there should be qualifications. So that better candidates are fielded. The level of internal democracy in political parties are things that you have to demand, or you do not have to vote for that political party in bringing forth these changes. Then the constitutional drafting process is important. You can't just appoint some ordinary committee you chose to constitutionally draft the constitution. You need to appoint people, consult the public, conduct public hearings and a constitutional assembly created through people's representatives and a certain process needs to be followed. This is the way we should go

forward. I believe that in this parliament, as the president has already mentioned, a new constitutional process will start. We have had consultations for 30 years, but now the time has come to actually implement it.

The electoral system too needs to change

Dayasiri Jayasekara

Member of Parliament - Sri Lanka Podujana Peramuna (SLPP)



In the current context of the country, the first thing that is mentioned is that 225 parliamentarians are not required. There, the main predicament is that this is a call made by some people at the protest site and not necessarily a clarion call from the entire country. Similarly, this current group of 225 was elected after the 225 parliamentarians were rejected in 2019 with the sentiments that the parliament should be bombed with all 225 members in it. However, it is the 225 elected

after this saga in 2019 that are being asked to leave.

Actually, this is not a problem of a special number, I see it as an issue of trust and respect of the appointed representative, the conduct in parliament and the confusion as to what actually the representative is involved in once elected. The second issue is the rejection of the way politics have operated for the past 74 years. I see this as a conflict that emerged after the introduction of the open economy in 1977 and not as a problem of 74 years. Corruption was minimised in the governments before 1977 and the people were not as morally corrupt. We know that when C.W.W. Kannangara died, he was receiving a token payment. It was a society with the calibre of such politicians that suffered a major setback after 1977 with the introduction of the proportional representation electoral system and the open economy. Therefore, I believe that this is a situation that escalated over the political history spanning the last 40 years.

Proposal for a National Assembly

A key suggestion that came forth from those involved in the agitation was the formation of a national assembly parallel to the parliament and the Cabinet, composed of professionals and the state should be governed taking into due consideration their suggestions and criticisms. This is similar to what we have also suggested. We have suggested that just as we are appointed to parliament, there should be a council that would consider the proposals of the professionals, and enable the exchange of ideas and wider discourse, in order to engage them in the governance mechanism. We see this as a matter that is being discussed with a degree of a value proposition.

As the Sri Lanka Freedom Party, our organisers are not appointed by the leader. There are certain processes before the leader gives the letter. Because there is an interview panel, people come to that panel and their information is discussed and that is where

A key suggestion that came forth from those involved in the agitation was the formation of a national assembly parallel to the parliament and the Cabinet, composed of professionals and the state should be governed taking into due consideration their suggestions and criticisms. This is similar to what we have also suggested.

we select the organisers for each seat. The party leader appointing a person is not a reasonable method. A big accusation from the people is that the list does not contain good candidates to choose at an election to cast their vote. In some districts, thieves, robbers, people accused of corruption, uneducated and people involved in various vices are part of the candidates' lists. This is a serious matter, that there are no good candidates for the public to choose from.

We need candidates that can be accepted

As political parties, we all have a responsibility to nominate people who are accepted by society. When people who have been accused of corruption, committed murder or accused of murder are nominated through a candidate list, the people do not have an opportunity to make a reasonable choice. We are currently discussing several related issues at present.

In the case of a constitutional amendment, the current electoral system should be reformed in line with what has been stated above. We are also discussing this matter and have presented a number of proposals. Representative democracy will be strengthened only by reinforcing the electoral reform process. I believe that the aspiration of the agitators can be achieved to some extent through this process.

Political Party internal democracy should be strengthened

Dr. Harini Amarasuriya

M.P. Jathika Jana balawegaya (JJB)



Sri Lanka is going through an extraordinary time at this moment, and we need to understand that moment correctly. The Aragalaya that we are seeing now has been calling for the transformation of our country, of our quality of social relations in fundamental ways. And it's important that

we pay attention to that. It's important that we understand what the demands of the 'Aragalaya' symbolises in a larger political and social context. One of the biggest areas we think of, as the National People's Power (NPP), that we need to deal with in this country, is the social contract between the rulers and the citizens and we think that this is a problem that has been unresolved in our country ever since independence.

In many ways, we've been struggling to define this relationship, to define this contract

We have come to the limits of this current constitution. We have severe problems with the existing constitution. We critique the constitution, especially the executive presidential system.

in a way that is equitable, democratic, and just, and many of the problems that we've been facing since independence, the Northeast conflict, the Southern insurrections and all of these moments, the sort of significant moments of political upheaval in our country, have been the underlying issue has been that social contract. And we have still not really come together to form a social contract that works fairly for everyone. So, in that light, we think a new constitution is absolutely essential. We have come to the limits of this current constitution. We have severe problems with the existing constitution. We critique the constitution, especially the executive presidential system, we think this can no longer be tinkered with and a new constitution is required.

And we think one of the primary fundamental questions that the new constitution should address is the social contract between the rulers and citizens and the kind of relationship that should be - how do we ensure that there are no second-class citizens and that citizens feel included and part of the system, whatever their identity, whether it is in individual identity in terms of gender, sexual orientation or being part of a specific cultural, ethnic community. Whatever the identity is, there can no longer be second-class citizens in our country. So ensuring equality, equity, and social justice for all, irrespective of difference should be a primary fundamental principle in the new constitution. We also think that in redefining the social contract between the citizens and the rulers, one of the things that we need to think about is how to strengthen democracy, how to strengthen democratic structures in our society, and how to enable citizens to participate more actively

in their own political systems and political decisions.

So, we have several ideas that we are thinking about and we are discussing. None of these are final, but these are up for discussion. One or two examples that I can give is that we know that during elections, all political parties come up with manifestos that are simply forgotten after they get elected. Even right now, we see that problem where there was overwhelming support for a particular manifesto, and for a particular type of leadership that never materialised. It also does not consider the fact that citizens also change their minds and change their ideas about what is right and required. However, there's no opportunity that is given in our system to accommodate this change. We see that happening right now. So, there are several things that we propose to address - one is that we think a party that gets elected to power by presenting a particular manifesto has to be justiciable somewhere.

So that there is some constitutional provision that is provided for a citizen who voted for a particular manifesto to hold them accountable. A party that comes into power by promoting a particular manifesto is bound to implement it and a citizen should

whatever their identity, whether it is in individual identity in terms of gender, sexual orientation or being part of a specific cultural, ethnic community. Whatever the identity is, there can no longer be second-class citizens in our country.

have the right to go to court if necessary if that manifesto is being undermined or not implemented properly. The other proposal we have is to have a provision with the right to recall a representative so that the citizens who elected a particular member do not have to wait for the end of the term of office in order to express their sentiments about a particular representative. If during that period the representative violates certain fundamental agreements or is accused of corruption, those who sent him to that position should have the ability to recall and call for new elections.

We also think that matters like crossovers should be prohibited or crossovers should result in you losing your seat and having to be re-elected. You cannot simply just cross parties and remain in your seat without your constituents being given a chance to accept or reject the position you have taken. So as the NPP, things like this in which citizen's participation in this system is strengthened, are implemented at people's councils at the local level where we are setting those, by getting the community to appoint leaders from within that community, representative of that community, who will then form an NPP council for that particular local area.

So we have asked that the people's councils include youth representation and women's representation that is representative of that community, of the diversity within that community. Within our party structure, the councils will have the power to influence what happens within the party. Once we set this up properly, which we are in the process of doing, we think that they should be able to, for instance, propose nominations for elections in the future. They can suggest who should represent them in elections. Those

The other proposal we have is to have a provision with the right to recall a representative so that the citizens who elected a particular member do not have to wait for the end of the term of office in order to express their sentiments about a particular representative.

ideas should come from the council's input into policy input and into the manifestos that the party develops. So, we have a council at the very local level, at the polling division level another layer, and a district level representation. Through this system, we'll be able to influence the party at the national level so that there is a conversation and a dialogue that is enabled across the party.

So the decisions are not just taken at the top and sent down to the bottom, but there is communication that goes both ways. So we think that democratising party structures, as well as enabling greater citizen participation in decision-making in matters of policy and politics is the way that we can democratise society. We are aware that a constitution can only do so much, and along with the constitution there is a need for political education, consciousness, awareness raising, and also opportunities for citizens to organise and engage if we really want to democratise our society.

These should be priorities for reform in the months as we go forward.

Disaster if constitution drafted only based on Aragalaya

Prasanna Ranatunga

Member of Parliament - Sri Lanka Podujana Peramuna (SLPP)



The Constitution of our country has been amended 20 times since 1978. Most of these amendments were to fulfill the agendas of political parties or to serve individuals. That is why this has become an utter confusion with amendment after amendment added on. Therefore, people of the country, scholars and elders are of the opinion that a new constitution should be introduced in this country that is relevant to the times. It is my suggestion that a brand new constitution

should be brought that is relevant to the country by recognising and understanding the needs of the people.

When the presidential system is abolished, what will happen to the Provincial

When the presidential system is abolished, what will happen to the Provincial Council? - and how would the Provincial Councils be governed? - There are several issues that will surface... These things are intertwined with each other. We have to decide whether to make our country subject to a federal system or a unitary country.

Council? - and how would the Provincial Councils be governed? - There are several issues that will surface... These things are intertwined with each other. We have to decide whether to make our country subject to a federal system or a unitary country. If we pursue federalism, when the presidential system is abolished, the federal system can be implemented through the provincial councils. If the majority of the people of the country want this to be a unitary state, the president should have some powers to handle the provincial councils. This cannot be explained briefly; this requires a broad dialogue. When I was in the opposition, I was in the constitutional amendment committee, we discussed for four years and still could not see an end.

The activists reject all 225 parliamentarians. However, if the 225 leave, the next in line on the list will be appointed. Therefore, this should not be the purpose of the Aragalaya.

The constitution is not something that can be drafted in two or three days. We need to create a broad discourse in the country, since many people do not understand the constitution. They want to fulfil their daily needs and live. Therefore, I believe that we should create a discourse in this country, allow debates to take place and introduce a constitution suitable for this country. We need everyone's assistance with such a process. Otherwise, the efforts will be futile.

Today, except for the MPs who were elected from the National List in the Parliament, all the others have been appointed by the people's votes, as representatives of the people. Today, people talk about the agitation (Aragalaya) in the country in a big way. The activists reject all 225 parliamentarians. However, if the 225 leave, the next in line on the list will be appointed. Therefore, this should not be the purpose of the Aragalaya. If you ask sixty leaders of the Aragalaya what the next steps are, they will tell you sixty different things. People who do not understand the constitution speak at these forums. When they were questioned by the media regarding their suggestions and proposals, they say that there are no such plans. Therefore, if we get restricted to the Aragalaya to develop a constitution the country will be damned from the start. Instead, groups that have the expertise and sound understanding in this area need to be called, engaged in a wider discourse, and a constitution that guarantees the objectives of the people should be developed with good understanding and consideration from the perspective of the public.

Step away from old systems, think afresh

M.A. Sumanthiran

M.P. - Tamil National Alliance



There have been calls for a radical change in our system of governance, people are requesting a system change, not just a change of heads, or a change of persons, but a change of the entire system. They are asking for an advanced model of democratic governance. This could be even called direct democracy. We have a system where representatives are nominated from the political parties and

people have to elect from the nominated candidates with very little engagement regarding who will be nominated. Once these representatives are elected and assume office, they make all the decisions for a period of five years. People do not have the space to engage or interact in those decisions. So, there is a radical and revolutionary change necessary at both these levels. The type of radical change that is envisaged cannot be achieved under the

People do not have a say or an opportunity for almost five years, to engage according to the current system after electing the representatives. The people who appoint the representatives do not have the provisions to intervene and influence the decisions made by their representatives.

present constitution. Therefore, we definitely need a new constitution that is formulated as an out-of-the-box solution. We have to put aside the existing system and think fresh as we step into a reform process, not on any of the lines that we are used to so far.

We need a new constitution if the system has to be changed completely. The present mechanism of selecting representatives should be changed. Currently, the political parties select representatives and nominate them to the people for election. In contrast, in the old voting system in the local governments, the people choose their candidate and presented that candidate to their political party. After the election, the assembly meets and decides how to form a government. According to the current system, the party with the majority votes or the most seats gets the power to form a government.

To change this system, the people have to choose their representatives and nominate them, and after those representatives are elected, if there is no government made up of those representatives, a committee system has to be formed. There is a discussion about such matters at present.

What is the People's Council?

There need to be provisions for the people to engage in selecting the candidates to be elected by the public vote. Once these candidates are elected there needs to be a forum for the public to engage in the decision-making process. There is a need to create people's councils so that the voice of the people and the representatives can be absorbed from the grassroot level upwards. When making decisions there must be a system where the people are consulted. If the people's councils

are functioning, before taking an important decision for the country, the decision can be discussed at the local levels and finally referred to the highest assembly. So, there will be greater involvement and engagement of the people in choosing representatives and also in the decision-making process. Major decisions cannot be left in the hands of the elected representatives only, it should follow a process of a participatory decision involving the public. This must be two-way consultation and the people's views from the council can contribute to making the final decision. So, in this manner, we can strengthen democracy and engagement of the public instead of the representative democracy that we have right now. Constitutional reform must take this into consideration and make fundamental system changes instead of just tampering with the current constitution and strengthening democratic rule in the country.

In order to implement these systems, we have to completely change the constitution, leave aside the existing system and think in a new innovative way and proceed with a reform process. The country has reached the stage where such a system is required although it is quite difficult to implement this system in practice since the people do not have a say or an opportunity for almost five years, to engage according to the current system after electing the representatives. The people who appoint the representatives do not have the provisions to intervene and influence the decisions made by their representatives. This system is the reason for the deteriorated state our country has reached today. Therefore, the engagement and participation of the people in important decisions will be the most critical aspect of a People's Council.

When the elected representatives are accused of corruption, the public should have the ability to look into the facts and remove the representative and appoint someone else. The new constitution will be an advanced democratic system only if such proposals are included and integrated into this new constitution.

Although it is not easy to implement this system, if we are to strengthen democracy, we must create a mechanism that can achieve these objectives.

We can obtain technical support since the modern world has found practical solutions to such problems in advanced democratic systems. If this does not happen the mandate of the people will continue to be distorted in governance.

A constitutional amendment should be enacted soon

Rauf Hakeem

Member of Parliament - Samagi Jana Balawegaya (SJB)



The topic of constitutional change in the country has reached a new stage after the Galle Face agitation (Aragalaya). Maintaining a reasonable equilibrium in the relationship between the three pillars of democracy, the executive, the legislature and the judiciary, is a characteristic of a good constitution. If we want to retain this feature and also make an effort to strengthen democracy, there is a

process within the framework of the existing constitution.

The constitutional reform process can adapt two methodologies. One is to work within the framework of the existing constitution. The other is to develop a constitution through a consultative process among the people in the country since there is a different process if it is to be done with the people's participation outside of the constitution. We have had both of these experiences in history within the short post-independence period in this country. In 1971, we had a process of the entire elected body sitting as a constituent assembly and promulgating a constitution, which is an autochthonous constitution that was introduced in 1972. Then we also have the existing constitution, with certain entrenched clauses and a referendum and a two third majority in parliament are required for a change to those provisions. There are other provisions in the constitution that do not require a referendum but could be approved

by only a two third vote in parliament.

However, there is a sentiment expressed particularly after the Galle Face protests, among the people that the entire parliament has lost its mandate. In that case, there is a need to obtain a fresh mandate from the people to set up a new parliament. Thereafter, parliament has to either sit as a constituent assembly after laying down a manifesto in which they will state very openly that they would enact a new constitution through a constituent assembly or mechanism to enact a new constitution through the existing constitutional framework where you will have to have two third vote in parliament, as well as the referendum in case it impinges on the entrenched clauses.

There is an ongoing discussion regarding an interim administration with the participation of MPs who are currently elected as representatives to Parliament. At the same time, a constitutional amendment has already been proposed to revert to the 19th Amendment from the 20th Amendment

by changing some provisions with limited requirements. The 22nd Amendment has been presented to parliament. It will include several proposals to reduce the power of the executive and increase the powers of the parliament, and is scheduled to include some provisions that go beyond the 19th Amendment. If these are done properly, there is hope that the current agitation among the people can be settled to some extent. However, for the preparation of a completely new constitution, there is an attempt to form a select committee and draft the constitution through this committee.

However, after the Galle Face Aragalaya there is a call to have an entirely new constitution embodying several other reforms to improve democratic norms in the country, including the provision for direct democracy and its implementation when it comes to important issues where people should be able to participate through a referendum to decide, beyond the executive and parliament in approving those matters, which are considered to be critical. These may then require a certain threshold of approval from parliament as well as through a referendum in the country.

If the constitution is drafted with public participation, a People's Council can be established outside the Parliament, similar to the efforts in the seventies. We must ensure that the procedure generally followed around the world in the preparation of a constitution is adhered to before looking at the modalities.

Implemented in stages

If the constitution is drafted with public participation, a People's Council can be established outside the Parliament, similar to the efforts in the seventies. We must ensure that the procedure generally followed around the world in the preparation of a constitution is adhered to before looking at the modalities. It is necessary to obtain a mandate from the people to approach the preparation of drafting a constitution. The mandate can be obtained in an election. That is our expectation.

Through these methods, we hope to present a stable constitution that responds to the current aspirations of the people of the country, especially one that balances the relationship between the three pillars of democracy - the executive, the legislature and the judiciary. In order to implement in several phases, we expect to present the provisions of the 19th Amendment as a short-term phase, there is now an opportunity and space to reduce the powers of the executive and increase the powers of the Parliament, as well as to completely change the constitution and present a constitution including the electoral system and other requirements.

Limiting the power of the executive

In order to reduce the overbearing power of the executive in controlling parliament when it comes to the dissolution of parliament, the appointment of the prime minister and the cabinet, as well as assigning subjects to cabinet ministers, the powers vested in the executive have to be reduced.

The discretion of the executive in selecting a cabinet from the legislature and appointing the prime minister should be reduced, or completely eliminated. There is a request for a constitutional system to be introduced that assigns those powers to a prime minister who is appointed by the majority in parliament. The space available to the Prime Minister or the President to expand the cabinet should be reduced or limited. There is a need to ensure that appointments to important positions be made transparently through a legislative body made up of members of parliament and experts from civil society, in

such a manner that suitable and qualified people are appointed and professionals are able to come into those positions. There is a need for a system that protects the rights of the people.

So these are the issues that have surfaced and hopefully, we could capture these new provisions and aspirations either as a temporary measure through an interim arrangement in the parliament or as a fully inclusive new constitution.

This parliament cannot bring a new constitution

Mano Ganesan

Member of Parliament - Samagi Jana Balawegaya (SJB)



There are two paths before us as a republic. One is to enact amendments to the constitution, and the other is to enact a completely new constitution. A new constitution cannot be brought into this parliament. The process of presenting a constitution should be passed by the parliament. Although it is possible to go to a referendum, the Parliament is the primary unit. This parliament is a distorted parliament. The mandate of the people outside is not

reflected in Parliament and is not represented. Everyone is aware of this anomaly. What can be done now is to bring in an amendment.

The constitution has been amended 20 times. The next amendment by number will be 21. Now we know a little about it because we had the 19th Amendment with salient democratic features introduced to the constitution. Before that, we had the

It was during the 17th Amendment that for the first time civil society organisations came together to introduce key democratic elements to the constitution. This was completely abolished by the 18th constitutional amendment, enacted by the Rajapaksa government. We yet again enacted the 19th Amendment and the Rajapaksas came back to power and enacted the 20th Amendment.

18th Amendment introduced after the 17th Amendment. It was during the 17th Amendment that for the first time civil society organisations came together to introduce key democratic elements to the constitution. This was completely abolished by the 18th constitutional amendment, enacted by the Rajapaksa government. We yet again enacted the 19th Amendment and the Rajapaksas came back to power and enacted the 20th Amendment. I have voted for the 17th and 19th Amendments and opposed the 18th and 20th Amendments. That is the position of our party. Therefore, I think that I have a right with my party more than others to talk about democracy and the need to bring democratic features to the parliament.

The national problem needs solutions

We talk about democracy in our parties. When you compare our party, I believe that our decision-making body is more democratic than anyone else. As the party leader, I am

If the civil society thinks that once independent commissions, good governance, rule of law, media freedom, and independence of the police and the judiciary are established, that all problems are solved, then they are wrong. We need all these things, and we agree but we need to go beyond and pursue a solution to the national problem.

a firm believer in democracy. We cannot reintroduce the 19th Amendment and conclude the process. As a Tamil community, we are a party that represents a community that has been subjugated. No one has found solutions to the national problem. There is the 13th constitutional amendment in the constitution, but it has not been implemented. It needs to go beyond that. Although we said that it should be 13+, now it is minus thirteen. We need to pay attention to these as well.

If the civil society thinks that once independent commissions, good governance, rule of law, media freedom, and independence of the police and the judiciary are established, that all problems are solved, then they are wrong. We need all these things, and we agree but we need to go beyond and pursue a solution to the national problem. What has happened today? The main reason for this crisis is the national problem. The problems are not over, the war ended. A colossal amount of money had to be spent on that war. The money that should have been used for development and providing solutions for the issues of the people had to be used for the war. Not only that, the Rajapaksas were given a free hand to do whatever they wanted on the basis of winning the war. The people gave a licence to them to plunder, kill, abduct, attack journalists, and assault and kill civil society activists. It was the 6.9 million people who voted that brought back the Rajapaksas, and now they are the ones who are initiating the 'Aragalaya'. Now they say 'Gota go home'. I said it in 2004 when people were abducted in white vans. We will not quit because of these things but will unite together holding hands. We condemn the suppression of the 'Aragalaya'. We oppose it.

The proportional and preferential system should be there

There is an opinion that the voting system should be changed. But we will never agree to change the current Proportional representation system. Civil society needs to learn a lesson. There is a false illusion in civil society, and there is a thought that the preference system should be abolished. If there are 20 candidates nominated from a party, three people can be elected by a popular vote. It is a feature of democracy. The minority parties have an opportunity to enter parliament due to the Proportional representation system. Otherwise, only two parties will be in parliament. It is another authoritarian madness. You need to understand that. There are people in the 'Aragalaya' and there are young people. How do they come to parliament? They have an opportunity through this process.

There is no time to bring a new constitution. Now let's all come together and

There is no time to bring a new constitution. Now let's all come together and definitely bring the 19th Amendment, repeal the 20th and go for elections very soon. Let's get a new mandate, new MPs will be elected, the comrades involved in the Aragalaya can also come, let's come together and formulate a new constitution.

definitely bring the 19th Amendment, repeal the 20th and go for elections very soon. Let's get a new mandate, new MPs will be elected, the comrades involved in the Aragalaya can also come, let's come together and formulate a new constitution. In any case, it cannot be done with this parliament. This parliament will give 134 votes to make the representative of the Rajapaksa the President. Is it what the people want? It is a joke, so we cannot expect a new constitution in this ridiculous parliament.

It is wrong to reject all 225

I want to say one thing, the thought of rejecting all 225 parliamentarians is wrong. I am one of the 225. I am not a thief, I have not done anything wrong, I have not spoken dirty words, I have not taken commissions, I am only standing up for my people. My people voted for me, not the Aragalaya people. So how can you ask us to go? There are two sides to the coin of democracy, on one side are the people who seek votes and on the other side are the people who vote. If the people who obtain the votes are not doing things right and are engaged in wrong activities, the people can protest and send them away. Also, the people who vote should learn, they should understand politics, they should find out, they should vote for the right candidate, if they vote correctly it will be good if not another group like this will be voted and be elected to the parliament in the next election. Therefore, people should stop voting on the basis of racism, extremism, separatism and terrorism, and vote thinking of their country. Candidates who are honest, dedicated, with a vision, who care for the people and with the ability to at least speak two languages in this multi-ethnic country should be voted into office. Then the future will be bright and positive. Otherwise, it is useless to only place the blame on one side.

A constitutional equilibrium required for development

Patali Champika Ranawaka

Member of Parliament - Samagi Jana Balawegaya (SJB)



The idea of a new constitution has reemerged. The reason is the 12 April 2022 declaration of State bankruptcy. Therefore, people have been pressed to seriously question their representatives and rulers considering the difficulties they are faced with as a result. This has surfaced as a discourse in society about a type of representation outside of parliament that

represents democracy directly. When you consider the crisis in Sri Lanka, there are some historical aspects to it, but this crisis has escalated and matured to this point because the non-commercial loans obtained after

This crisis has escalated and matured to this point because the non-commercial loans obtained after 2010 were invested in projects that could not generate any income, while the wealth was plundered. Although the question of whether this calamity is a problem of the constitution is before us now, the issue of governance has also come to light as an issue behind this catastrophic situation.

2010 were invested in projects that could not generate any income, while the wealth was plundered. Although the question of whether this calamity is a problem of the constitution is before us now, the issue of governance has also come to light as an issue behind this catastrophic situation. Even though the issue of the grievances or aspirations of the minority people has been at the centre of discussions during attempts to develop fresh constitutions in the past, the space now expands to deliberate on the issues of democracy, human rights and economic behaviour within a wider scope.

Regulation of development processes

Generally, according to the definition of a constitution in political science, the elements of the economy are not reflected in the constitution. They are reflected in the various Acts. However, given the present context of the country, the need to introduce a certain degree of constitutional equilibrium in development without leaving room for the rulers to take arbitrary decisions, has been mooted. We have also suggested the National Physical Plan, the commission should be included in the constitution and ensure that development processes outside of its scope are prevented.

In addition, traditional party politics have been seriously questioned. Those who engaged in political revolutions in our country expected mainly to overthrow the system through an armed struggle and to establish a different social order and a system. They have failed. Therefore, it is not only the democratic system that has failed in Sri Lanka, even the armed insurrections have failed tragically.

Also, when we consider countries like Cuba, concepts such as socialism that insurrections expected to establish, have been seriously challenged. Even though those social systems have fallen apart, these problems surface since there are people who still cherish and attempt to dwell on those memories.

Internal democracy of the parties

Therefore, it should not only be about the economic system we adopt but attention should also be drawn to the party system and the unlimited powers wielded by the leaders of the respective political parties, the absence of democracy and democratic values within the parties, the tendency to remain without leaving when defeated, the despicable desire and attempts to repeatedly represent parliament, provincial council or local councils through heinous methods and the damage to the country due to nepotism. Attention should be paid to the impact on the country due to family politics. At present one-third of the parliament are relatives, while there is another group of people who have managed

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to increase their preferential vote count with ill-gotten wealth. The influence of the media, especially the owners of the electronic media, that launch massive campaigns to send their preferred people to parliament and initiate processes to ensure that those who are not in favour or liked by the media owners are defeated and discredited. There is a wider discourse at present regarding the internal democracy of these political parties and the media outlets.

Mass Media and illegitimate capital

When it comes to mass media, especially electronic media, the frequencies belong to the people. They are used in utterly despicable ways and means to misinform and mislead people, and discredit people they don't like, and promote their own favoured individuals and groups. Billions of rupees earned through illegal means such as drug trafficking, illegal stone and soil smuggling and government contracts, are invested in elections. These result in higher preferential votes. They are

seated in the front row of the parliament today. In such a context, democracy and the value of the people's vote have become a joke.

It is our belief that internal party democracy, external democratic processes and election processes should be strengthened in this constitution in order to have a real representation of the people instead of this politics of nepotism, corruption and puppets manipulated by the media.

In our opinion, the Election Commission should be empowered and strengthened. The Election Commission should reject party constitutions that do not guarantee internal democracy in the parties. Also, a tradition should be established in the country, in order to create a democratic environment where the main leaders would step down after an election defeat paving the way for other leaders to take over. Also, in the selection of candidates, the parties should be able to have a process of obtaining the preference and or considering the will of the party members from the regions. In some countries, primary elections are held for the candidates in order to select a candidate to represent a party at an election, and that is how presidential candidates and prime ministerial candidates are selected. Such a process is essential.

Regulation of election expenses

The second area is money. The Election Commission should have definite control over the use of finances. Most of the time, attention is paid only to the abuse of state property. The Election Commission should be entrusted to lay down specific rules and regulations for election campaigns that use not only state property but also ill-gotten wealth. Similarly,

attention should be paid to the usage of media. Even if there are some issues with print media, as far as mass media is concerned, electronic media is the most widely circulated and used media in the country. The frequencies used by the media belong to the people of the country. The Internet belongs to the people. Therefore, it is essential to delegate power to the Election Commission to intervene and regulate Internet and electronic media usage in a specific and balanced manner. Otherwise, this will continue to operate in an extremely corrupt manner.

The wider public should also develop political traditions outside the constitution. Instead of lamenting, 'Oh, what happened to us or who is responsible for this mess' after the country declared bankruptcy, we could have averted the disaster, if we had acted with some kind of understanding before these events unfolded. Therefore, the public should also understand and own these traditions.

We need a party tradition where a winning presidential candidate would retire from politics after serving the legitimate term as a president and also where party leaders would step down after losing a main election and thereby, provide the opportunity for others to take the country forward. The country needs party traditions that abhor nepotism and ill-gotten wealth.

An alternative proposal about delimitation

Mylvaganam Thilakarajah

former M.P. United National Party - National Union of Workers (NUW)



of the public. They went from village to village and inquired from the people for their suggestions regarding the content of a new constitution. The people who thought 'I want to give a suggestion at those forums are the very same people who came to a point where they wanted a 'system change', especially when economic problems approached their kitchens and children's schoolwork was disrupted. It is also an opportunity to change the constitution.

There is a problem in Sri Lanka regarding the formulation of laws or policies. It has

Our first constitution came into being in 1972, but we could not govern even for 5 years with the constitution we made for ourselves. We made a mistake in drafting the first constitution. Who drafted it?

The need for a new constitution for Sri Lanka is a topic that has been discussed for a long time. It is also a form of agitation. Today, that agitation (Aragalaya) is on the streets. Those who have agitated before have given in writing their ideas and what needs to be done according to their opinion. The governments that have been elected from time to time came forward to resolve these matters and the previous government of 'Yahapalanaya' appointed a committee to obtain the views

become confined to certain exclusive groups. However, now it has become a common call of the people. This is the best side of the agitation that I see. Now there is an opportunity for the common man to question this system of governance, demand a new constitution and call for a system change.

Prior experience in drafting legislation

So, what can we do about this? They are talking about 74 years of independent Sri Lanka. My continuous idea is that we are a country that did not make a constitution for ourselves for almost half of the 74 years. From 1948 to 1978, we did not even think about how we could govern ourselves. We just accepted the framework from the British monarchy. Our first constitution came into being in 1972, but we could not govern even for 5 years with the constitution we made for ourselves. We made a mistake in drafting the first constitution. Who drafted it? Was it made in such a way to preserve our Sri Lankan identity by obtaining the suggestions of the public? If not, there is a question of whether it was developed to serve a political agenda. After that, we made our own constitution called the second constitution of 1978, and we are still experiencing problems with it. Instead of creating a constitution that encapsulates the identity of Sri Lanka, it was adopted with pieces here and there from different countries.

Inconsistency in the system of administration and the system of representation

It is clear when you take a look at the wider picture, that politics alone is not the only cause of the problems we have

in our country. The main problem in our country is with the administration. To what extent our administration, electoral system and politics are compatible with each other, this is something for us to think about. There is a mistake in this representation. The representation of the public is not reflected properly. Not only the representation but also the service required by the public is not provided properly. We appoint our representatives through a voting system. How do we obtain a service from these representatives? They do not hand out anything personally, it is taken from the administrative system. We have an administrative structure with ministries, secretaries of ministries, district secretaries, divisional secretaries and Grama Niladharis. On the other hand, there are elected representatives. There are electorates, a district system and so on. But these two systems are not the same. The question arises as to how many people a member of parliament represents and how many people an MP serves. The constituencies are small in an electorate but the administrative unit to which the elected official is supposed to provide

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services is larger. There is a big contradiction between these two structures, and that's why, first of all, the delimitation of Sri Lanka has to be done correctly.

A precise delimitation is necessary

For example, do we have a specific definition of the population that should be included for one Grama Niladhari division? Do we have an idea of how many people should be represented under one divisional secretariat or a district? On the other hand, we need to see if the people are properly represented in the parliament. An alternative to this problem that can be suggested is for some level of limitations of a Grama Niladhari (GN) division to be established. A division can be formed by combining three such GN areas. A representative is then appointed to the local council or the municipal council for that division. We should determine a definite criterion about the population that should belong to a divisional secretary's jurisdiction and by combining two such jurisdictions we can formulate a provincial council area. Also, four provincial council divisions can be combined, and one representative can be appointed to the parliament. This kind of delimitation can streamline public representation as well as administration.

Under the current system, the area represented by a person contesting for the Provincial Council and the person contesting for the Parliament is the same. Both of them are obtaining their votes from a district. Therefore, from the public's perspective what is expected from a member of the provincial council is similar to the expectation of a member of parliament. There is an expectation

that a member of the local government should carry out the work of a member of parliament. The expectation is that all our people's representatives and therefore all of them have to work in a similar manner. That is why the parliamentarian will go and construct a road in the village. A member of the provincial council becomes a member who attempts a role in policy making and world affairs. The working areas have not been clarified in the

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absence of a proper delimitation.

Therefore, all of this should be structured. 'System change' means not only the constitution. The administrative system should also undergo a complete change.

A complete reform is urgently required

Weerasumana Weerasinghe

Member of Parliament - Sri Lanka Podujana Peramuna (SLPP)



There were 20 amendments to the Second Republic Constitution of 1978 while an attempt was made for a 21st Amendment. It was rejected by the Supreme Court and a 22nd Amendment has now come to Parliament. When the 1978 constitution was drafted, there was significant opposition among the people, political parties and groups who were knowledgeable about the constitutional process and were able to

interpret the constitution and learned people. They claimed that the constitution was a distorted constitution. It was an authoritarian constitution developed by merging sections of the various constitutions of France, the United States and England. We have witnessed the use of this constitution over the past forty-four years. A new constitution was a continuous pledge made by successive governments that came to power since 1994. However, in the past twenty years, none of the leaders who were elected to power showed any genuine

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desire to fulfil that promise. The necessary support for this process was not also not provided by other political forces.

The current 9th parliament is a politically distorted parliament in our nation. There is no room to expect significant achievements from this parliament. We have witnessed the people's agitation and pressure mounting due to this distortion. For the first time in recent history, a public protest escalated to the point of ousting the Head of State. We cannot expect a restorative reform through this distorted parliament and the political environment that has taken shape after the resignation of the head of state. However, we believe that this crisis will eventually contribute to some extent to changing the political environment in this country with an intervention for some constitutional change.

The 22nd Amendment is a positive step

The government approved the 22nd constitutional amendment at the last cabinet meeting. It will be discussed in Parliament after the gazette notification is issued. There

The last government which we were part of, the 20th Amendment was presented as an adjustment to the 19th Amendment. This was not for any new reforms. At that time, we had to vote against our will, on the promise of President Gotabaya Rajapaksa that a new constitution would be introduced within a year.

are some positive reforms in the proposed draft. In the previous 19th and 20th Amendments especially when the 19th was brought, the people had high expectations for the rights of the citizen to be guaranteed. Among all these constitutional reforms, the 19th Amendment is a positive constitutional amendment. But at the same time, they promised to present a bill related to the electoral system, but the 'Yahapalanaya' government did not fulfil this pledge during their time. Therefore, in the last government which we were part of, the 20th Amendment was presented as an adjustment to the 19th Amendment. This was not for any new reforms. At that time, we had to vote against our will, on the promise of President Gotabaya Rajapaksa that a new constitution would be introduced within a year. But he was unable to do it. So, this has now become a distortion. The new amendment presented seems like a journey of returning to the 19th Amendment. This is a positive feature.

In particular, we see two main issues surfacing from the protest in society. The first is the voice of the people who are oppressed due to the economic crisis. The second voice is demanding democratic reforms. Therefore, it is necessary to find solutions to the economic problems and also respond to the agitation related to democratic reforms at this moment. The proposed 22nd Amendment is a positive step in this regard. However, as the Sri Lanka Communist Party, we believe that the 22nd Amendment alone will not be sufficient. There are many positive and salient features contained in the draft such as allocating more power and strengthening Parliament, increasing opportunities for people to participate in it as a public institution, and listening to everyone's opinions making it more inclusive.

A change in the electoral system

However, the picture in society regarding the 225 elected parliamentary representatives, is not positive. Let's leave aside the judgement call as to whether it is a fair reflection or not. The call is to reject all 225. The reason is that in the current electoral system and process the real representatives are not appointed. The space and opportunity for real representatives to be appointed are limited. Therefore, if we keep these gaps as it is and attempt to move to the next election a distorted situation will be repeated again. Therefore, our request is that a new electoral system should be provided along with this 22nd Amendment. It is essential to ensure justice to the voice of the people who fought for these democratic rights, otherwise, a distorted legislature will be formed again.

In the last parliament, a committee headed by the current Prime Minister Dinesh Gunawardena held a long series of discussions regarding a new electoral system. Many parties and groups contributed with their ideas and inputs. However, the possibility of that report coming out as an accurate and credible report is doubtful. It could be seen that some efforts were made to fulfil the personal interests of the people gathered on the committee. However, a report has been submitted. Unfortunately, although 17 people were named to the committee, only eight committee members have signed the report. All eight members are from the parties or representatives of the previous government. No one from the other parties has signed this report. However, if the electoral system is not reformed at least based on this report or in a manner compatible with the new constitution, it will be a huge tragedy for the country.

Support for the amendments subject to revisions

The 9th Parliament is one of the most discussed and debated parliaments in the political history of this country. Therefore, if we work for these reforms, we will at least be able to accomplish something positive through this parliament. As the Sri Lanka Communist Party, we are ready to provide the required assistance for the 22nd constitutional amendment to be enacted subject to revisions. This is mainly because this draft presented revolved around the bill Wijeyadasa Rajapakshe proposed while he was an MP of the independent group. He presented it based on our ideas presented while developing the draft. He has now presented it as the Minister for Constitutional Affairs. This is a positive feature. We will provide our contribution to passing it in parliament with revisions. But as a party, our main call is for a full constitution that represents the aspirations of the people. If this parliament can achieve this step, I believe that will be justice for the people. We will do our maximum to intervene for this purpose in the upcoming period.

New proposals for a constitution

In the entire Aragalaya movement, there was a demand for a system to be created for educated and intelligent youth to be able to contribute to the democracy of this country. It is true that educated and intelligent people were elected to parliament by the people's vote. But there was a discourse in society about the lack of direct representation in the proceedings of Parliament. In the 22nd Amendment which is going parallel with the 19th Amendment, a system is created for

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all MPs to contribute through the sectoral and oversight committees. As independent parties, we have proposed that a separate advisory board be appointed for each ministry. Professionals, subject experts as well as youth representation from the community should be part of this advisory board. We openly suggested that some representation from the groups that contributed to the Aragalaya should be included in this board. There should be a wider discussion regarding the method chosen, but the voice of the youth should be represented.

We suggest these reforms be included and the ideology of the people and the society be provided space in the decision-making process in parliament. There was a wide discussion, especially regarding the selection of members to the Constitutional Council, whether it should be within parliament, or the representatives should come from outside. We suggest that scholars, professionals, and representatives of such organisations should be appointed to the Constitutional Council as external representatives. We believe that a door will be open to the ideas of society as a result. For it to become a holistic process, the entire constitution must be changed.

Internal democracy

Even the procedures related to registering a new political party should be changed. If democracy is to be strengthened, not only the democracy of the public citizen and the legislature but also must extend to the strengthening of the internal democracy of political parties. Nobody talks about the behaviour of political parties in this country. Some parties are operated by their party leader as a private company. That is what we have seen recently even in the governance of the country, which was run like a family company. That is how political parties are also operated. That is how the parties have also governed the country. Therefore, the internal democracy of the political parties is essential. This becomes the responsibility of the Election Commission: To check the democratic framework of the political party while registering and to monitor whether the democratic framework is being implemented according to the relevant constitution. The Communist Party that I represent is a political party that respects internal democracy. In our constitution, a system is being formulated, for the opinion of the lowest member to reach the general secretary of the party. The party leader and the leadership council are elected through constitutional conventions. None of us know whether other parties have a similar system or not. As long as the internal democracy of political parties are strong, the people of this country will not have real democracy and their rights guaranteed.

Our country cannot move forward without an extensive discussion on all these issues. In four to five years, it will be called the curse of 80 years, and in another 10 years, it will be called the curse of 90 years. If this goes on like this, there is no progress forward.

Therefore, there should be a complete reform of this entire constitutional body immediately.

We propose a confederal constitution

C. V. Wigneswaran

M.P. Thamil Makkal Thesiya Kuttani (TMTK)



Regardless of ethnicity, the people living on the island are demanding a change in the system. However, there is no consensus on the change they want. There is no doubt that the political, social, and economic infrastructure built during the period of independence and continued thereafter has failed miserably. In particular, the ethnocentric policies that have been implemented so far have contributed

to the destruction of the infrastructure that has been maintained so far. Many who could have contributed to the country's prosperity and well-being were driven away by riots and massacres. However, while the country is falling into bankruptcy today, they have been able to live well in foreign climates.

States all over the world operate on modern progressive management and

States all over the world operate on modern progressive management and administrative techniques and principles. If the entire nation does not consist of a hundred percent homogenous linguistic, ethnic, and religious community, the need to protect the interests of minority groups becomes an important aspect of constitution-making.

administrative techniques and principles. If the entire nation does not consist of a hundred percent homogenous linguistic, ethnic, and religious community, the need to protect the interests of minority groups becomes an important aspect of constitution-making. Minorities are of two types. One group lives scattered among the majority and they are considered minorities in the vast majority. Another group is clearly the majority in the area in which they live but is forced to merge with the majority in the rest of the country through open or covert coercion and is arbitrarily called a minority. They are the majority in their native land but have been made a minority in simple mathematical terms. The Tamils of Sri Lanka belong to the second category.

They were the early settlers of this island and have been residing in the northern and eastern provinces of the island since the beginning of history and are still the majority in those provinces today. They have their own language, culture, way of life and religion. A major drawback that the majority of Sinhalese

people are facing today is the absence of a properly and truthfully written history and narrative about the island. If it was written by a team of local and international historians, the Sinhalese people would understand the place of the Sri Lankan Tamils in history. Forgetting their roots from the beginning of history, many Sinhalese now believe that the Tamils are a recent immigrant group who arrived in the country during the Chola invasion ten centuries ago.

The unitary constitutions implemented so far had given considerable power to the majority of the entire country and had given them the opportunity to brutally suppress the rights of the Tamils who were the majority living in the northern and eastern provinces.

According to Article 1 of the United Nations Charter on Civil and Political Rights, the people's right to self-determination has so far resulted in the Tamils being made second-class citizens by the Sinhalese people who claim to be the majority. This issue must be taken seriously in any attempt at system change. We Tamils were at the forefront of the freedom struggle. When we were given freedom by the British, we expected justice from the Sinhalese. However, when the Sinhalese leaders came to power, they threw out the Tamils and established a dictatorship of the majority so that the entire island, including the areas where the Tamils were the majority, would be subjugated. So far, more than a million Tamil people have been driven out of the island. Because of such short-sighted policies of the politicians of the majority community of the entire island, we had to face a thirty-year war. Therefore, maintaining the reasons for thirty years of war is a curse for the country.

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Therefore, any legislative effort to initiate a change in the system must consider the aspirations of the Tamils, who are the majority in the North and East. Our party proposes a confederal constitution as it may be suicidal for the country to maintain a unitary constitution from now on. A unitary constitution can subjugate and marginalise the majority communities in their respective regions and make them obligated to the majority of the country as a whole.

A confederal constitution differs from a federal constitution in the following ways: In a confederate constitution, sovereignty is vested in the member states or units. Accordingly, the central government will be responsible for the member units. In a confederal system, the central government has sovereignty. Member units may be subordinate to the Central Government. Therefore, a new constitution should be drafted as a confederal constitution so that the north-east of Sri Lanka is a member unit and has the right to self-determination. An essential element of a new constitution that is expected to bring about a change in the system should be the change from a unitary constitution to a confederate constitution.

The Tamil people's right to self-determination, which is consistent with the principles of international law, has not been reflected in the unitary constitution that has been implemented so far. For more than 70 years, Sri Lankan Tamils have been agitating for reforms. Although the Tamil speaking people were the majority in the North Eastern Provinces, the dominant Sinhala Buddhist ideology did not allow any flexibility for reforms. This can only be changed by creating an understanding between the power structures and decision-makers. That

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understanding can come from knowledge as well as experience. Even learned law professors have so far adopted the suicidal principles of Sinhala Buddhist ideology in Sri Lanka.

It seems that experience is teaching Sinhala Buddhists the necessary lesson. Now they understand the threatening statements made against Tamils and Muslims calling them terrorists and extremists respectively to gain political power and loot the resources of the country. Politicians who continue to maintain the rhythm of anti-minority sentiments are engaged in looting the country under the cover of such narratives which they have deliberately created for their own benefit.

The Aragalaya is a movement to get rid of such politicians. It will be seen in the future to what extent it will be possible to bring a constitution that truly reflects the aspirations of the people through such an action. However, the oppressed people will have to continue agitating for reforms to be able to get a constitution that reflects their aspirations.



Postscript

Our objective was to get the participation of the Members of Parliament representing all the parties that are represented in parliament for these threads of dialogue. The majority of them took part enthusiastically. However, it must be mentioned that the responses by a few was disappointing. Although a section constituted the government that included Mr. Dallis Allahapperuma, Prof. G.L. Peiris and Prof. Charitha Herath agreed initially to offer the

comments of one of them, that opportunity was missed despite our best efforts. Although we invited Mr. Vajira Abhayawardene of UNP and Mr. Jeevan Thondaman of Ceylon Workers Congress to give their views, neither gave a positive response. Expression of views of MP Weerasumana Weerasinha was on behalf of the eleven party alliance that included his party as well.



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