

Constitutional Crisis in Sri Lanka

On the 26th of October, 2018, the President of Sri Lanka attempted to remove the incumbent Prime Minister Ranil Wickremesinghe from his position and attempted to appoint in his place, former President Mahinda Rajapaksa, against whom the President contested at the 2015 Presidential elections. This has drawn the criticism of local and international persons and groups, who opine that the actions of the President are unconstitutional.

Several arguments have been put forward by those opposing the action of the President as unconstitutional, as well as those in support of the President's move:

1. The 19th Amendment to the Sri Lankan Constitution¹ specifically sets out the manner in which the Prime Minister may be removed from office in Article 46(2) of the Constitution. This Article states that the Prime Minister can only be removed when he resigns from his office, or when he ceases to be a Member of Parliament. This provision was specifically brought into the 19th Amendment, thereby breaking away from previous constitutional practice, when the President used to be vested with the power to remove and appoint the Prime Minister at will.
2. Article 42(4) of the Sri Lankan Constitution² empowers the President to appoint as Prime Minister a Member of Parliament who is most likely to command the confidence of Parliament. This Article however, does not allow the President to remove the incumbent Prime Minister other than for reasons stipulated in Article 46(2).
The argument put forth on behalf of the President that he is empowered to remove the Prime Minister by virtue of his powers under Article 42(4) read with the Interpretation Ordinance where it states that the appointing authority also has the power to remove, is not valid in this instance, as Article 46 (2) clearly sets out the manner in which the Prime Minister can be removed.
3. A National Government was formed in August 2015, with the coalition of the two main political parties in Sri Lanka – the United People's Freedom Alliance (UPFA) under the leadership of the President and the United National Party (UNP) under the leadership of the Prime Minister. On 26th October, 2018, the UPFA announced its withdrawal from the National Government thereby bringing an end to the coalition. The Constitution states that the Cabinet of Ministers cannot exceed 30 unless it is a Cabinet formed under a National Government. Therefore, it was argued on behalf of the President that by virtue of the UPFA withdrawing from the National Government, the Cabinet is rendered invalid as it now exceeds 30 Ministers. Therefore, it was argued that the Prime Minister who holds office as long as the Cabinet functions, is automatically removed as the Cabinet stands dissolved.
However, Ranil Wickremesinghe was appointed as Prime Minister in January 2015, while the National Government was formed in August 2015. Therefore, even if the National Government and its Cabinet stand dissolved, the position reverts to the status quo before August 2015, where Ranil Wickremesinghe holds office as Prime Minister.
4. The President has stated that the Sinhala translation of the 19th Amendment allows him to remove the Prime Minister. However, this provision is to be read with Article 46(2) which lays out the manner in which the Prime Minister can be removed.

Therefore, the arguments put forth on behalf of the President to validate his move, are not sound in terms of the letter and spirit of the Constitution.

Further, the secretive manner in which the swearing in of the alleged new Prime Minister was orchestrated without the prior knowledge of the incumbent Prime Minister, the fact that this matter was not taken up in parliament which is the right forum for such matters, as the parliament should decide on whom it places its confidence, and the fact that instead parliament was prorogued by the

¹ <http://www.parliament.lk/files/pdf/constitution/19th-amendment-act.pdf>

² <http://www.parliament.lk/files/pdf/constitution.pdf>

President till the 16th of November, all indicate a flagrant violation of democratic principles and the rule of law. Unfortunately, the President who himself came to power on promises to ensure good governance, and a reduction of presidential powers, is now seeing to be going back on his election mandate to partner with his former nemesis Mahinda Rajapaksa.

Events following the swearing in of the purported new Prime Minister

The rule of law and media freedom were blatantly infringed upon, on the night of 26th October, 2018, when the state electronic and print media institutions were taken over forcibly by supporters of the Joint Opposition (a faction of the UPFA). For the first time in recent Sri Lankan history, the state electronic media – ‘Rupavahini’ – went off air due to the tense situation at its premises. These events have led many to view this situation as a coup d’etat or at least as a constitutional coup.

On Sunday October 28th a shooting was reported at the Ceylon Petroleum Corporation (CPC) when the relevant Minister, Arjuna Ranatunga (whose alliance is with Ranil Wickremesinghe) stepped into his offices. When several people at the CPC attempted to assault the Minister, his security guard opened fire to defend the Minister. This resulted in three persons being injured, and one of the injured persons thereafter succumbed to his injuries. This resulted in a strike launched by the CPC, culminating in the arrest of the Minister’s security guard, and thereafter the Minister himself, before the Minister was released on bail. However, the persons who attempted to assault the Minister have not been brought to task.

Other sporadic instances of violence have also been reported from other parts of the country.

On 29th October, 2018, it was reported that a pastor in the Avisawella area has been abducted by a group of unknown persons. On 30th October, 2018 following a tip-off received by an anonymous caller, the pastor was found by the roadside having injuries, and has now been admitted to the hospital. While confirmed reports have not been received yet, it is believed that the pastor was abducted by a group of persons who have opposed the building of a church by the pastor in that area.

Local and international reaction

Following the events of October 26th, the country has been embroiled in a constitutional crisis and an atmosphere of uncertainty. The international community such as India, the US, the UK, the EU and the United Nations have expressed concern over the situation and stated that the situation is being closely monitored, while calling for adherence to the Constitution. However, locally, the media has normalised the situation, referring to Mahinda Rajapaksa as the Prime Minister and Ranil Wickremesinghe as the ‘former’ Prime Minister.

The Speaker of Parliament has applied to the President several times requesting that Parliament be summoned before 16th November. Further the Tamil National Alliance (TNA) and the Janatha Vimukthi Peramuna (JVP) have also written to the Speaker requesting that Parliament be convened before the 16th of November. However, no decision has been taken as yet regarding the summoning of Parliament before 16th November, 2018.

The Sri Lankan Civil Society, as well as certain religious bodies, have issued numerous statements condemning the unconstitutional acts of the President, the lack of respect to democratic values and the rule of law, and emphasised the need for Parliament to be convened in order to resolve the current crisis.

While the National Government too failed to make good on many of its promises, progress was also made in a few aspects, such as less surveillance and more freedom of expression and of the media, the setting up of transitional justice mechanisms such as the Office of Missing Persons (OMP) and the Office of Reparations, the operationalising of independent commissions, the reduction in powers of the Executive President and the introduction of the Right to Information Act in a bid to increase transparency.

Therefore, the events of 26th October, 2018 also struck fear in many that the country will regress to a time of human rights violations, enforced disappearances, lack of media freedom, widespread corruption and a culture of impunity, and that the progress made in cultivating a society where human rights are respected and there is increased transparency, will now lose its momentum.

Prayer points

Please pray:

- For the position of Prime Minister to be filled in accordance to the divine will of God
- For the prevalence of peace and unity in Sri Lanka
- For democracy, constitutional principles and the rule of law to be upheld
- For further violence and panic to not grip the country or its citizens
- For strength for the Sri Lankan Church to carry out its ministry unhindered during this time of political turmoil
- For strength for the NCEASL to carry out its work during this time of political turmoil

Useful links

- **Sri Lankan Constitution** – <http://www.parliament.lk/files/pdf/constitution.pdf>
- **The 19th Amendment to the Sri Lankan Constitution** – <http://www.cpalanka.org/paradise-lost-preliminary-notes-on-a-constitutional-coup/>
- **Articles written on constitutional crisis**
 - <http://www.cpalanka.org/category/documents/>
 - <http://www.cpalanka.org/constitutional-crisis-questions-and-answers/>
 - <https://www.thehindu.com/opinion/lead/from-uncertainty-to-crisis/article25363794.ece>
 - <http://groundviews.org/2018/11/01/nailing-canards-why-president-sirisenas-actions-remain-illegal-unconstitutional-and-illegitimate/>
 - <http://groundviews.org/2018/10/29/a-coup-in-asias-oldest-democracy-a-statement-by-sri-lankan-students/>

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