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எதிர்க்கட்சித் தலைவர் - இலங்கைப் பாராளுமன்றம்
LEADER OF THE OPPOSITION - PARLIAMENT, SRI LANKA

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MEDIA RELEASE

A draft constitution to destroy Sri Lanka

At the recent meeting of the Constitutional Assembly, the Prime Minister tabled a 187 page report prepared in the form of a draft constitution. Thereafter the PM has been going around the country claiming that there is no constitution or even the draft of a constitution. At the same time we also hear the Prime Minister and other members of the UNP stating that under the proposed new constitution, Sri Lanka will remain an 'indivisible' and 'united' country and that Buddhism will not be denied the special place it has hitherto had. The people should be mindful about these moves being made to promote a new constitution in the midst of multiple crises including an unprecedented pest invasion in the agricultural sector and a looming debt crisis.

When the present rulers came into power in 2015, the only constitutional agenda they had was to abolish the executive presidency and to change the system of elections so as to ensure stable parliamentary governments. The draft constitution does have provisions to abolish the executive presidency, which we will not oppose. However, the new system of elections that has been proposed is another 'pure proportional representation' system like the systems that were introduced at the local government and provincial council levels in 2017 with disastrous results. Even those who voted for that elections system in 2017 now want it scrapped. If the system of elections is to be changed so as to ensure stable governments, what should be introduced is the hybrid 70%-30% 'first past the post/proportional representation' system proposed by the Parliamentary Select Committee headed by Mr. Dinesh Gunawardene after years of careful study from 2002 to 2007 under both UNP and UPFA governments.

The draft constitution seeks to weaken Parliament and immeasurably strengthen the provincial legislatures. If Parliament is to enact a law on a matter on the provincial councils list without the express agreement of each and every provincial council, that law would have to be passed with a two thirds majority by Parliament and also approved at a referendum. Even a law on a provincial council subject passed in this manner can be vitiated by a statute passed by a provincial council with a simple majority (Clause 132 in the draft constitution). Such limitations imposed on the legislative power of Parliament is the turning point at which the unitary state becomes a federal

state. We are resolutely opposed to such a change. Parliament can make laws on matters coming under the concurrent list only with the approval of all provincial councils (Clause 134). Thus the discretion that Parliament has under the present Constitution to decide whether to consult the provincial councils or not, is to be done away with. The legislative power of Parliament is to be further weakened by giving the proposed constitutional court the power to review laws that have been passed by Parliament (Clauses 182-c and 185).

Even though the draft constitution refers to a provincial council list, a concurrent list and a reserved list it has not been stated anywhere whether these lists are the same as those in the present Constitution or not. Although reams of useless information are being tabled in the Constitutional Assembly, some of the most essential information such as the content of these lists, is missing. The federalist tilt in the proposed draft becomes obvious when the Governor - the main representative of the central government in the provinces is placed under the chief minister. The executive power of the province is to be vested in the Chief Minister and not the Governor in complete contradiction to the provisions of the present Constitution (Clause 242).

The police force will be broken up into a national police force and nine separate provincial police forces each with its own Police Commission. The national police force is to have jurisdiction only over a limited number of specified offences, such as offences against the state, election offences and currency related offences etc. The provincial police will have effective charge of all day to day police work pertaining to crime, fraud, narcotics, traffic, public order etc. (Clauses 254, 259, and 284). This country can be destroyed simply by breaking up the police force into 10 separate police forces in the manner proposed. This is why no government in the past 30 years, broke up the police force regardless of the provisions in the 13th Amendment.

Under the new constitutional proposals, the central government will have control over state land used for subjects pertaining to the national list or the concurrent list at the commencement of the Constitution. The provincial councils are to have authority over all other state land within their borders. If the central government requires state land in a province for any purpose, they may address a request to the provincial administration and if the latter does not comply, the dispute will be referred for arbitration to a three member tribunal. If the central government is not satisfied with the arbitration ruling, they can petition the constitutional court. The central government cannot unilaterally acquire state land in a province even for a national security related purpose as the provincial council can petition the constitutional court against such an acquisition (Clauses 302, 307 and 308).

Under the proposed new constitution the declaration of a state of emergency by the central government is to be made subject to judicial review by the constitutional court. A state of emergency may continue in excess of three months or a period of more than 90 days within a 180 day period only if it is approved by two-thirds of the Members of Parliament (Clauses 290-5, 291-d and 292). What this means in practice is that the central government will not be able to respond adequately to an emergency. The declaration of an emergency is an executive action and the judiciary is not competent to deal with such matters. In any case, if a stay order can be obtained against a declaration of emergency, there will be little point in declaring a state of emergency. There are many other issues as well such as the provision to merge the northern and eastern provinces (Clause 237-3) and the creation of a constitutional court to exercise the constitutional jurisdiction currently exercised by the Supreme Court (Clauses 181 to 191).

The special oath against separatism in the present Seventh Schedule introduced by the 6th Amendment of 1983 is not to be seen in the draft constitution. It should be noted that what has been mentioned here are only a few of the provisions in the proposed draft constitution that we are unable to agree to. A certain pattern can be discerned here. The Parliament and the central government is to be weakened and the provincial councils strengthened immeasurably, the governors are to be made subordinate to the chief ministers, separate armed police forces are to be established for each province and the question of subjects allocated to the provinces and the central government is to be kept open to be filled in later. The declaration of a state of emergency when necessary is also to be made virtually impossible. Where all this is leading should be obvious to everybody.

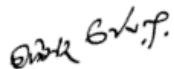
The UNP, TNA and JVP have forfeited the trust of the people due to the manner in which they practiced dissimulation and deception in the law making process. The way the 19th Amendment was passed with dummy provisions inserted solely to mislead the public and the Supreme Court, the way they changed the local government and provincial councils election laws through the back door by introducing committee stage amendments to Bills gazetted for completely different purposes, and the manner in which the Office of Missing Persons Act was bulldozed through in August 2016 without a debate or a proper vote in the midst of a melee in Parliament are all cases in point.

There is no limit to the perfidy of this government. After putting forward the draft constitution, members of the government have been speaking only of two issues – the place accorded to Buddhism and the term ‘unitary’. In the draft that has been circulated to all MPs, there are several alternative formulations proposed for the provisions relating to the place accorded to Buddhism and the question of the unitary state. The separatists and federalists have no interest in names or words. So long as they get what they want, they do not care by what name it is called. Their real target is not the status of Buddhism or the word ‘unitary’. There is a very real

possibility that they will back down from the alternative formulations they have proposed with regard to the status of Buddhism and the term 'unitary' as a bargaining strategy in order to win the real federalist demands which is the essence of the new draft constitution.

The venerable Maha Sangha in particular should be mindful of the possibility of such manoeuvres. Even though the present Constitution accords the foremost place to Buddhism, we have seen the manner in which the present government persecuted the Maha Sangha. So there is a very real possibility that this country will be turned into a federal state while still retaining the unitary label. The majority of the Tamil people in this country permanently reside outside the northern and eastern provinces. The vast majority of the Muslims reside permanently outside the eastern province. Such realities should be kept in mind when promulgating a new constitution.

Opposing the draft constitution put forward by the present government does not mean that we as the opposition are slamming the door shut on constitutional reform. We acknowledge that extensive reform of the present constitution is necessary. The 19th Amendment alone has created a great deal of confusion that needs to be put right. Though we reject the separatist/federalist aspirations of some political parties, we acknowledge that local communities need to be empowered to look after their own affairs within a certain national framework. We will be putting forward our own proposals at the next national election to seek a direct mandate from the people for constitutional reform. I call upon the people and all political parties to support our endeavor because that will be the only real opportunity available to effect constitutional reform in this country.



Mahinda Rajapaksa
Leader of the Opposition