

# The Nineteenth Amendment is a historic constitutional milestone in Sri Lanka's ongoing political development

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*At the end of April, President Maithripala Sirisena's 100-day programme of governance reforms culminated with the passing of the Nineteenth Amendment to reduce the powers of the presidency. **Asanga Welikala** reviews the progress that has been made since January, and argues that despite difficulties and necessary compromises, the Amendment represents a change for the better in Sri Lanka's governing arrangements.*



With the election of Maithripala Sirisena to the presidency in January 2015, Sri Lanka embarked on a 100-day programme of constitutional and governance reforms. The promise of far-reaching changes to abolish, or at least substantially reduce, the powers of the executive presidency had been the keystone of Sirisena's presidential campaign. The previous President, Mahinda Rajapaksa, had not only constitutionally extended the powers of this already over-mighty institution, but had also extra-constitutionally instituted a control regime based on nepotism, clientelism, ethnic chauvinism, and corruption. Sweeping away this institutional apparatus of authoritarianism and its more informal – but also more ingrained – network of patronage and protection through constitutional reforms brought together the otherwise disparate coalition of political forces that supported Sirisena's candidacy.

While reforming executive presidentialism was the centrepiece of the 100-day programme, it also included a raft of other proposals, including freedom of information legislation and reforms to the parliamentary committee system, as well as economic reliefs. This collection of policy proposals did not make for the most coherent of programmes, and neither did it seem realistic within a 100-day period. Predictably perhaps, the government's energies have been focused on the presidential reforms and other proposed measures have fallen by the wayside, bar some measures to ease the cost of living, and some small but symbolically significant steps toward ethnic reconciliation. Corruption prosecutions in particular have been conspicuous by their absence. However, the excesses of the Rajapaksa regime had been such that the majority that voted for its ouster has been willing to settle for progress on the main issue.

The coalition that was cobbled together around Sirisena's candidacy included parties that supported outright abolition of the executive presidency as well as some that supported more moderate reforms. Disagreement therefore surfaced after the election when the new government had to frame the constitutional amendment in concrete terms. Even though it did not threaten the fall of the government, the public airing of disagreements among parties represented in the Cabinet contributed to a sense that the reform process was disorganised and at times in disarray. Moreover, the assumption had been that all parties in Parliament would fall in line with the new President's reform mandate. Despite Rajapaksa's defeat, however, a large section of the former President's parliamentary coalition continued their loyalty to him. In the hope of returning him to active politics if not to power in the forthcoming parliamentary election, they sought to obstruct the reform process as much as they could. The absence of a settled view on reform or abolition within the government helped the opposition's tactics.



Despite these difficulties, the Nineteenth Amendment to the Constitution was passed with the requisite two-thirds majority in Parliament on 28 April 2015. This involved a great deal of backroom negotiation that deprived the process of much transparency, and there was no certainty until the last moment that its passage was assured. While in the event the opposition voted with the government, this support was secured only by conceding a number of its demands, which had the effect of significantly diluting the original reform proposals. The opposition has also demanded that electoral reforms be introduced in conjunction with the presidential and governance reforms. The government has accepted this in principle and suggested that these be embodied in a future Twentieth Amendment, but it is not clear whether or not this will be passed before the forthcoming parliamentary election.

The Nineteenth Amendment Bill underwent several iterations before it was passed. The first version was the most radical in terms of cutting down presidential powers by transferring virtually all executive powers to the Cabinet of Ministers. While the President would continue to be directly elected, and retain certain powers in exceptional situations, in substance the presidency was rendered largely ceremonial in terms of the day-to-day running of the government by the requirement that he acts on the advice of the Prime Minister. Some of this was initially diluted due to opposition from those within the government opposed to complete abolition. More importantly, the Supreme Court, which has the power to determine whether any constitutional amendment requires to be approved at a referendum (in addition to a two-thirds majority in Parliament), declared that several provisions as proposed by the government would need a referendum. These included the removal of the President's powers to appoint and reshuffle the Cabinet, which the Bill proposed transferring to the Prime Minister. Keen to avoid a referendum, the government undertook to remove these clauses when the Bill was presented to Parliament.

When the Bill entered the parliamentary process, the opposition's focus of critique was on the composition of the Constitutional Council: the body that would recommend presidential appointments to the new independent commissions overseeing elections, the public service, the judicial service, the police, and bribery and corruption, and which would also approve presidential appointments to high posts such as judges of the superior courts. The Bill proposed that the majority of the Constitutional Council would be independent persons, although it would also include the Speaker as chair and the Prime Minister and the Leader of the Opposition. Just before the second reading of the Bill, the government agreed to seven MPs and three independents for its membership, reversing the non-party political composition of the Council, and in this way obtained the opposition's votes for the Nineteenth Amendment.

Notwithstanding these compromises and deviations from the original position, the Nineteenth Amendment represents a change for the better in Sri Lanka's governing arrangements. In the best possible reading, the President no longer commands, but has to work in cooperation with a Cabinet of Ministers that is responsible to Parliament. This can be seen as restoring a semblance of balance to a constitution that had given the presidency overwhelming pre-eminence before. It has reduced the terms of both President and Parliament to five years from the previous six, it has provided that these terms are (more or less) fixed, and it has reintroduced the two-term limit on presidential office. It has made the President's exercise of power susceptible to the fundamental rights jurisdiction of the Supreme Court. As mentioned above, re-empowered independent commissions would oversee key state services and the Constitutional Council will regulate presidential appointments. Thus the Nineteenth Amendment establishes both a better structural balance between the executive and the legislature, and a substantial framework for de-politicisation.

In his first few months in office, President Sirisena has also established a more modest, conciliatory, and public service ethos in the office, in stark contrast to the extravagance and autocratic style of his predecessor. Most significantly, he is the only President to have delivered on a promise to reduce his own powers after election. That fact alone makes the Nineteenth Amendment a historic constitutional milestone in Sri Lanka's ongoing political development. In the past few years, the Rajapaksas only exacerbated a much longer, decades-long trajectory of institutional decay and soft authoritarianism that has seen Sri Lanka dissipate its much-vaunted democratic promise at the moment of decolonisation. Reversing this trend will take much time and concerted and sustained effort. But there is enough in the Nineteenth Amendment – and the commitment to its birth shown by its progenitors – to offer some hope that the decline could at last be arrested.

In the next few months, Parliament will be dissolved ahead of elections. The present government has strongly indicated that, if returned, it would seek to introduce a new constitution. While no detailed plans have been outlined, this would presumably abolish presidentialism altogether and, crucially, address the central issue of ethnic pluralism and devolution that was not included in the 100-day programme. Both President Sirisena and Prime Minister Ranil Wickremasinghe have strong moral and political incentives to deal with this vexed set of issues, for they have both been major beneficiaries of ethnic minority support. However, given that finding a constitutional settlement to this issue has eluded Sri Lanka throughout its post-colonial existence, the difficulties involved in a future constitution-making exercise cannot be overstated.

But before that, the general election must be won. The new government has restored a sense of political freedom and the rule of law and is repairing Sri Lanka's badly damaged external relations, especially with India and the West. Even with the successful passage of the Nineteenth Amendment under its belt, however, the government cannot easily assume a victory. A Rajapaksa revival is underway, and although much diminished as a political force without the leadership of a major party and without access to state power and public resources, his loyalists need only do well enough to deny the government an overall majority to derail the reform agenda in the next Parliament. If on the other hand the government – or rather the electoral majority of January 2015 – is able to inflict a second successive defeat on Rajapaksa and his acolytes this year, then the political arena can be cleared of their toxic influence for several more years, if not forever. This would avail the much-needed political space to negotiate and introduce the devolution and power-sharing reforms that are critical to the future stability and peace of Sri Lanka.

*Note: This article gives the views of the author, and not the position of the India at LSE blog, nor of the London School of Economics. Please read our [comments policy](#) before posting.*

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