

# MP-IDSA

## *Issue Brief*

# Sri Lanka Headed for Elections: Democracy in Distress?

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## **S***ummary*

This issue brief seeks to analyse the political developments surrounding the twice postponed parliamentary elections and the debate in its wake in Sri Lanka. It underlines the stresses and strains in Sri Lankan democracy on account of growing assertion of the presidential executive powers and the challenge it poses to functioning democracy in the island nation.

Sri Lanka is heading for parliamentary elections on August 5, 2020. Initially scheduled to be held on April 25, after President Gotabaya Rajapaksa dissolved the Parliament six months before the end of its full term, the elections were first postponed to June 20 in view of the spread of the coronavirus. Thereafter, following the Supreme Court ruling of June 2, dismissing petitions challenging the dissolution of the Parliament and postponement of elections, the Election Commission announced on June 8 that the election would now be held in August.

Amid the COVID-19 pandemic and a declining economy, the government, the political opposition and the civil society in Sri Lanka have been entangled in a politico-constitutional debate that has implications for the future of democracy in the island nation. The stresses and strains in the Sri Lankan democracy on account of the growing assertion of the executive powers of the President are now more than evident.

## Dissolution of Parliament

As per the constitutional provision, the general elections are to be held every five years to form a new Parliament, until and unless it is dissolved earlier. As per Article 70 (1) of the Sri Lankan Constitution, the President can dissolve the Parliament six months prior to the expiration of its term.<sup>1</sup> The term of the 8<sup>th</sup> Parliament, which started in September 2015, was to end in August 2020. However, applying Article 70 (5) of the Constitution, President Gotabaya issued an extraordinary gazette notification on March 2, 2020 that ordered the immediate dissolution of the Parliament, holding of general elections on April 25, and convening of the new Parliament on May 14, 2020.<sup>2</sup> This schedule was perfectly within the 90-day limit set by the constitution between the dissolution and reconvening of the Parliament.

The reason for the dissolution of the Parliament and conduct of elections six months before the due date was perhaps to avoid the complexities arising out of running a minority government. After Gotabaya Rajapaksa came to power in November 2019,

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<sup>1</sup> Article 70 (1) of the Sri Lankan Constitution states: “The President may by Proclamation, summon, prorogue and dissolve Parliament: Provided that the President shall not dissolve Parliament until the expiration of a period of not less than four years and six months from the date appointed for its first meeting, unless Parliament requests the President to do so by a resolution passed by not less than two-thirds of the whole number of Members (including those not present), voting in its favour.” See **“The Constitution of the Democratic Socialist Republic of Sri Lanka”**, Revised Edition – 2015, Chapter XI: The Legislature, *Parliament Secretariat*, Government of Sri Lanka, p. 55 (Accessed June 21, 2020).

<sup>2</sup> Article 70 (5) (a) of the Sri Lankan Constitution states: “A Proclamation dissolving Parliament shall fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation.” Ibid. p. 55. Also, see **“A Proclamation By His Excellency The President Of The Democratic Socialist Republic Of Sri Lanka”**, *The Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka*, No. 2165/8, March 02, 2020.

he appointed his brother and former president Mahinda Rajapaksa as Prime Minister and later the cabinet ministers on the latter's advice. However, Mahinda Rajapaksa administration was finding it difficult to function smoothly in the Parliament where the opposition United National Party (UNP) and its alliance partners were in majority. Therefore, the President sought to conduct the parliamentary elections as early as possible, hoping that his party, the Sri Lanka Padajana Peramuna (SLPP), would reap a good electoral dividend enabling his brother Mahinda Rajapaksa to form a majority government and function smoothly.

Unfortunately, due to the outbreak of COVID-19, the parliamentary elections had to be postponed, even though the candidates had already filed their nomination papers on March 16-19, 2020. However, the decision to postpone elections from April 25 to June 20 clashed with the constitutional provision that the new Parliament be convened within three months of its dissolution.<sup>3</sup> Given the uncertainties of the health situation in the country and based on the expert opinion of the epidemiologists, it was observed by the Election Commission that conducting elections even in the last week of May 2020 to reconvene the new parliament within the stipulated time-frame, before June 2, would not be possible. Therefore, the Election Commission appealed to the President to seek the Supreme Court's advice. The President, nonetheless, refused to approach the Court stating that he saw no reason why elections could not be conducted at the end of May 2020.

The Election Commissioner S. Ratnajeevan H. Hoole held that conducting elections amidst the pandemic would risk the lives of the people, which would be a violation of their fundamental rights.<sup>4</sup> Finally, the Election Commission announced June 20 as the new date assuming that countrywide lockdown announced on March 20 on account of COVID-19 would be lifted by April 27, and it would get adequate time to prepare for the elections.

Subsequent to the announcement, objections came from several quarters on the ground that holding of elections amidst the pandemic would have a disastrous effect on the lives of the people, as the number of COVID-19 cases in the country was increasing. A fundamental rights petition was also filed in the Supreme Court in this

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<sup>3</sup> Article 70 (5) (b) of the Sri Lankan Constitution states: "Upon the dissolution of Parliament by virtue of the provisions of paragraph (2) of Article 62, the President shall forthwith by Proclamation fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation." Again, Article 70 (5) (c) states: "The date fixed for the first meeting of Parliament by a Proclamation under sub-paragraph (a) or sub-paragraph (b) may be varied by a subsequent Proclamation, provided that the date so fixed by the subsequent Proclamation shall be a date not later than three months after the date of the original Proclamation". Ibid. p. 55-56.

<sup>4</sup> For the text of the letter, see S.Ratnajeevan H. Hoole, "[No To New Gazette: Letter To The Election Commission](#)", *Colombo Telegraph*, April 20, 2020 (Accessed June 21, 2020).

regard, which was withdrawn later as the Election Commission further postponed the elections from June 20 to August 5, 2020.

### **Demand for Reconvening Dissolved Parliament**

As the elections were postponed and a new Parliament could not be convened within the stipulated period, the opposition parties jointly demanded to rescind the presidential gazette and reconvene the dissolved Parliament. According to Tamil National Alliance (TNA) leader Sumanitharan, the new election date made the presidential proclamation dissolving Parliament invalid “because the country can function without a Parliament for no more than 3 months.”<sup>5</sup> It was also argued that the absence of a functional Parliament beyond June 2, 2020 could result in a constitutional deadlock.

Similar concerns have also been raised by the leaders of Sri Lanka Muslim Congress (SLMC).<sup>6</sup> The joint statement issued by seven leaders belonging to the opposition parties mentioned that “(D)emocracy is governed by three institutions with distinct and separate powers, viz, the Executive, the Legislature, and the Judiciary. All three of these organs are vital, and must be active for Rule of Law to prevail”.<sup>7</sup>

It was, therefore, argued forcefully by opposition parties that the Parliament needed to be reconvened to deal with the unprecedented challenges faced by the country due to the outbreak of COVID-19. The opposition believed that to bring about the required changes in the quarantine law in order to conduct elections amidst the pandemic, amendment in the constitution is required and which can only be done through a functioning Parliament.

It was also argued that the vote on account or the interim permission granted in October 2019 by the Parliament to the government to spend money expired on April 30, 2020.<sup>8</sup> Therefore, the President cannot authorise a capital expenditure or any

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<sup>5</sup> **“Headed For Constitutional Deadlock: Sumanthiran Says Presidential Proclamation Dissolving Parliament Invalid”**, *Colombo Telegraph*, April 21, 2020 (Accessed June 21, 2020).

<sup>6</sup> Chamika Madiwake, **“Gazette Declaring Election Date Unconstitutional, No Level Playing Field Amid Pandemic: SLMC Slams EC”**, *Colombo Telegraph*, April 21, 2020 (Accessed June 21, 2020).

<sup>7</sup> For the full text of the statement, see **“Reconvene Parliament: Opposition Party Leaders Tell Gota”**, *Colombo Telegraph*, April 27, 2020 (Accessed June 21, 2020).

<sup>8</sup> As a norm, the government in Sri Lanka refrains from passing a budget in the year of the presidential election, so that the new President can pass his own budget. Since the presidential election was in November 2019, the then government presented a vote on account to Parliament for a period of four months from January 1, 2020 to April 30, 2020, instead of an Appropriation Bill, which was adopted on October 23, 2019. Following the presidential election in November 2019, it was up to the new government to present an appropriation bill in the Parliament before dissolving it on March 2, 2020.

money to be withdrawn from the treasury after April 30, 2020<sup>9</sup> as the Parliament alone has the authority on public finance. A functional Parliament is required constitutionally to deal with financial issues in the country. It was also argued that the funds received to deal with the COVID-19 crisis in the country can be used only with the approval of the Parliament.

Therefore, the President was requested to reconvene the dissolved Parliament applying Article 70 (7) of the constitution, which states:

If at any time after the dissolution of Parliament, the President is satisfied that an emergency has arisen of such a nature that an earlier meeting of Parliament is necessary, he may by proclamation summon the Parliament which has been dissolved to meet on a date not less than three days from the date of such Proclamation and such Parliament shall stand dissolved upon the termination of the emergency or the conclusion of the General Election, whichever is earlier.<sup>10</sup>

The opposition even went to the extent of assuring the President that it will provide all kind of support to the Mahinda Rajapaksa Government to deal with the COVID-19 challenge and other governance issues in the Parliament.<sup>11</sup>

The President, however, refused to reconvene the Parliament. His secretary P. B Jayasundera argued that the President could run the country constitutionally without the Parliament for more than three months.<sup>12</sup> The absence of Parliament has not impacted in any way the government's response to COVID-19. It is held that the team consisting of the President, Prime Minister and cabinet ministers with the help of bureaucrats, health officials, and scientists and military has managed the COVID-19 situation reasonably well.

It was further argued that the President has full authority on the consolidated fund vide Article 150 (3) of the Sri Lankan Constitution, which states:

Where the President dissolves Parliament before the Appropriation Bill for the financial year has passed in to law, he may, unless Parliament shall have already made provisions, authorize the issue from the Consolidated

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<sup>9</sup> For the full text of the letter from former Finance Minister Mangala Samaraweera to President Gotabaya Rajapaksa, see **“Re-Summon Parliament To Constitutionally Resolve Crises And To Approve Public Expenditure: Mangala Urges Gota”**, *Colombo Telegraph*, April 29, 2020 (Accessed June 21, 2020).

<sup>10</sup> The Constitution of the Democratic Socialist Republic of Sri Lanka, no. 1, p. 56.

<sup>11</sup> Ranil Wickremesinghe, R. Sampanthan, Sajith Premadasa, Rauff Hakeem, Mano Ganeshan, Champika Ranawaka and Rishad Bathiudeen offered their support by signing a statement. For the full text of the statement, see *Colombo Telegraph*, no.7.

<sup>12</sup> Chinthika de Silva, **“President-Parliament Set For Showdown As Gota Spurns Opposition Offer Of Assistance To Tackle Covid-19”**, *Colombo Telegraph*, May 01, 2020 (Accessed June 21, 2020).

Fund and the expenditure of such sums as he may consider necessary for the public services until the expiry of a period of three months from the date on which the new Parliament is summoned to meet.<sup>13</sup>

Therefore, the President's secretary Jayasundera replied to the opposition leaders that there was no need to apply article 70 (7) and reconvene the dissolved Parliament.<sup>14</sup>

## Petitions in Supreme Court

Amid such inconclusive discussions and debates, seven fundamental rights (FR) petitions were filed in the Sri Lankan Supreme Court to nullify the presidential gazette of March 2, 2020 to dissolve the Parliament, after the President refused to reconvene the Parliament. On June 2, the Supreme Court rejected these FR petitions and gave a green light to President Gotabaya Rajapaksa to govern the country without the Parliament until the elections are held and the new Parliament is formed.

It is interesting to note that some of the opposition leaders who initially demanded to reconvene the dissolved Parliament had refused to file FR petitions in the Supreme Court citing lack of legal basis for such a demand. However, many within Sri Lanka are still of the opinion that the judgement favoured unbridled Presidential rule.<sup>15</sup> Despite such mixed views, on the FR petitions and the court judgment, it seems to have been accepted by Sri Lankans at large. The debate on the constitutionality of the demand for reconvening the dissolved Parliament is receding into the background as the country gears up for the parliamentary elections in August 2020.

## Summing Up

There is a growing concern in Sri Lanka today about the country being subjected to authoritarian rule under Gotabaya Rajapaksa, without any elected body to check and balance the executive. There appears to be little hope in other institutions like the judiciary or the media which could moderate the executive assertion. At this juncture, the arbitrary appointment of several presidential task-forces to deal with governance issues is making people apprehensive about attempts to consolidate the

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<sup>13</sup> The Constitution of the Democratic Socialist Republic of Sri Lanka, Chapter XVII: Finance, no. 1, p. 114.

<sup>14</sup> Chinthika de Silva, no. 12.

<sup>15</sup> Sanjeewa Fernando, **"Dismissal of FR petitions: What follows the Supreme Court Decision?"**, *Daily Mirror*, June 10, 2020 (Accessed June 24, 2020).

executive presidency in the absence of legislative scrutiny.<sup>16</sup> The appointment of the Task Force “to build a secure country, disciplined, virtuous and lawful society”, comprising members belonging to military and police officers, on June 2, 2020 - the same day the constitutional deadline lapsed for the convening of the Parliament, adds to popular fear in this regard. All public officials have been made answerable to this 13-member task force, which has been ordered to report to the President directly.

The ‘Lawyers for Democracy’, a civil society body representing legal practitioners, said in a statement that “the promulgation of the task force with wide powers which override Parliament, Prime Minister and Cabinet Judiciary and Public Service is an affront to the constitution and democracy”.<sup>17</sup> According to *Colombo Telegraph*, “for the first time in Sri Lanka’s republican history, the President of the country has made the civilian authority-- the public service-- subservient to military officials.”<sup>18</sup>

One of the possible reasons for President to strongly assert his position could be to consolidate his executive powers, since the 19<sup>th</sup> Amendment vests more power in the office of the Prime Minister than of the President. Even if his party SLPP comes to power and forms the next government under the prime ministership of Mahinda Rajapaksa, the cabinet headed by the Prime Minister may not like to repeal the 19<sup>th</sup> Amendment in the Parliament for obvious reasons and make executive presidency more powerful. Possibility of such a scenario might have led President Gotabaya Rajapaksa to appoint the task forces to consolidate his position in the Sri Lankan power structure.

As of now, the election is likely to be held on August 5, 2020. The Election Commission has warned, nevertheless, that in case of a second wave of the spread of COVID-19 in Sri Lanka, the election date may get postponed further. Such delay in the parliamentary elections is likely to prolong the President’s rule in Sri Lanka, which, in turn, will provide Gotabaya Rajapaksa with an opportunity to further strengthen his position. In such a case, the authoritarian impulse that the system has started emitting would pose a critical challenge to functioning democracy in Sri Lanka in future. For all practical purposes, going by the reactions at the domestic level, Sri Lanka looks poised for a throw-back to the days of executive presidency.

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<sup>16</sup> The newly appointed presidential task forces include: a task force to be in charge of health conditions inside military camps; two task forces to handle distribution of relief amid the pandemic and a committee to oversee the economy; a task force to build a secure country, disciplined, virtuous and lawful society; and a task force for the management of archaeological sites in the Eastern Province.

<sup>17</sup> **“LFD Condemns Gota’s Virtuous Society Task Force, says it has super powers over PM, Cabinet and Public Servants”**, *Colombo Telegraph*, June 11, 2020 (Accessed June 17, 2020).

<sup>18</sup> **“Gota’s Junta Consolidates after SC ruling: Task Force for Disciplined Society Ready for Action”**, *Colombo Telegraph*, June 03, 2020 (Accessed June 17, 2020).

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