

## Speech on the 22<sup>nd</sup> Amendment on 20<sup>th</sup> October 2022

Thank you, Honourable Deputy Speaker, for the opportunity to speak on this very important constitutional amendment that has been presented to this house. I say 'important' not because there are any important contents in this Bill, but because this Bill is being touted as an important reform to the constitution of this country, while it is not. And it is my intention today to inform the country as to what this amendment actually seeks to do.

There are many members in this House who voted for the 17<sup>th</sup> amendment to the constitution. The same members voted for the 18<sup>th</sup> amendment to the constitution. Those very members voted for the 19<sup>th</sup> amendment to the constitution, and they voted for the 20<sup>th</sup> amendment to the constitution and today they are all ready to vote for the 22<sup>nd</sup> amendment to the constitution, which will become the 21<sup>st</sup> amendment. They are like a pendulum they swing from one end to the other. I have my respect for Hon. Sarath Weerasekara seated there: right or wrong he stands at one end. He doesn't swing like a pendulum.

I say this because when the 17<sup>th</sup> amendment to the constitution was passed in this house nobody cast a vote against it, only one member of Parliament abstained from voting. When the 19<sup>th</sup> amendment to the constitution was passed in this house, only one member, Hon Sarath Weerasekara voted against it. Everybody else voted for it. That shows what the 17<sup>th</sup> amendment and what the 19<sup>th</sup> amendment sought to do and how even members in the opposition benches were conscious of the expectations in the country and they went along with it, particularly the 19<sup>th</sup> amendment. When the 19<sup>th</sup> amendment was presented to this House, I think the government had only 48 members, the opposition had over 150 members. Yet it was passed. That was soon after an election. But those very members out of that 150, I think about 60 odd members, later voted for the 20<sup>th</sup> amendment, including the Hon Minister of Justice or you did not vote you did not come, or you voted, including the Minister of Justice who presented this Bill and pleaded with the other members to give them an opportunity to correct a wrong that they have committed by passing the 20<sup>th</sup> amendment.

I ask with all sincerity: from the turn of this millennium, 17, 18, 19, 20. Every time you say you have made a mistake and you want to change it. What type of parliament is this? That swings like this from one end to the other? Every time you say I made a mistake, let me correct it. No wonder the country says to be done with these 225! No wonder that everyone in the country today says "throw the 225 out." "You are misleading us, you are taking us for jokers," people of the country are not jokers, they know what they are asking for. Why is this 22<sup>nd</sup> amendment coming today? In the very same Parliament that adopted the 20th amendment it is coming because people in the country want to democratize this country - want to change the constitution of this country. They want a system change, not tinkering with the constitution. Some tinkering happened from 17 onwards but this Bill that is before us today doesn't even tinker with the Constitution. After it is passed, if it is passed, it will still retain all the powers of the executive presidency that the president enjoys under the 20<sup>th</sup> amendment to the constitution. I have challenged people for debate, I had one on

Monday night. No one is able to show that it actually reduces the presidential powers. So, this is a fraud on the country - this is an absolute fraud. People are asking for a change, a total change they don't want the executive presidency. How have the people of this country been taken for a ride? 1994 presidential election manifesto said, abolish executive presidency within 6 months. Within 6 months! 1994! 6 months has still not come! Now not to be outdone, every other candidate at every other presidential election comes before people and says "I will abolish executive presidency, vote for me". Eventually in 2015 president Maithiripala Sirisena, who is here, he also said, when he became the candidate. The first promise that he made to the country: "I will abolish the executive presidency." And then in the Manifesto, small adjustments were made: we will first do what is not required to be done with a referendum and then we will bring a new constitution. It is only President Gotabaya Rajapaksa who did not promise to abolish the executive presidency. But even he said he will bring a new constitution within 1 year. That was a promise and on the 3<sup>rd</sup> of January 2020, when he addressed this house, when he made his throne speech, he said I will bring a new constitution within this year. And he pointed to four factors, one of those was the executive. He said to deal with executive..... Hon.Suren Raghavan, your telephone conversation can be heard on the speakers, on the microphone here. If you don't want to listen to what is happening in the house, please go out and speak.

He said there are four things that are necessary for change in the constitution: 1. the executive, 2. the electoral System, 3. Provincial councils and 4. he termed it Independence of the Judiciary.

The first matter that he identified was the executive. So everyone has promised this country that executive presidency will be revisited. Not only then, but before he relinquished office, in the last Address to the Nation, he said, we will do away with the 20<sup>th</sup> amendment as a first step, and then we will deal with the executive presidency. A day later, then prime minister who just took over as prime minister, the incumbent president, in his Address to the Nation very specifically said we will abolish executive presidency - only a few months ago! But what are we left with? The history shows, as I said, from 1994 the abolition of the executive presidency has been promised. Consistently the solution to the Tamil National Question also has been promised. President Mahinda Rajapaksa, famously in 2011, three times told India that he will fully implement the provisions of the 13<sup>th</sup> amendment and go beyond that and make devolution of power meaningful. Three times! joint statements! not done yet. None of these promises are ever kept. That's why citizenry of this country is asking for a fundamental change. They are exhausted; they know that this doesn't happen. When we talk about this in meetings we are told incrementally we will do it, but I can assure you nothing is done even incrementally. You keep going further down. And I will show how that is done. 17<sup>th</sup> amendment to the Constitution established a constitutional council, why? Because there should not be political interference. Appointment of independent commissions. The key word is independent. Therefore, the constitutional council itself had to be independent. In order for the constitutional council to be independent seven out of the ten members - it required - should not be members of any political party. That's why they came from outside - should not members of any political party. That's how you assure independence. Now 18<sup>th</sup> amendment did away with that. I spoke in this house, I made the longest speech on the 18<sup>th</sup> amendment to the constitution in this house on the 8<sup>th</sup> of September 2010, hardly a few months after I entered to this August assembly for the first

time. That's because of the UNP had withdrawn from the chamber and it was left to us and the JVP to make even just speeches on the 18<sup>th</sup> amendment. In the 18<sup>th</sup> amendment the constitutional council was done away with. Then when the 19<sup>th</sup> amendment came because you had promised to abolish executive presidency but then in the - I am talking about President Mithripala Sirisena - then in your manifesto you said we will first do what is possible without a referendum. There itself there is a step down. No step up, a step down.

And then 19<sup>th</sup> amendment Bill was prepared, that went to the supreme court, supreme court scrapped down a few matters. Another step down a second time. Then we came to this House: 150 members in the opposition, several matters they opposed. In order to get it through, a further step down. That is when the constitutional council composition became politicized. 7-3 became 3-7, only three independent members. Other seven were members of parliament and by definition they are politicians and members of political parties. No independence thereafter. There it went and even now what the Hon Minister of Justice is saying of re-establishing the constitutional council, it is that - that constitutional council, which is not independent. How will it appoint members to independent commissions then? That's steps down. Then what had happened? 20<sup>th</sup> amendment was passed and now you say you want to correct it, because people who protested demanded a change. They want the executive presidency abolished; they also said, do away with the 20<sup>th</sup> amendment first. So, if you do away with the 20<sup>th</sup> amendment you have to go back at least to the 19<sup>th</sup> amendment. I have always said that the 19<sup>th</sup> amendment is not the perfect legislation - even at the time it was passed. Because of the several compromises that were made. But we did it because immediately thereafter there was a constitutional assembly created by the whole parliament, and we went into the creation of a new constitution. A draft was presented to this House on the 16<sup>th</sup> of January 2019 by the incumbent president as the prime minister then, of a new constitution where there was consensus between all the parties. There were few adjustments perhaps necessary with regard to electoral system but everything else was agreed. Even power sharing arrangements was totally agreed. But that never saw the light of day. That was dumped and then 20<sup>th</sup> amendment strengthened executive presidency. Now you are telling the people, because people want to change this, they want to abolish executive presidency, you are lying to the people saying this is a first step towards that, when in fact none of the powers of executive president are taken away by this bill. Its false, you are lying to the people of this country. මේ විධායක ධුරය අහෝසිකරනවා කියලා, ඒකට ප්රීතමව මේක සම්මත කරමු කියලා කියන එක මහා බොරුවක්. ප්‍රෝධාවක්, ජනතාවට කියන බොරුවක් මේක, කිසිදු වෙනසක් නැහැ 20 වෙනි සංශෝධනයේ තියෙන හැම විධායක බලතල ජනපති වෙත තියෙනවා,...the Constitutional council appointments show that the government will have control over the constitutional council. The Supreme Court also has swung like a pendulum unfortunately. In the 19<sup>th</sup> amendment bill they permitted various changes and said this doesn't require a referendum, but now those identical changes, the same supreme court says you require a referendum. Now people have to be told this as well, its not only the Parliament that swings like a pendulum, Its the Supreme Court also. Change the Supreme Court also. Ask them also to go home. If they can't read and understand their own determination in the 19<sup>th</sup> amendment with the very same words, within a few years, they say now this requires referendum. How can that be? they are supposed to be learned; how can that be? Of course, today, there was a good determination on the Bureau of Rehabilitation Bill. We said, as it was presented, "withdraw it" It goes against the fundamental principles that a person

must be presumed innocent until proven guilty in a court of law. Not to be just rounded up and taken and put into rehabilitation. And I don't know why the minister even presented that Bill in this house. I have asked the question publicly: whether the cabinet should be rehabilitated for even presenting this bill. Second time that I have come across where the supreme court has said the whole of the bill is inconsistent with the constitution. First time it was the broadcasting authority bill some years ago. The whole of the bill! This may have been done you were not the Minister, but when you are the Minister and present, it surely you should read the contents of the bill? Why do you present a horrendous piece of legislation like this? At least on this occasion the Supreme Court has shot it down. But on the 22<sup>nd</sup> amendment they have been swinging this way and that way. How will people have confidence in the Supreme Court, when it interprets? Supreme Court is also swing like a pendulum when it changes its mind on constitutional interpretation, which is the sole and exclusive preserve of theirs. They jealously guard it also, and they swing, one end to another. Now because of this I say with respect, people have asked for a change and what you are trying to do is pull wool over the eyes of the people. You are pretending to the country that you are making some reforms, when, in fact you are not making any reform. And this is dangerous, I must say there are no harmful provisions in this Bill, but the harm is that you are showing the country something when it is not, and that is potentially harmful because the confidence that people have in this institution have eroded and now totally destroyed and when they find that the parliament has also misled us, led us to think that there is some major reforms when there is no reform, they will only take to the streets. They will have no confidence in their representatives who have fooled them once again. Same thing happened with the devolution, when 13<sup>th</sup> amendment was enacted, we said it is not enough we did not accept it. But even what was enacted was never implemented in full, kept coming down, step down, step down....then whatever that had been given to the provinces was also taken back: transport authority .... This, that....various things, pinnacle of that was the "Divinaguma Bill." 15 powers given to the provinces swiped away and taken to the Centre, step down whilst telling everybody else we will give 13 plus, but here minus minus minus.... Identical to this is your approach. You are telling the people that you are going forward you are democratizing but in fact you are strengthening a dictator. இந்த சட்டமூலமானது மக்களை முற்று முழுதாக ஏமாற்றுகிற ஒரு சட்டம். ஒரு பெரியதொரு மாற்றத்தை ஏற்படுத்துவதற்காக மக்கள் போராட்டத்தை செய்கிற போது, அந்த மாற்றத்திற்கு வழிவகுக்கின்ற முதலாவது படியென்று மக்களுக்கு பொய்யைச்சொல்லி, எந்தவித மாற்றமும் இல்லாமல், இப்படியாக நீங்கள் செய்வது மக்களை ஏமாற்றுகிற காரணத்தினாலே, மக்களுடைய போராட்டம் நிச்சயம் வெடிக்கும். ජනතා විමුක්ති පෙරමුණ මේ උත්සාහයට අපි තරයෙන් විරුද්ධ වෙමු.

This is a very dangerous thing that you are doing to the country, and I must warn the Honorable Members of this House: let's stop pretending, let's stop fooling the people or attempting to fool the people - people are never fooled. If you want to do a reform, do it and take it to the people at a referendum. Why are you fighting shy of a referendum? After all, people have asked for this. When people have asked for this, take it to the people. Get their consent. That's how you make reforms in the country. You make a fundamental change - bring a new constitution, don't pretend, don't lie to the people and try to make people fools.

Thank you