Would it be possible to postpone the Presidential Election?

The uncertainties about conducting elections in Sri Lanka are emerging from time to time.Changing the electoral map by the rulers who were and are in power, for their survival disregarding the democratic rights of the people has been the main reason for that.

It is not surprising that the majority of the people of this country have doubts and apprehension about theholding of elections on scheduled dates due to several experiencesthey have encountered in the past, such asthe postponement ofParliamentary Election by a referendum held during the term of office of President JR Jayawardene in 1982, conducting Provincial Councils polls from 1988-2015 and Local Government polls from 1991-2018on staggered basis for the advantage of the parties that held the ruling power, holding the 1988,1999,2010 and 2015 Presidential Elections were held in advance, delaying the Local Government Polls during 2015-2019 by two and a half years using electoral reforms, postponement ofProvincial Councils Elections for more than 5 years until today during the same period through an amendment to the Provincial Council Electoral System adoptedaccording to a proposal made by the current President, and the postponement of local government election in 2023 for more than a year until now by not releasing funds approved by The Parliament for conducting local government polls as per the discretion of the current President Mr. RanilWickramasinghe.Even at this moment many people are of the viewthat it ismost likely for the election to be postponed using some tactics.The present dialogue between the two governing parties (United National Party and Sri Lanka PodujanaPeramuna) is analogous to that.

It is not a debate about democracy or the people's right to vote. It is a dialogue about whichelection should be heldfirst and which party would benefit from that. So much so, in reality, it willultimately end upin making victorious the most formidable party in the power struggle albeit in the name of democracy, the people and the country.Under the circumstances, the object of this article is to alleviate, to some extent, theanxiety and the doubts of the people and the politiciansabout the future elections.

Does the President or the Government have the power to decide the date of the Presidential Election?

The Constitution clearly specifies two instances in regard to the holding of the Presidential Election.

1. Upon a proclamation made by the President declaring his intention to hold a Presidential Election one year before (it was 2 years before the 19th amendment was

passed) the expiry of the official term of officeof President. <u>As per thesub-paragraph (3A) (a) of the Article 31 of the Constitution of Sri Lanka 1978)</u>

2. Election held as usual at the end of the official term of the office of the President.<u>As per thesub-paragraph (3) of the Article 31of theConstitution of Sri Lanka 1978)</u>

According to the Constitution, a President who had been elected for a five-year term by the direct vote of the people has the power to call a Presidential Election, at his discretion, one year priorto the expiry of his term of office (after completing a4-year term; prior to the 19th amendment the tenure of President was 6 years and calling for a presidential election was possible 2 years before the expiry of the official term.When the president make the announcement the Commissioner of Elections shall be required to conduct a poll for the election of the next President as per clause 31 (3) (b)2.

But the incumbent president is not one elected directly by the people; hence he has no discretion whatsoever over it. According to the provisions of the Constitution, even if he resigns, there is no possibility of going for an election except appointing someone else for the rest of the term.

Elections held after the expiry of the term of office of the President

According to the Constitution, the powers of conducting the upcoming election rest on the Election Commission because it is an election held after the expiry of the term of office of the President. As per the sub-paragraph(3)of the Article 31 of the Constitution, the new President must be elected within a period not less than one month and notexceeding two months before the end of the term of office of the incumbent President.

Also, according to the provisions of Act No. 15 of 1981 (2) for the election of the President, a datenot less than 16 days and not more than 21 days should be declared for the acceptance of nominations following the announcement of the date of election. A minimum of 4 weeks and a maximum of 6 weeks should be allocated forcampaigning purposes after receiving nominations. Also, within two weeks after receiving the nominations, the Election Commission should announce the symbols of the respective candidates and the date of election by a special gazette notification. Thedate of Electionshall be any day other than a Full Moon Poya day or any public holiday specified in the First Schedule to the Holidays Act, No. 29 of 1971. In deciding the dates for elections, The Election Commission takesinto consideration thedays of religious and cultural importance, national examinations and other special matters.

Accordingly, the timeline of election can be arranged as follows.

1. The current President's term ends on November 18, 2024

2. Accordingly, the new President should be elected before October 17, 2024. Considering the time it takes to count the votes and announce the results, it will most likely be a date before October 15. Determination of that date is theexclusive power and right of the Election Commission.

3.Date of Nomination: should be a date between 16 days to 21 days from the date of announcement of the election. Also time should be allocated for submitting objections for nomination if any, from 9.00am to 11.30 am.

4. Campaigning period shall be minimum 28days and maximum 42days from the date of receipt of nominations.

Accordingly, the entire election process will take 63 days (21+42) if the election is announced taking the maximum timeor 44 days if the minimum time is taken (16+28).

On the assumption that the Election Commission will hold the election on October 17th, and the entire process will take the maximum number of days that is63 days, then theannouncement of the election would be made in the second week of August, and if it is based on the minimum number of days, the announcement of the election might be in the first week of September.

Assuming that the Election Commission conducts the election on September 18thand takes the maximum timeline,then the announcement of the election could be at the beginning of the third week of July. Also, on the assumption that the election will be held on September 18th, and takes a minimum of 44 days, then the election should be announced in the first week of August.

Accordingly, the announcement of the election can be made at any time on a date from the third week of July to the first week of September, regardless of the basis of calculation.

The following table will provide an insight into the announcement of the previous presidential elections and the dates allocated for each component ofactivity can be understood from the table below.

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Presidential Elections held in Sri Lanka

Year	Date of expiry of the official term	Date of declaration of election	How many days ahead of the end of the term of office, the election was announced?	Nomination date	How many days had been allocated for nominations since the announcement of election?	campaigning period, Number of days	election date	No of days from the announcement date to the Election	How many days before the end of the term of office the election was held?
1982		1982/08/30	-	1982/09/17	18 days	31 days	1982/10/20	51 days	-
1988	1990/02/02	1988/10/21	469 days	1988/11/10	20 days	37 days	1988/12/19	59 days	410 days
1994	1995/01/02	1994/09/17	138 days	1994/10/07	20 days	31 days	1994/11/09	53 days	54 days
1999	2000/11/12	1999/10/28	381days	1999/11/16	19 days	33 days	1999/12/21	54 days	327 days
2005	2005/12/12	2005/09/19	84 days	2005/10/07	18 days	39 days	2005/11/17	59 days	25 days
2010	2011/11/19	2009/11/27	722 days	2009/12/17	20 days	38 days	2010/01/26	60 days	662 days
2015	2016/01/27	2014/11/21	432 days	2014/12/08	17 days	29 days	2015/01/08	48 days	384 days
2019	2020/01/09	2019/09/18	113 days	2019/10/07	19 days	38 days	2019/11/16	59 days	54 days
2024	2024/11/16	?	?	?	?	?	?	?	?

The Presidential system was introduced to the Constitution of Sri Lanka on 04.02.1978 and the term of office of the President was 6 years until 2015. Prior to 2015, the president in power had the authority toconvene a presidential election two years before the expiry of the official term, and after 2015 it was reduced to one year.

According to this table it is evident that the time allotted forcampaigninghas been approximately5 weeks.Also, when considering the time frames in which elections had been held prior to the end of the official term, it can be seen that the presidential elections called for under normal circumstances (1994, 2005, and 2015), the elections were called 54 days, 25 days, and 54 days respectively, before the expiry of the official term. Accordingly, the appointment of the next President following the ending of the term of office of the current President, should take place before October 17, 2024.According to the examples cited above, the minimum time taken up to now for calling a Presidential Election is 25days.Accordingly, the next Presidential Election is more likely to be held in the last week of September. (It is not mandatory. The Election Commission is endowed with full powers to take decisions in this regard.)

Presidential Elections in Sri Lanka										
Year	Nomination Date	campaigning Period	Election Date	% Percentage voted	% polled by the the winning candidate	Registerd Voters	Valid votes	Votes rejected	Total votes	Polling centers
1982	17th September	34 Days	20th September	81.06	52.91	8,145,015	6,522,147	80,470	6,602,617	6985
1988	10th November	40 Days	19th December	55.32	50.43	9,375,742	5,094,778	91,445	5,186,223	8060
1994	7th October	34 Days	9th November	70.47	62.28	10,945,065	7,561,526	151,706	7,713,232	9580
1999	16th November	36 Days	21st December	73.31	51.12	11,779,200	8,435,754	199,536	8,635,290	9912
2005	7th October	39 Days	17th November	73.73	50.29	13,327,160	9,717,039	109,739	9,826,778	10748
2010	17th December	41 Days	26th January	74.50	57.88	14,088,500	10,393,613	101,838	10,495,451	11,134
2015	8th December	32 Days	8th January	81.52	51.28	15,044,490	12,123,452	140,925	12,264,377	12314
2019	7th October	41 Days	16th November	83.72	52.25	15,992,096	13,252,499	135,425	13,387,951	12845

Eligibility to be a Presidential Candidate (Article 92 of the Constitution)

1 Being an eligible person to register as a voter (registration as a voter is not required.)

2 Being completed 30 years of age

3 Being a person who has not been disqualified to be a Member of Parliament under Article 91

4 Should not be a person elected twice to the office of President by the People

5 Not being one who had been removed from the office of President according to Article 38(2).

Anyone who has fulfilled the above qualifications is eligible to contest the presidential election.Ifcontesting as an independent candidate, he or she must beor hasbeen a Member of Parliament.

Payment of security deposit

The security deposit must be paid before12 noon on the day before the date of accepting nominations, and the independent candidates must submit a letter obtained from the Secretary General of the Parliament confirming that they have served or are serving as a Member of Parliament.

The current amount of securitydeposit payable by a candidate of a accepted political party is 50,000 rupees and the cabinet has approved to increase it to 2.6 million rupees.

The current amount of security deposit payable by an independent candidate is 75,000 rupees and the cabinet has approved to increase it to 3.1 million rupees.

Although the proposals related to the above amendment have been passed by the cabinet on April 8, 2024, it will be implemented in the forthcoming election only if it is passed by the parliament and endorsed by the speaker prior to calling for nominations for the next Presidential Election.

How will the increase in security deposit change the shape of the upcoming Presidential Election?

We appreciate the decision taken to increase the security deposit for the presidential candidature.This will discourage the candidates who contesting the election merely to gain personal popularity, supporting the election campaigns of the mainstream political parties, supporting them to increase the number of polling booth agents and seeking positions from the winning party after the election. Also, the amount of money spent on the election can be reduced to some extent through this. Although 35 candidates contested the last election, apart from the two main candidates, all the other candidates had secured only less than 2 percent of the total votes polled. But considering the amount increased, this could pose a problem for certain political streams that choose to contest to socialize a certain political opinion even if they do not intend to win. In order to avoid confiscation of the security deposit, 2.5% of the total votes polled must be obtained, which approximately amounts to 1.2 million votes. Consequently, many will have their security deposits forfeited.Also, the projects that secure votes by employing small groups will be avoided through this. But this amount will not be a problem for businessmen contesting the election.

The results of the previous PresidentialElections are shown in the table below.

1982				
Name of Candidate	**Party**	**Votes polled**	**percent age**	**Votes polled by defeated candidates & %**
JR Jayawardena	UNP	3,450,811	52.91 %	3,071,336
Hector Kobbekaduwa	SLFP	2,548,438	39.07 %	
Rohanawijeweera	JVP	273,428	4.19 %	47.09%
others	03	249,470	3.83 %	

1988				
	Name of Candidate	Party	Votes polled	percentage	Votes polled by defeated candidates & %
	R.Premadasa	UNP	2,569,199	50.43 %	2,525,679
	SirimavoBandaranaike	SLFP	2,289,960	44.95%	
	OssieAbeygunasekara	SriLanka Mahajana Party	235,719	4.63 %	49.57%

1994				
	Name of Candidate	Party	Votes polled	percent age	Votes polled by defeated candidates & %
	Chandrika Bandaranaike	PodujanaEksat hPeramuna	4,709,205	62.28 %	2,852,323
	SrimaDissanayaka	UNP	2,715,285	35.91 %	37.72%
	others	04	136,858	1.81%	

2000				
	Name of Candidate	Party	Votes polled	percent age	Votes polled by defeated candidates & %
	Chandrika Bandaranaike	PodujanaEksat hPeramuna	4,312,157	51.12%	4,123,597
	RanilWickramasinghe	UNP	3,602,748	42.71%	
	Nandanagunatilleka	JVP	344,173	4.08%	48.88%
	others	10	176,676	2.11%	

2005				
	Name of Candidate	Party	Votes polled	percent age	Votes polled by defeated candidates & %
	Mahinda Rajapaksa	EksathJanatha NidahasSandha naya	4,887,152	50.29 %	4,823,530 49.64%
	RanilWickramasinghe	UNP	4,706.366	48.43 %	
	others	10	117,164	1.21%	

2010					
	Name of Candidate	**Party**	**Votes polled**	**percent age**	**Votes polled by defeated candidates & %**
	Mahinda Rajapaksa	EksathJanatha Nidahas Sandhanaya	6,015,934	57.88%	4,377,679 42.12%
	SarathFonseka	Nava Prajathanthravadi Sandhanaya	4,173,185	40.15%	
	others	20	202,694	1.97 %	

2015					
	Name of Candidate	**Party**	**Votes polled**	**percent age**	**Votes polled by defeated candidates & %**
	MaithripalaSirisena	Nava Prajathanthravadi Peramuna	6,217,162	51.28%	5,906,290 48.72%
	Mahinda Rajapaksa	Eksathjanatha Nidahas Sandhanaya	5,768,090	47.58%	
	others	17	138,200	1.15%	

2019					
	Name of Candidate	**Party**	**Votes polled**	**percent age**	**Votes polled by defeated candidates & %**
	Gotabaya Rajapaksa	Sri Lanka Podujana Peramuna	6,924,255	52.25%	6,328,244
	SajithPremadasa	Nava Prajathanthravadi Peramuna	5,564,239	41.99%	47.75%
	AnuraKumara Dissanayaka	JathikaJanabalaveg aya	418,553	3.16%	
	others	31	343,084	2.53%	

Marking preferences in Presidential Election

According to Article 94 of the Constitution, the voter has the right to mark the second preference if more than two candidates are contesting and the third preference if three or more candidates are contesting. If he is giving the vote to one candidate, he can cast the vote by marking Number 1 in the box in front of his/her name and the symbal. If the second and third preferences are given, in the same way, No.2 and No. 3 should be marked respectively.

Selection of the winner
Presidential Elections Act (No. 15 of 1981)

After counting the total valid votes, if a candidate has secured 50% of the valid votes polled and one more vote, he or she will be declared the winner.

In case no one has secured 50% and one more vote, the second and third preferences are counted.

At this stage, the Election Commission will prepare a list of votes received by all candidates from the entireSri Lanka in a descending order based on the number of votes polled by each one of them. The candidate who has received the most votes in Sri Lanka should occupy the slotnumber 1in that list. The name of the candidate whohas received the least votes in Sri Lankashould be at the end of the list. The Election Commission then divides the candidates into two groups.The first group will include the two candidates who have received the most votes from all over Sri Lanka. This group will be named the remaining candidates: the candidates still remaining in the contest.The second group will includethe rest of the presidential candidates. They are named as candidates eliminated.

Thereafter, on the instructions of the Election Commission, the counting officers all over the island set aside the ballot packets of the two candidates who are still in the contest, that is the candidates who havereceived the highest and second highest number of votes, and open the packets of the other candidates (defeated candidates) respectively, and count the 2nd and the 3rd preferencemarked for the candidates who are still in the contest and add them to the score of the latter.The candidate who receives the highest number of votes shall be declared elected as President. In the event the number of votes obtained by the two is equal, the Election Commission, at its discretion will determine the winning candidate by drawing lots and giving one vote to the winner by the Election Commission and declaring he or she is elected as the President.In this exercise, the winning candidate had not polled 50% and one vote, he or she will be elected as the President.

Could theParliamentary Elections be held this year without the Presidential Eelection?

As mentioned at the beginning of this article, the majority of people think that the rulers can postpone the elections if they want. That means they can conduct the elections as they wish. On the face of it, this seems plausible, but every time it has been delayed, there have been exceptional factors affecting it.

There are no such exceptional circumstances at the moment and the Presidential Election has not been delayed at any time since 1982. All that happenedwas conducted in advance in some instances.Therefore, the Presidential Election will be held within the

same time frame as mentioned in the beginning of this article. But according to the sub Article 72 (1) of the 20th Amendment to the Constitutional, the Executive President has the power to dissolve the Parliament at any time after two and a half years have passed since the official term of the Parliament was begun on 20-08-2020.Accordingly, the President has the power to dissolve the Parliament at any time after February 20, 2023 until August 2025. But, if the Parliament is dissolved by the election commission, the on us of conducting the parliamentary election will be on the election commission.If the President dissolves the Parliament, it is the responsibility of the President to announce the date of dissolution, the date of the poll and the date of the commencement of the new Parliament through a gazette notification.

If the Parliamentary Election is held before the announcement of the Presidential Election, taking into account the minimum period of the Presidential Election (16+28=44 days) and the minimum period of the Parliamentary Election (17+35=52 days), the Parliamentary Election should be held before the last week of August 2024.Accordingly the Parliament should be dissolved within the 3rd week of July. If we take into consideration the maximum time taken for Parliamentary Polls (17+49=66 days) and the maximum time taken for Presidential Elections (21+42=63 days), the Parliament should be dissolved in the first week of June 2024. (In addition to this, I would like to remind you that there are several matters related to the discretion of the Election Commission in setting up the time and the date.

Holding the both elections on the same day

The Election Commission has already announced from time to time through the medi, the practical difficulties of holding both polls on the same day. There is no mention of it in the law and it does not appear that there is any legal obstacle. Many countries in the region (Thailand, Philippines, and Indonesia) have held several elections on the same day.Indonesia held 5 elections on February 14, 2024 and 204 million voters cast their ballots at 0.2 million polling stations and there were only 300 voters in one polling station. It was also reported that more than 50 election officials died during the election process. Therefore, if the election is held on the same day, it should be done after discussing with the Election Commission and also considering the practical difficulties and reaching an agreement.But, if the two political parties in power, seek to announce the Parliamentary Election also, soon after the Presidential Election is announced in order to achieve their needs of political power, the election commission will not have an alternative but to hold the both elections simultaneously.Such coercion without formal dialogue and consensus between all parties will not augur well for democracy.

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