

Panel's take on changes to elected presidency: Bring the entrenchment provisions into force sooner?

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Most panellists at discussion feel this could make the Constitution too difficult to change in future

A part of the Constitution that safeguards the powers of the president should be brought into force sooner rather than later, said Institute of Policy Studies deputy director Gillian Koh.

By empowering the president, the provisions - which are currently suspended - would act as a check on Parliament and unfettered use of the reserves, she argued at Friday's Straits Times roundtable discussion on changes to the elected presidency.

However, other panellists felt that bringing the provisions into force could make the Constitution too difficult to change in the future, leaving it unable to meet the evolving needs of society.

Because of this, the Government has taken a cautious approach and has no immediate plans to bring them into force, said Home Affairs and Law Minister K. Shanmugam.

At the heart of the debate was the structure of checks and balances built into the political system, and the trade-offs it poses for the kind of Constitution that Singapore wants.

Panellists addressed a key upcoming change to a set of provisions in the Constitution that "entrench", or protect, the presidency by making it difficult for Parliament to amend the laws governing the office.

Currently, these provisions - set out in Article 5A and Article 5(2A) - impose strict conditions that must be met before Parliament can pass amendments.

Under these Articles, the president can veto any attempt by Parliament to amend the Constitution to curtail his powers. To override the presidential veto, Parliament must get the support of two-thirds of the population in a national referendum

Neither of the provisions has been in force as the Government had suspended them indefinitely.

Last week, the Government proposed to re-craft the provisions into a two-tier system. Under the new system, strict conditions must still be met if the Government wants to make fundamental changes to the presidency, but less critical changes will not need to clear such a high bar to get the go-ahead.

The new system will not be brought into force for now.

Giving her take on the issue of timing, Dr Koh argued that the provisions would be a structural check on Parliament, and any unfettered use of the reserves and making key public-sector appointments.

The provisions underpin and bolster the presidency, and having the elected presidency itself "is something that addresses what a lot of critics of Singapore's government system say we lack", she said.

"It is a light check but nonetheless should be viewed as a check."

But Mr Shanmugam said that care must be taken not to tie the hands of future governments and leave them unable to change the Constitution. "If you entrench it in a way that ties the hands of future governments, then that Constitution cannot fit the society as society changes," he said.

The Constitution must be capable of being amended - something that the current requirement of the support of two-thirds of the electorate in a national referendum may make virtually impossible.

In the United States, for instance, the Constitution is so difficult to amend that changes can be made only through the courts.

This has the effect of taking control over public policy away from Parliament and moving it over to the judges, which is not Singapore's constitutional structure, said Mr Shanmugam.

He cited a hypothetical example of a future government wanting to scrap the elected presidency.

Currently, requiring the president to be elected gives him the standing and moral authority to say "no" to the Government.

Said the minister: "A future government could disagree, and if it disagrees, it can amend the Constitution in the way that is provided."

Agreeing, Nominated MP and panellist Azmoon Ahmad said: "We have to make the system adaptable through time."

This need for flexibility is why there is no strict deadline for the changes to take place.

Asked by the fourth panellist, assistant professor of law Cheah Wui Ling, when the new system might be brought into force, Mr Shanmugam said: "I am not able to tell you that now. It depends on how these provisions work."

But he said that Singapore should "wait to see how it works out... and then entrench it at a suitable point in time once we are confident".

The issue of checks and balances also cropped up during a discussion on changes that give more weight to the decisions of the Council of Presidential Advisers (CPA).

These changes are about the intricacies of when Parliament can and cannot override the president - mostly, they depend on whether the president is supported by the CPA.

It serves as an additional layer of checks and balances, and Mr Shanmugam described the changes as complex but significant.

"In the past it was slightly untidy - the president in some cases has to consult the CPA, in some cases he didn't need to even in respect of fiscal matters. In the context of appointments he had to consult in some cases but at least in one situation, he didn't have to," he said.

"There were questions as to when Parliament can override and when it couldn't override, some cases it could, in some cases it couldn't.

"We now are looking at an approach based on what the commission has said, to say that in terms of the custodial functions - fiscal and for appointments - in all cases, the president must consult the CPA, and if the CPA agrees with the president, then that's it, Parliament cannot override."