

Working of Democracy in Sri Lanka

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Introduction

'... Recent developments in Sri Lanka's electoral politics are symptomatic of a deep crisis of democratic institutions. This crisis manifests itself in a form of our democratic institutions and practices being separated from the elementary normative principles of democracy.'¹

Democracy, a means of giving citizens a political voice through participation, provides people with the ability to hold state and non-state actors accountable for their actions and inactions. A democracy is understood to consist of representative and accountable government, legislature respecting and giving full effect to human rights, independent judiciary, effective and accessible means of legal recourse, legal system guaranteeing equality before the law, prison system respecting the human person, police force at the service of law, and effective executive enforcing the law and capable of establishing social and economic conditions necessary for a reasonable standard of living. When assessing the working of democracy, in addition to studying the functioning of the above-mentioned structures and bodies, it is also important to ascertain whether democratic values have been internalised in institutions and political processes. Further, attention should also be paid to socio-economic and political factors that impact upon the practice of democracy.

The Balkans has clearly illustrated the danger of ignoring power bases created by local actors who may subvert constitutional and administrative arrangements. As Tiruchelvam points out Sri Lanka is 'an island society where the legal, bureaucratic and political elite is relatively small and exercises disproportionate influence over national decision-making processes'². Hence, local actors who have a huge impact on the working of structures of governance should be studied. Furthermore, in Sri Lanka 19 years of conflict has resulted in lack of public faith in structures of governance and minimal public participation and influence on law making. This has led to lack of accountability of state structures and politicisation of all aspects of life. Moreover, the consolidation of power in the political party has resulted in 'regime authoritarianism'³ where the distinction between the regime and the state has blurred with the regime in power acting like the state. Keeping these factors in mind this paper will analyse the working of democracy in Sri Lanka and the impact it has had upon different groups in society. It will also examine whether local actors have influenced and shaped democratic structures and processes, and if so the effects of this change on the working of democracy.

ACCOUNTABILITY OF THE ORGANS OF GOVERNMENT

Parliament and the Executive

The country needs one strong individual who fears not the Judiciary, the Legislature nor the Party... and I have the power to do anything for six years (The Island, Sunday February 27, 1983)⁴

In Sri Lanka Constitutions, from the pre-independence constitution of 1931 to the Second Republican Constitution of 1978, have contributed to the erosion of not only the accountability and independence of the executive, legislature and judiciary but also the supremacy of the constitution itself.

The enactment of the Second Republican Constitution in 1978 by the United National Party (UNP), which through a landslide victory commanded 5/6 majority in parliament, provides the best example of the 'use and usurpation of constitutional ideology'⁵ for purely partisan purposes. The powerful executive created by the new constitution was outside the checks and balances of the parliament, which considerably weakened the legislature. The irony is that the 1978 Constitution while concentrating more power in the executive president also introduced many democratic features, such as a justiciable fundamental rights chapter and a more independent judiciary. As the UNP commanded a 5/6 majority in parliament, the shifting of power to the executive president led to a more authoritarian system of governance and to further use and usurpation of the Constitution four years later.⁶ When J.R. Jayawardena was elected President in the first presidential election in 1982 he eschewed parliamentary elections, which were expected to follow the presidential elections, and instead held a referendum to extend the life of parliament. He justified his actions citing intelligence received of a naxalite plot to assassinate him and other ministers including

members of the Sri Lanka Freedom Party (SLFP) and take over the SLFP. Jayawardena argued that if elections had been held according to the proportional representation system, which would have been put into effect if parliamentary elections had been held, the SLFP would have obtained more seats in the elections. Hence he stated his intention was to prevent the SLFP, a party taken over by 'anti-democratic, violent and Naxalite (anarchist)' ⁷ forces coming into parliament as the opposition. The real purpose however was to maintain the 5/6 majority in parliament, as UNP would have lost its 5/6 majority if elections had been held on the proportional representation system introduced by the 1978 Constitution. President Jayawardena therefore used the referendum, a democratic tool which 'has an inherent legitimacy' ⁸ and 'involves the direct participation of the people on a given issue' ⁹ in an undemocratic manner to railroad the democratic process - a perfect example of the use and usurpation of constitutional ideology. As Coomaraswamy states 'this wholly unwarranted and unprecedented resort to the referendum principle to circumvent the usual electoral processes delegitimised parliament and also deprived the opposition of the share of seats they would have been entitled to in a parliamentary election under the proportional representation system...' ¹⁰

The proportional representation electoral system introduced by the 1978 Constitution, which make the candidate dependent on the party for nomination, solidified party loyalty and diminished legislator responsibility to the electorate and voter. 'It has ensured the dominance of the party and party bosses over the processes of nomination in a situation where there already was a lack of internal democratic processes within the major parties.' ¹¹ Hence, this system diminished the independence of the parliamentary member who was forced to vote with the party. Further, the second amendment to the Constitution declared that a member of parliament who was expelled from a political party was liable to lose his seat in parliament. The member would be expelled when Parliament, after considering the report of a Select Committee appointed to inquire into the matter passes a resolution by not less than eighty-five members voting in its favour that the person in question ceases to be a member of parliament. ¹² This provision further eroded the independence of members of parliament and enabled the executive, who was a member of the party that commanded a majority in parliament, to have greater control of the legislature. J.R. Jayawardena made full use of this power in 1982, when he obtained undated letters of resignation from all parliamentary members of his party prior to the referendum to ensure everyone toed the party line. ¹³ The President also used this advantage to reassign MPs to different constituencies, i.e. from the constituency from which they were elected to another, and even appointed a non-elected person to a parliamentary seat when it became vacant. ¹⁴ The legislature therefore became the puppet of the executive and it even became possible to 'reproduce in time a group of Parliamentary representatives who do not represent the people but only the President'. ¹⁵

Despite this attempts have been made to make the legislature accountable through the introduction of the parliamentary committee system, whereby committees consisting of members of parliament were formed with aims ranging from giving advice on policy to ministries to acting as a check on the legislative process. Unfortunately, instead of functioning as a space for lively debate of proposed legislation, this system merely operates as another platform where members, who are forced to toe the party line, espouse party positions on issues. ¹⁶ A more recent example of this is the instance when a request by a member of parliament for a debate on the appointment of the Chief Justice and allegations against him, was refused by the Deputy Speaker who was a member of the ruling party, which supported the nominee for Chief Justice. ¹⁷ The fact debate was refused on an issue that lies at the heart of democracy - the integrity and independence of the judiciary- is proof the parliament is no longer a forum for lively debate on issues but merely another platform for party posturing.

The executive has also manipulated the parliament to change laws to enable the ruling party to extend the state of emergency. Section 155 (8) of the 1978 Constitution requires a 2/3 majority for the extension of emergency rule beyond three months. In 1988, when the JVP insurgency was raging and rule by emergency was becoming the norm rather than the exception the UNP government realised it would no longer be able to maintain its parliamentary majority after the elections 1989 elections and as a result would be unable to extend the emergency easily. As a result the government amended Section 155 (8) to enable the extension of a state of emergency by a simple majority. ¹⁸

The abuse of the immense power vested in the office of the executive president is a reality even today. In 1998 President Chandrike Kumaratunge used the power in section 7 of the Public Security Ordinance, which decrees that emergency regulations prevail over all other laws except the Constitution, to declare an island wide state of emergency. ¹⁹ Following this declaration the President declared inoperative the

Election Commissioner's notice under section 22 (1) of the Provincial Councils Act under which the Commissioner gave notice of the day of the provincial polls. The declaration by the President pronounced the Election Commissioner's notice would remain inoperative as long as the state of emergency prevailed. Hence by (ab)using the power vested in her office the President circumvented the procedure required to postpone provincial council elections, i.e. constitutional amendment.²⁰ In 2004 when the cohabitation between President, a member of the Sri Lanka Freedom Party (SLFP), and the Prime Minister, a member of the United National Party (UNP) who commanded a majority in parliament was breaking down, the President using the power vested in her by the Constitution to dissolve parliament any time after 1 year of the life of the parliament, called for elections. The elections, which cost nearly 9 million rupees²¹, gave the President's party a majority in parliament and is blamed for contributing to the derailment of an ailing peace process.

Centre-Province (Power) Relations

In an attempt to resolve the ethnic conflict the 13th amendment to the Constitution introduced the system of provincial councils. The provincial council system, which was established by the 1987 Indo-Lanka Accord, was doomed from the beginning as the centre, which was determined to give only minimal powers to the provinces, drafted the amendment in a manner that enabled the Centre to interfere in virtually all affairs of the provinces. To begin with, there is no clear demarcation of power between the centre and the provinces.²² The subjects are divided into 3 lists; the list with subjects devolved to the provinces; the reserved list with subjects retained by the centre; and the concurrent list which contains subjects within the purview of both the centre and the province. The most important feature is the phrase 'national policy on all subjects and functions' in the reserved list, through which the centre has retained the power to make national policy on all subjects and functions, even those in the provincial list. Through this the centre has ensured there is no subject on which it cannot interfere and has effectively made devolution meaningless.²³ As Loganathan contends 'under the guise of providing explanatory notes, the Appendices negated the Provincial list and arrogated to the Executive Presidency and the central bureaucracy absolute control over the subjects in the Provincial List'.²⁴

Many other provisions of the Provincial Councils Act further erode the autonomy of the provincial councils. Art 154G is a case in point. Although this article states the parliament and provinces can both make laws relating to matters in the concurrent list after consulting each other, it does not set out a process for consultation. Even though such a process was set up through Standing Orders in 1989 it does not provide any space for real consultation nor does it allow the province to influence legislation.²⁵ According to Standing Order 46A when a bill is drafted it is sent to the provinces on the direction of the speaker for the comments of the province. In the event the parliament does not receive the views of the province within a specified time it can proceed with the legislation. This clearly illustrates there is no real consultation or debate and very little scope for the province to influence drafting of legislation. Further, the Standing Order does not state what recourse the province has in the event the centre does not make the amendments requested by the province. On the other hand if a law passed by the province is inconsistent with the provisions of any law passed by parliament, then the law passed by parliament prevails and the provincial law is void to the extent of the inconsistency.²⁶

The failure of the provincial council system may be attributed to the fact the government never intended to devolve power in an effective manner, which is illustrated by article 2 of the Constitution which states that Sri Lanka is a unitary state²⁷ with the executive and legislative power vested in the centre, i.e. only the centre is considered sovereign. Further, article 2 is an entrenched provision, which can be amended only by a two-thirds majority and referendum. The fact the government enacted the Provincial Councils Act²⁸ without amending the unitary state provision in the Constitution is proof that effective devolution was never intended. When the Provincial Councils Bill was challenged on the basis it changed the unitary nature of the state and hence a two-thirds majority and a referendum were required to pass the bill, the Supreme Court decided a referendum was not necessary and the Bill could be passed after the deletion of one particular provision.²⁹ By so deciding the Court was effectively stating the bill did not change the unitary nature of the state.³⁰

The firm belief of the judiciary that executive and legislative power is vested in the centre has also influenced Supreme Court decisions on centre province disputes. As Tiruchelvam states 'The constitution entrenches a unitary state, and that has influenced the outlook of the bureaucracy and the judiciary in the resolution of centre-provincial disputes.'³¹ The case of the National Transport Commission Bill³² is a useful

study in this aspect. In this instance the centre sought to prohibit provincial involvement and interest in the operation of bus services through the use of its power to make 'national policy on all matters and functions'. With the purpose of weakening the provincial councils the centre created a National Transport Authority with the power to determine the issuance and renewal of licenses, permits etc. The Supreme Court when petitioned stated it could only deal with the question of whether the bill contravened Art 12(1) of the Constitution, the equality provision. Hence the court did not examine whether the Bill violated the 13th amendment.³³ Amongst other articles that diminish the power of the provincial councils is art 155 (3A), which states that emergency regulations can suspend or override provincial council statutes. This provision is dangerous and has great potential for abuse in Sri Lanka, which has been ruled by emergency for the greater part of its post-independence era. This was clearly illustrated when, as discussed in the above section, the President used emergency regulations to suspend provincial council elections for political purposes.

Article 154 L presents another danger to provincial councils as it allows the President to take over the administration of the provincial council if she is satisfied a situation has arisen in which administration cannot be carried out in accordance with the provisions of the Constitution. The fact her actions are not questionable in a court or tribunal as per Article 154 L (6) makes provincial councils, especially those controlled by opposition parties vulnerable to politically motivated takeovers. The power of the executive is strengthened and the autonomy of the provincial council further undermined by Article 154M, which allows the parliament to confer on the president the power of the provincial council to make statutes and to authorize the president to delegate such power to any other authority. The fact the Constitution allows the parliament, which is the body that should assume the legislative functions of the provincial councils in the event of a take over, to confer legislative power to the executive clearly illustrates the intention of the drafters to concentrate power in the executive. Hence, the intention of the thirteenth amendment was not true devolution but the creation of a nominal system that would pacify the minorities without encroaching upon the power of the centre and the executive.

The financial autonomy of the provincial councils is restricted by Article 154 N of the Constitution which gives the President the power to make a declaration by proclamation that the financial stability or credit of Sri Lanka or any part of the territory is threatened. When the proclamation is in effect the President can give directions to the Governor of any province, which may include 'a provision requiring all statutes providing for payment into or out of a Provincial Fund to be reserved for the consideration of the President after they are passed by the Provincial Council'. Article 154 R of the Constitution establishes a Finance Commission, which is composed of nominees of the centre, among them the Governor of the Central Bank and the Secretary to the Treasury. It is the Commission that recommends to the President the principles on which funds should be apportioned to the provinces and the President allocates funds from the annual budget to meet the needs of the provinces on the recommendation of the Commission. Further Article 154 R (8) exempts the Commission from an inquiry by any court of tribunal into recommendations made by it relating to the adequacy of funds. This effectively means that in case of centre-province dispute over funds, the Commission composed of government nominees may be weighted in favour of the centre³⁴ while the province is left without any legal remedy or recourse.

Despite devolution the ministers at the centre continue to control the dispensing of services. This is due to many reasons, one of which is the introduction of the proportional representation system. The proportional representation system has resulted in larger electorates and the provincial councils provide the ministers means of consolidating their power bases. As most provincial council ministers are juniors who occupy a lower position in the party hierarchy they often defer to senior ministers at the centre. Hence, 'ministers of the central Cabinet and members of the central legislature have developed a vested interest in the micro issues at the local level. They have seen such issues—relating to public appointments, infrastructure etc.-- as important for their re-election.'³⁵ Resistance to devolution therefore comes from every level of the legislature, executive and the bureaucracy.

Colonial constitutions and institutions have also been blamed for the current resistance to devolution. For example, Wanasinghe faults the Donoughmore Constitution for strengthening centralization, and points out it created an atmosphere where those elected to the State Council believed the central ministries they controlled were superior to other institutions and proceeded to create separate institutions under their control rather than utilise local mechanisms.³⁶ The proportional representation system exacerbated this state of affairs and led to a paradoxical situation; on the one hand the connection between the voter and the member disappeared and the politician found it was more important to pay attention to party interests rather than local interests³⁷; on the other hand as the connection between the member and constituency

no longer existed it became important to maintain local power bases to ensure re-election. The result of this is that although the member is not responsive to local needs, s/he is at the same time more involved in dispensing favours to local communities, i.e. the central minister might not heed a provincial ministers requests for provision of certain services but might interfere in the running of provincial affairs by pushing for the appointment of a certain person to a provincial bureaucratic post.

Political history has shown that when in power each party has attempted to disempower the provincial councils and consolidate power at the centre.³⁸ The result has been increased centralization resulting in the lack of a sense of community ownership over local infrastructure and services. Instead, people regard the centre as the provider of services³⁹, which defeats the purpose of devolution. Provincial councils are now mere administrative units of the centre and 'continue to remain trapped in a primarily administrative role and function, responsible only for the continued operation of the service delivery infrastructures that were handed down when taking over the district operations of the Central line agencies.'⁴⁰

Independence of the Judiciary

Ceylon has today a judiciary of which it can justifiably be proud..But in course of time with loyalty to party, and not to character and competency, being the deciding factor in the making of appointments, this tradition will be no more⁴¹

Nadesan Q.C. 1971

The 1947 Constitution adequately protected the independence of the judiciary as the Chief Justice and the judges of the Supreme Court were appointed by the Governor General, a non-political, non-partisan figure, and could be removed only after an address of both houses of parliament. At the same time, the Judicial Services Commission was established with the power of appointment, transfer etc of all judicial officers, except the judges of the Supreme Court.⁴² Challenges to the independence of the judiciary began more than a decade later when the government attempted to give the Minister of Justice the power to appoint judges. In the 1970s the legislature functioned on the premise the people were supreme and therefore the parliament elected by the people was supreme and the judiciary consisting of un-elected officials was expected to be subordinate to the legislature.⁴³

Article 3 of the 1972 Constitution gave the National Assembly the authority to directly exercise judicial power and the power of appointment of judges of the superior courts was given to a non-elected President, thereby beginning the process of politicisation of the judiciary.⁴⁴ The Judicial Services Commission was abolished and a Judicial Services Advisory Board (JSAB) and Judicial Services Disciplinary Board (JSDB) were established. The former recommended names for judicial appointments to the cabinet and the latter was responsible for disciplining minor judicial officials. The cabinet however could disregard the recommendations of the JSDB.⁴⁵ Judicial review was abolished and although fundamental rights were included in the Constitution no enforcement procedures were included.

The 1978 Constitution, which created the office of the executive president, made further changes to the judiciary and vested the power of appointment of superior court judges in the president.⁴⁶ Article 107 (2) of the Constitution states that judges of the Supreme Court and the Court of Appeal can be removed on the grounds of incapacity or proven misbehaviour by an order of the President, after an address to Parliament supported by a majority of the total number of MPs. The resolution for the presentation of such an address requires the signatures of not less than 1/3 of total number of MPs. Although this provides for the security of tenure of judges, concentrating power in the executive (who in most instances also controls the majority in parliament) makes the removal of judges who have the support of the executive or the ruling party virtually impossible. This has been illustrated by the case of Sarath Silva (discussed below).

The independence and autonomy of the judiciary was in jeopardy a few months after the 1978 Constitution was promulgated, when the Court of Appeal ruled in favour of the former Prime Minister, Srimavo Bandaranaike, and stated that retrospective powers could not be given to a Special Commission of Inquiry established to examine her actions while in office.⁴⁷ The government responded by amending the Constitution to take away from the Court of Appeal jurisdiction over certain matters. A few years later in 1983 the judiciary was to face even worse times with the 'Great Lockout', when due to a series of events related to procedural difficulties in judges (re)taking their oath according to the sixth amendment to the

Constitution⁴⁸, the government barred judges of the Supreme Court from entering their chambers and posted armed guards to prevent access to the Courts.⁴⁹ The government's attempt to make the judiciary subordinate to the executive continued in 1984 with the attempt to impeach the Chief Justice. In 1984 Chief Justice Neville Samarakoon in a speech at an awards ceremony criticized government inaction towards political violence in the North, which resulted in the appointment of a Select Committee of Parliament to inquire into his conduct as a precursor to his impeachment.⁵⁰ The Select Committee gave a decision that found his conduct 'a serious breach of convention'.⁵¹ As the Chief Justice could only be removed upon submission of proof of the alleged misbehaviour or incapacity, Parliament appointed another Select Committee by Standing Orders to investigate the remarks made by the Chief Justice. The Chief Justice however retired before the Committee completed its deliberations.⁵² The most important question raised by this incident is whether the mechanism used to investigate allegations of misconduct of judges violated the independence of the judiciary. As Nadesan Q.C. argued in his defence of the Chief Justice, the use of the Select Committee procedure is unconstitutional as the parliament was exercising judicial power, which according to the Constitution is to be exercised only through the courts.⁵³ Hence, it was an infringement of the independence of the judiciary. Such infringements were common- place during this period and not surprising considering the attitude of the executive towards the judiciary. President Jayawardena is reported to have stated 'the judiciary would pose difficulties for the executive if they are wholly outside anyone's control'.⁵⁴ This comment, which clearly illustrates his attitude towards the judiciary, continues to influence the different organs of the government, with even the President resorting to public criticism when judgments are given against the government or one of its officers⁵⁵, the most recent being the President's claim the judiciary is corrupt.⁵⁶

The executive's control over the judiciary was exhibited once again in recent times with the appointment of Sarath N. Silva as Chief Justice despite two petitions filed against him by Victor Ivan, the editor of the Ravaya newspaper who claimed that Sarath Silva had helped cover up a rape charge against Magistrate Lenin Ratnayake, and W.B. Jayasekera who cited Sarath N.Silva as a co-respondent in his divorce case.⁵⁷ In response, the Supreme Court studied the petitions and decided they should be taken up for inquiry. Notwithstanding protests and requests by the UN Special Rapporteur on the Independence of the Judiciary and local rights groups the appointment be delayed until the hearing was concluded, Sarath Silva was appointed Chief Justice while the petitions were being heard.⁵⁸

In recent years doubt has also been cast on the accountability and integrity of the judiciary. The case of Tony Fernando⁵⁹, where the court's failure to follow due process resulted in the violation of Fernando's right to a fair trial and access to justice, clearly reveals the Supreme Court's failure to respect fundamental principles of justice. Fernando filed a workman's compensation claim with the Deputy Commissioner of Workmen's Compensation, which was unsuccessful. He then filed two petitions in the Supreme Court, which were consolidated by the Court prior to the hearing. Fernando filed another petition that the consolidation of the earlier petitions violated his right to be heard in a just and fair manner. When this petition was taken up by the Court, Fernando filed yet another petition that his earlier petition appealing against the consolidation of the initial petitions should not be heard before the Chief Justice as he was a member of the bench that had rejected his consolidated petition. During the hearing of the last petition, which was also heard by the Chief Justice, Fernando was convicted of contempt of court and immediately removed to prison. 2 weeks later the Chief Justice issued another contempt order and Fernando was sentenced to 1 year rigorous imprisonment and was released after serving 10 months of his sentence. This action of the Court also served to intimidate members of the legal profession who began to fear the same fate could befall them if they displeased the Court. The neutrality of the Supreme Court has also been put in doubt in many cases where acts of personal bias by the Chief Justice were alleged. By being a member of the bench which heard Tony Fernando's petition in which he was cited as a respondent, the Chief Justice violated section 49 (3) of the Judicature Act, which clearly states that a case in which a judge of the Supreme Court or Court of Appeal is a party or personally interested in should be heard by another judge. By flouting this rule that aims to ensure bias does not exist, the Chief Justice has acted in a manner that has jeopardised the integrity of the Court. The fact the Supreme Court, the highest court in the land and the court of last resort, has acted with impunity and scant regard for the rule of law and due process does not augur well for the future of the independence and integrity of the judiciary in Sri Lanka.

Armed Forces & the Police

In the case of the armed forces, the appointment of the commanders of the army and navy continues to be

at the discretion of the President, which has resulted in the continuation of political appointments. As Senarathne declares 'there is little parliamentary supervision of the military and intelligence services and neither does the constitution provide for any such role'.⁶⁰ The responsibility for the army, navy and air force lies with the Ministry of Defence with each organised as a separate department with its respective commander functioning as its chief executive officer.⁶¹ Since the Minister of Defence exerts extensive influence and control over the armed forces, the Presidents of Sri Lanka have always retained that particular portfolio. Due to the conflict in Sri Lanka the army has grown in number and has become 'the dominant organisation and its dominance-due to its size, omnipresence and the tactical context of the North and East has increased over the years'.⁶² In tandem (**check**) the intelligence sector too has grown with the creation of the Directorate of Foreign Intelligence (DFI) and the Directorate of Internal Intelligence (DII), which are both part of the Ministry of Defence.⁶³ There are various other bodies such as the Special Task Force, the commando unit of the police, the Military Intelligence Corps (MIC) of the army created in 1990, and the Directorate of Military Intelligence, which is the parent body of the MIC.⁶⁴ The militarised climate created by the 20 year conflict and the proliferation of military units raises questions of accountability of these various structures and bodies. For example, the Presidential Security Division (PSD), which has grown under Chandrika Kumaratunga's tenure and is said to have access to considerable financial resources, has been accused of engaging in illegal activities and maintaining links with organised crime.⁶⁵ The PSD is alleged to have been involved in the murder of journalist Rohana Kumara, the armed intrusion into the home of Lasantha Wickramatunge, editor of the Sunday Leader newspaper, and the smoke bomb attack on the offices of Ravaya newspaper. It should be noted that both newspapers mentioned above have been very critical of the President.⁶⁶ No action has been taken in these cases.

The conflict has also resulted in increased expenditure on arms procurement, an area that is lacking in transparency and accountability. As Senarathne reiterates, in a country where military expenditure has increased in the past twenty years the need for reform is urgent.⁶⁷ Parliamentary oversight, which is currently lacking, is therefore imperative.

In the case of the police, political interference has led to the erosion of its independence and confidence.⁶⁸ The police has also become increasingly militarised due to the conflict, during which period it transformed from 'a law enforcement agency to an insurgency suppression mechanism'.⁶⁹ Torture became the most common form of interrogation and is commonly used at present. Tampering with evidence, doctoring information record books and registers and fabricating cases against innocent persons has also become common.⁷⁰ Even when officers are accused of torture or other crimes there is no internal investigative mechanism to take effective action. At present in the event of a complaint against a police officer, a high-ranking officer, such as an Assistant Superintendent of Police (ASP), investigates the complaint and makes recommendations on the action to be taken. It is alleged these officers do not carry out proper investigations but instead try to compel the victim and the accused to reach a compromise.⁷¹ Earlier this year, in response to these complaints the National Human Rights Commission held consultations with the Inspector General of Police (IGP) and as a result the IGP undertook to draft guidelines to prevent torture in custody. In addition, circulars have been sent to police stations to the effect that higher officers will be held responsible for torture and custodial deaths.⁷²

In Sri Lanka lack of accountability of armed forces and the police and the lack of transparency maybe partially attributed to the minimal discussion of issues relating to the role of the security sector in a democracy. Although several civil society organisations have been engaged in monitoring and condemning human rights violations by the security sector, they have neglected discussion of the broader issues of strengthening civilian control and oversight of the security sector.

BUREAUCRACY AND OTHER INSTITUTIONS

The 1972 and 1978 Constitutions contributed to the erosion of the independence of the public service and the politicisation of the bureaucracy by making the cabinet responsible for heads of ministries and departments.⁷³ The politician became the 'central figure of the body politic',⁷⁴ after the promulgation of the 1972 Constitution. This placed the MP in a position to dispense favours in the form of jobs, contracts etc, and set in motion the politicisation of the public sector.⁷⁵ The need to create a public service that was responsive to the needs of the public and was within the control of the executive, who would work for the good of the people, was the justification for increased political interference.⁷⁶ Party loyalty was extended to the bureaucracy by Article 52 of the Constitution, which vested the power of appointment of Secretaries

of Ministries in the hands of the President. Further, checks and balances on appointments, transfers etc were limited by Article 55 (5) of the Constitution which states that subject to the jurisdiction of the Supreme Court no other court or tribunal can question such appointment or transfer.⁷⁷ The creation of the provincial bureaucracy by the 13th amendment to the Constitution led to the worsening of the state of the bureaucracy, as the provincial bureaucracy was forced to serve two masters, the centre and the province. The divisional secretaries in the provinces had to serve the centre where un-devolved subjects were concerned and the province in provincial matters. Instead of being subject to the purview of one set of politicians the bureaucrat was forced to serve two, which can be extremely difficult in cases where the province is in the hands of a party different to the party that holds power at the centre.⁷⁸

In 2001, the 17th amendment to the Constitution was adopted in an attempt to depoliticize various organs of government and increase their independence. However, the process by which the amendment was passed was in itself not conducive to furthering discussion and debate on issues of public importance. The amendment was drafted without any civil society participation or public discussion and was rushed through parliament after only a day's debate without a final draft being presented to the public.⁷⁹

The 17th amendment provided for the creation of a Constitutional Council, Public Service Commission, Election Commission, National Police Commission, Judicial Services Commission, Human Rights Commission, Permanent Commission to Investigate Allegations of Bribery or Corruption, the Finance Commission and Delimitation Commission. The Constitutional Council consists of the Prime Minister, the Speaker, the Leader of the Opposition, one person appointed by the President, five persons appointed by the President on the nomination of both the Prime Minister and the Leader of the Opposition, one person nominated upon agreement by the majority of the Members of Parliament belonging to political parties or independent groups to which the Prime Minister and the Leader of the Opposition belongs and appointed by the President.⁸⁰ Provision has been made by Article 41A (3) for the appointment of three persons belonging to minority communities. The appointment of members to the Commissions takes place upon recommendation by the President, which is approved by the Council.⁸¹ Members cannot be appointed unless both the President and the Constitutional Council concur. As the Constitution does not state how a disagreement between the President and the Council should be resolved, this system requires bipartisanship, which is a challenge in Sri Lanka's divided polity where the party reigns supreme. Not surprisingly this process has been beset by problems, beginning with the non-appointment of the Elections Commission due to disagreement between the President and Constitutional Council about the proposed Chairperson of the Commission.⁸² Although the Police Commission was established in November 2002 it too has seen its share of controversies with a tussle ensuing between the Commission and the Inspector General of Police (IGP) on the issues of transfer and promotion of officers.⁸³

Although the Commissions were created with the aim of changing the balance of power between the executive and other organs of government, it is evident that in practice the process has not led to an actual change in the status quo. This is because the 17th amendment leaves room for the President to exert control over the outcome of the process, i.e. the power is tilted in favour of the President. For example, the Presidential nominees to the Constitutional Council are eligible for re-appointment while those appointed on the nomination of the Prime Minister and Leader of the Opposition are not. There is therefore no equality of status of the members of the Council.⁸⁴

Progressive institutional change in Sri Lanka has taken place only at the convenience of the executive with the purpose of gaining political advantage. Although many institutions were established with the stated aim of protecting and promoting human rights, enhancing the accountability and transparency of public service etc, due to continued government interference these institutions have been unable to exercise their powers and fulfil their mandate.⁸⁵

POLITICAL PARTIES

As the discussion below will illustrate, in Sri Lanka, political parties are more alliances for sharing power than groups that represent social diversity and the aspirations of citizens. This is clearly shown by the numerous crossovers that have taken place in the political history of Sri Lanka. To quote recent examples, S.B. Dissanayake who was once a member of the Janatha Vimukthi Perumna (JVP) joined the Sri Lanka Freedom Party (SLFP), which he later left to join the United National Party (UNP) when his relationship with the President who is also the leader of the SLFP deteriorated. A more interesting example is Tilak

Karunaratne of the Sihala Urumaya (SU), the right wing Sinhala chauvinist party, who joined the United National Party (UNP) due to problems within the SU. Mr. Karunaratne claims he joined the UNP because unlike other parties, such as the SLFP and the JVP, the UNP has always protected the rights of the Sinhalese people.⁸⁶

Before the political party system emerged political identity and group solidarity were negotiated along ethnic lines, which led to the bifurcation of Sri Lanka's indigenous elite. This was exacerbated by the method of appointment to the Legislative Council on a communal basis, which was put in place by the colonial rulers.⁸⁷ This meant the only way to gain access to the structures of power and thereby to resources and employment opportunities was through ethnic communities. Ethnic politics was here to stay.

Prior to independence the colonial rulers, who were of the opinion that communalisation of demands was contrary to the process of democratization, abolished communal representation. The colonial rulers rejected the demand of the Ceylon Tamil Congress for 50% seats in the legislature and believed 'no community should be permitted to hold more than half the cabinet posts'.⁸⁸ This led not to the end of the communalization of politics but to the delegitimization of minority demands and left intact majority communalization of group demands.⁸⁹

A study of the history of political parties in Sri Lanka shows that nationalist leaders from the English educated elite, who 'tempered with a degree of populism and nationalism',⁹⁰ dominated the party system in the pre-independence era. The Ceylon National Congress (CNC), was 'not a party per se' but a 'confederation of notables' with very little worker representation and strong internal divisions. Although it sought to represent all Sri Lankans by the 1930s low-country Sinhalese dominated the party.⁹¹ The Congress, which won the 1931 and 1936 elections despite these factors, was dominant in the semi-responsible government created under the Donoughmore Constitution and during this period attempted to transform itself into a political party.⁹² In 1946 when the centre-right United National Party (UNP) was formed as a coalition of various political groups, amongst them the Sinhala Maha Sabha, the Moors Association and even some Tamil leaders, many Congress leaders also joined the party.⁹³ The most distinctive feature of the UNP was that it opened membership to all as opposed to the Congress, which consisted mainly of members of the elite.

For a long period the Congress dominated the political scene and was successful in keeping its political rivals out of power. Parties such as the Ceylon Labour Party, which did not have the support of the tea and rubber plantation workers and ceased to be a political force after its electoral defeat in 1952, and the All Ceylon Liberal League a party formed in 1931 with a commitment to radical constitutional changes were no competition to the Congress.⁹⁴ Despite splits and conflict within the left, left parties in Sri Lanka posed a challenge to the Congress and later the UNP in the early years. The Lanka Sama Samaja Party (LSSP) with a considerable working class support base and the Community Party (CP), which was formed by a splinter group of the LSSP, posited themselves as alternatives to the UNP in the 1947 elections. However, by the 1952 elections their ability to win seats diminished as the parties of the Marxist left were unaware of how to mobilize local support and their attacks on religion and local culture only served to alienate the mass rural vote.⁹⁵ The inability of the Left parties 'to fuse Marxist philosophy with the traditional culture of the country'⁹⁶ played into the hands of the UNP, which used the anti-religious stance of these parties to attack them. Further political compromise, which has dominated the politics of the left in Sri Lanka, resulted in a 'succession of compromises...(which) weakened (the left) to a point of irrelevance'.⁹⁷

During this period parties representing the interests of minorities began to emerge. The All Ceylon Tamil Congress (ACTC) was formed in 1944 after the exodus of Tamils from the Sinhalese dominated Ceylon National Congress⁹⁸ and the Federal Party was founded in 1949 by a splinter group of the ACTC.⁹⁹ The other party was the Ceylon Indian Congress formed in 1939, which later became the Ceylon Workers Congress (CWC) in 1950.¹⁰⁰ The CWC was severely affected by the disenfranchisement of the Tamils of Indian origin, which prevented it from winning seats until 1977. Another new party emerged during 1951, the Sri Lanka Freedom Party (SLFP) founded by S.W.R.D. Bandaranaike who broke away from the UNP. Despite the presence of these parties the UNP continued to dominate the political scene until the 1956 elections, which in many ways proved a watershed year in the political history of Sri Lanka.¹⁰¹ The 1956 elections saw the beginning of divisive ethnic politics and the emergence of a two party system with the UNP and SLFP, which forced the Left parties to abandon their revolutionary rhetoric and move towards the centre.¹⁰² However as pointed out by C.R. de Silva, two different party systems operated in the country, as in the north and east the contest was between the two Tamil parties, the Federal Party and the Tamil Congress,

while in the rest of the country the SLFP and UNP battled for seats.¹⁰³ This death knell for independent candidates led to the consolidation of the party system in Sri Lanka and growth in party loyalty.¹⁰⁴ Even today independent candidates have little chance of being elected. For example, no independent candidate was elected in the 2004 parliamentary elections.¹⁰⁵

The UNP has always positioned itself as the protector of the country against Marxists who it claimed threatened democracy, religion and culture. Economically it espoused a mixed economy policy with a strong focus on fostering the private sector and business community. However, during the initial phase of the party it also incorporated socialist goals and provided free medical care etc.¹⁰⁶ Although the UNP continued its open market economic policies during the 1980s, its failure at the 2004 parliamentary elections is attributed to its neo-liberal policies which alienated the rural masses who felt they did not benefit from the expected peace dividend. This in turn was beneficial to the SLFP, which in 2004 campaigned on a pro-poor, anti-elite platform and won.

Where party ideology is concerned all major Sinhala parties have certain factors in common- they all give the foremost place to Buddhism and appeal to the Sinhala people as guardians of their heritage, culture and language. As Tambiah points out, in the 1960s both the UNP and SLFP 'not only grew closer ideologically regarding Buddhist restoration but also became alternative choices at subsequent elections'.¹⁰⁷ For example, the SLFP focused on the ethnic issue in the 1956 election and campaigned on the basis it was the party that would protect the rights of the Sinhalese people and uplift their culture and heritage. It utilised existing Sinhala perceptions of the privileged position of Tamils during the colonial era and the benefits gained by them during this period to obtain support from rural farmers, village teachers etc.¹⁰⁸ The SLFP claimed to be a party of the common people, an alternative to the UNP on the right and the Marxist on the extreme Left. In practice however the policies of the UNP and SLFP were similar on the ethnic issue with both parties resorting to divisive ethnic politics to win seats. For example, the UNP changed its policy on the language issue and supported a 'Sinhala Only' Policy when it realised the SLFP had gained electoral advantage through this policy. Where economic policies were concerned, the two major parties had differing views with the policies of the SLFP having a more socialist stance with increased nationalisation of many areas of the economy during the 1970s, while the UNP has always opted for a pro-market economic policy with increased participation of the private sector.¹⁰⁹

The JVP, which emerged as a splinter group of the Ceylon Communist Party in 1965, rejected the stance of the old Left based on class, and instead opted for an ideology that combined Sinhala nationalism.¹¹⁰ In keeping with its revolutionary outlook the support base of the JVP, both in the late 1960s and mid 1980s, consisted of those most affected by the open economic policies - the unemployed, frustrated youth from underprivileged rural areas.¹¹¹ In preparing for the insurrections in 1971 and 1987 the party functioned in secret mobilizing rural youth through political education classes and discussions.¹¹² Universities were the main recruiting base for the JVP and the change in University demographics, which saw an increased intake of students from rural areas who despite having access to higher education were still disadvantaged when competing with the students from middle and upper class English speaking backgrounds, worked to the benefit of the JVP.¹¹³ Although in the late 1970s and early 1980s the JVP supported the cause of the Tamil people and accepted they were discriminated by the majority, the party soon reverted to chauvinistic ideology to appease its majority support base- the discontented Sinhalese youth.¹¹⁴ As Senaratne states 'the JVP's incessant search for a wider support base and anti-government mobilisation coalesced with the mobilisation of Sinhala nationalism'.¹¹⁵ Sinhala nationalism was therefore imperative to the propaganda of the JVP, which fanned the fires of ethnic grievance due to fears of losing its support base. After entering the political mainstream the JVP has maximised the present political climate, which, with the rising cost of living, antipathy to neo-liberal economic policies and fear of the LTTE gaining ground due to the peace process, is extremely conducive to the politics of the party. The JVP, an anti-systemic political group which started out as a party with an ideology that was 'a mix of Marxism, nationalist and revolutionary activism',¹¹⁶ had won 39 seats by the year 2004 and is currently a part of the government coalition. The statement made by the General Secretary of the party at a recent meeting to commemorate the party's founder that the JVP would one day form the government leaves one in no doubt of the JVP's abandonment of radical politics.¹¹⁷ Despite these factors the party has maintained its nationalist and anti-minority stance with the occasional rhetorical platitudes to the protection of the rights of minorities.¹¹⁸ It is one party along with the Sinhala Urumaya, which makes no pretence of wooing minority voters.

The history of the Ceylon Workers Congress (CWC), a party dedicated to the upliftment of the Tamils of Indian origin, is illuminating as it clearly illustrates the difficulty faced by small parties in gaining power at

the national level. It also points to the near impossibility of being true to any political ideology within a fractured, extremely divided political culture. The CWC supported the SLFP in the 1960 elections but shifted its allegiance to the UNP in 1965 and after the UNP defeat in 1970 supported the Tamil parties and the cause of the Tamil people in the hope of safeguarding the rights of the Tamils of Indian origin. Allegiance was once again shifted to the UNP in 1978¹¹⁹ and at present the CWC is allied with the People's Alliance, which is led by the SLFP. The party's shift in allegiance tells of struggles faced by smaller parties to stay afloat within the party political system. Within the proportional representation system smaller parties such as the CWC also play the role of kingmaker and have been wooed by both the UNP and SLFP with the promise of cabinet position and portfolios.¹²⁰ The position of the small party in Sri Lanka is hence paradoxical; it is powerless and powerful at the same time.

A study of the Tamil United Liberation Front (TULF), its acceptance of the LTTE as the sole spokesperson for the Tamils and the party's willingness to take orders from Killinochchi, despite internal divisions and protests by senior party leaders such as Anandasangari¹²¹, reveal the dilemmas Tamil parties face within the current political climate. The position of the TULF on the issue of Muslims in the North and East is also useful to demonstrate the particularly difficult position of Tamil parties in Sri Lanka which face two possibilities at present; toe the line of the LTTE or stand apart and face the (sometimes life threatening) consequences. The TULF was initially formed as a coalition of Tamil parties in 1972. The split within the TULF led to the formation of the armed group Tamil Eelam Liberation Organisation (TELO) by more radical members of the group. A split within TELO led to the formation of the LTTE in 1982.¹²² The 1977 election manifesto of the TULF states the party 'guarantees that particularly Muslims who form part of the state of Tamil Eelam will be established in the regions where they are in a majority as an autonomous province with the right to secede on the basis of the right to self-determination'.¹²³ Further it also states the Sinhalese living within Tamil Eelam will have the right to be educated and conduct their business in their own language.¹²⁴ The 1994 manifesto is also along the same lines and advocates for 'constitutional arrangements that allow Muslims to share power in the North and East to enable them to preserve their identity and ensure their security'.¹²⁵ Contrast this with the 2004 manifesto which has abandoned the concept of power sharing and instead only states 'any solution to the Tamil national problem must incorporate matters and features that reassure the distinctiveness, security, culture and economy of the Muslims',¹²⁶ which is a far cry from the 1977 manifesto that spoke of the right of the Muslims to an autonomous province. The manifesto also points to features that have been incorporated into the LTTE proposals for the Interim Self Governing Authority (ISGA) to accommodate the Muslims. It should be noted the composition of the ISGA has been structured to ensure a LTTE majority, which leaves little room for the minorities in the North and East such as Sinhalese and Muslims to protect their rights.

In mobilizing support during the early years both the UNP and SLFP campaigned extensively amongst the youth and women with both parties creating Youth and Women's Leagues and Unions.¹²⁷ The UNP also initiated a one rupee membership campaign through which it had enrolled a million members by 1977. At present all parties have youth organisations and rural party branches. The parties also fund party branches in universities, which has led to clashes between students supporting different political groups. As the left parties that dominated university politics in the past are now powerless, the JVP has consolidated its power within the universities. The two major parties also have a presence at the universities.¹²⁸ The politicisation of student politics began post-1977, when, thugs brought into the university by the UNP student union harassed students at the Kelaniya University.¹²⁹ No police action was taken and the trend continued. At present student elections in universities are as violent as parliamentary and provincial council elections, as student groups function with impunity as they are confident they have the support of the party and politicians.¹³⁰

The executive presidency and the proportional representation system introduced by the 1978 Constitution have also affected intra and inter party dynamics. While proportional representation has provided space for smaller parties to win seats it has also led to erosion of unity within the party, especially due to the incorporation of the preference vote which encourages intra-party competition. The powerful executive who is in a position to dispense favours coupled with the proportional representation system, which makes members dependent on the party for nomination, has resulted in the party having a strong hold on the members of parliament who toe the party line, especially in the case of voting in parliament. Hence, there is no inner party democracy and no space for dissent.

The current party system is also not conducive to the participation of women as the party, which acts as the gate-keeper to the nomination list, does not nominate women because they are not perceived as

winnable candidates.¹³¹ Patronage politics and nepotism are the only means through which women have been able to enter politics and contest elections. In the recent past there have even been instances of husbands who were MPs in the central government nominating wives to the provincial councils as a means of strengthening their power base in the province.¹³² Although most parties have women's wings the purpose is not to advance the political participation and representation of women but to mobilize a vote base during elections.¹³³ Of the 117 women candidates who contested in the October 2000 parliamentary elections, the People's Alliance fielded only 14 candidates and the UNP 8.¹³⁴ Despite this women are not able to eschew parties and run as independents as they do not have the 'money and muscle'¹³⁵ to get elected in a very violent electoral process.

NON-PARTY POLITICAL DOMAIN

In Sri Lanka the non-party political domain is dominated by certain groups such as trade unions, business organisations, welfare and social organisations, professional groupings, non-governmental, non-profit organisations that consist mainly of human rights groups and development institutions, and student unions. A common feature of these organisations is they consist mostly of people and groups that possess some agency and power to come and work together for the welfare of the group. On the other hand many groups, such as displaced persons, lack agency and hence do benefit from the power of collective bargaining in their relationships with power structures. Some of these groups have organised in times of crisis, such as the settlers in Oliyamulla who when forcibly evicted from their houses petitioned the Supreme Court and the Human Rights Commission as a group, and farmers who last year marched in their traditional clothes demanding higher prices for their bumper crop.¹³⁶ These however were spontaneous reactions to incidents rather than sustained collective campaigns for rights.

The case of women is complex and helps illustrate the reality facing activism and rights struggles in Sri Lanka today. The period prior to independence saw the opening of space for women to engage in public life, which in part was due to the strong labour movement and active left politics that existed at that time.¹³⁷ This continued in the post-independence period with many upper and middle class women setting up women's organisations for the welfare of women.¹³⁸ Women's activism gained a boost after the 1975 United Nations International Year for Women, the International Decade for Women and the formation of many women's research and advocacy organisations in the 1980s.¹³⁹ In the 1990s these organisations campaigned for issues ranging from reform of the penal code to the rights of free-trade zone workers. In order to further their activism the women's groups also built partnerships with state structures and have even been involved in the drafting of legislation, although their influence has always waned when legislation reached the cabinet or parliamentary select committee stage and party politics came into play.¹⁴⁰ The lack of support from politicians and members of parliament to women's rights issues is a factor that has hampered the activism of women's groups. This is in stark contrast to minority groups, both ethnic and religious, which though subjected to discrimination and violence have members of parliament supporting their cause, sometimes to the detriment of women. For example, when amendments to the penal code, which legalised abortion and made marital rape illegal, the Muslim and Christian lobby within parliament pressured the government to abandon the amendments.¹⁴¹ This illustrates that without a political lobby for a particular issue the chances of achieving reform and effecting change are slim.

Despite these factors women's groups have continued to engage in struggles for their rights and attempted to influence decision-making processes. For instance, the Sinhala and Tamil Women's Network, a group founded with the aim of promoting communal harmony in the hill country contested the provincial council election in 1999 as an independent group.¹⁴² The group was subject to severe intimidation and threats during elections and failed to win a seat. It has been said the group failed because the public perceived an NGO entering politics as an attempt to grab power rather than as participation in the political process to influence decision making processes.¹⁴³ Hence, it appears the public views political process as tainted and expects groups that campaign for social change, human rights etc, to effect change without entering the political process, which is especially difficult in a country where every aspect of life is politicised.

In contrast trade unions have been quite successful in engaging in collective bargaining with the state, which in numerous instances has been forced to give in to the demands of the unions. The health sector, which provides an essential service to a country where the majority are dependent on free health care, has often used its position to compel the state to agree to provide more benefits to state health sector employees. For example, when the Health Services Trade Union Alliance (HTSUA) a federation of 50 public

health sector unions threatened to strike in June 2004 the Prime Minister agreed to pay an increase for casual and substitute workers and referred pay anomalies to a salaries commission.¹⁴⁴

The unions too are not exempt from political interference and influence. Labour unions, which were the site of political activity during the colonial period when there were few other means for political action, gave way to politics after independence.¹⁴⁵ Although historically only the Marxist parties were involved in trade union politics, the competitive nature of the party system led political parties competing with each other to sponsor labour organisations with the aim of increasing the party support base.¹⁴⁶ This has been a mutually beneficial relationship in many ways and has increased the bargaining power of unions.¹⁴⁷ This cements the politicisation of unionisation, as neither is likely to jeopardise this relationship for fear of losing the resulting benefits.

In the early 1960s the UNP realising the potential of the labour unions moved to support them, and mobilizing labour organisations became one of the primary activities of the political party.¹⁴⁸ The UNP even used the Jatika Sevaka Sangamaya (JSS), the largest trade union in the country at the time, in the pogrom against the Tamils in 1983.¹⁴⁹ Obeysekera ascribes the change in membership, ideology and activities of unions during this period to the fact UNP politicians from areas with large slums, which contained impoverished and discontented people, began to access them for political purposes. According to him these people joined the J.S.S. in large numbers and through intimidation members of other unions were also forced to join the J.S.S, which was 'without a working-class ideology;' and whose leadership 'owed personal allegiance to party bosses'.¹⁵⁰

Kearney's statement that members of a politically sponsored union cannot be thought of as supporters of that party¹⁵¹ holds true even today, as in many industries a one party union system prevails and workers have no option but to become union members. The political support of unions has also led to the demise of strong leadership within the union, as members of parliament often function as heads of unions.¹⁵² For instance, at present the JVP Minister Lal Kantha is President of the National Trade Union Centre (NTUC) which is an umbrella union consisting of 130 trade unions. Hence, decisions taken by political parties will rarely be opposed by the trade unions, as union leaders are party members.¹⁵³ A recent example relates to the strike by the JVP led All Ceylon Health Services Union (ACHSU) in June 2004. In this case accusations have been made that before the strike ACHSU leaders met with the Minister of Health, after which they distanced themselves from the union by declaring the Minister had promised to resolve their problems and calling on the workers not to strike.¹⁵⁴ This was followed by a statement by a member of the JVP asking the workers not to participate in the strike and calling upon them to give the government a chance.¹⁵⁵ This change in the stance of the JVP has been attributed to its formation of a coalition with the governing SLFP.

Where non-governmental human rights organisations (which are generally referred to as NGOs) are concerned, although they have attempted to transform society and the political processes, they have been mostly reactive than pro-active. At the same time, the state too has intermittently attempted to silence them through excessive regulation. In the 1980s the UNP attempted to regulate NGOs, most of which were registered as limited liability companies under the Companies Act, even going to the extent of appointing a commission to investigate allegations against NGOs. This resulted in the regulation (which lapsed the following year) that required NGOs with an annual budget of Rs. 50,000 to register by submitting confidential information about their receipts, disbursements etc.¹⁵⁶ The attitude towards such groups changed soon after the 1994 election which brought the People's Alliance into power. Initially many NGOs supported the PA and collaborated with the state on the belief the party in power genuinely intended to seek a negotiated settlement to the conflict and was committed to democratic, transparent and accountable governance. However, after the breakdown of the peace talks between the government and the LTTE many NGOs reverted to their role as watch-dogs.¹⁵⁷ After the souring of relations between the PA and the NGOs, the state attempted numerous times to increase government control and influence over the NGOs with little success.¹⁵⁸

In recent years human rights organisations have turned their attention to non-state actors and have sought to make private actors, such as the private sector, accountable for rights violations. In recent times however, with the private sector's engagement in seeking a negotiated settlement to the ethnic conflict, there has been more collaboration between NGOs and the private sector.¹⁵⁹

ECONOMIC AND SOCIO-CULTURAL DOMAIN

Economic policies in Sri Lanka have been inconsistent and as a result fluctuation in growth is a feature of the Sri Lankan economy. Economic policies 'have been dictated by the dominant ideologies of the day and the political dynamics of Sri Lanka's electoral system of government'.¹⁶⁰ During 1948 to 1956 economic populism with an open economy was the policy of the UNP, which hoped to increase voter support through welfare provisions and food subsidies.¹⁶¹ The policy backfired as the government could not afford welfare provisions and in 1956 when the MEP coalition led by the SLFP came into office, a mixed policy of economic populism with economic controls was put in place.¹⁶² The government influenced by its leftist allies increased government expenditure, which was not matched by revenues and nationalised industries, which increased the budget deficit. As a result the government had to impose controls on international trade and payments, as it was unwilling to devalue the currency.¹⁶³

The period 1965 -1970 was one of limited liberalization, since the UNP had learnt from its earlier debacle and was more cautious. Nevertheless, this was a period of fast economic growth in Sri Lanka, which changed dramatically when the SLFP came into power again in 1970 and imposed a closed economy policy. When the UNP swept into power in 1977 it practiced a liberal economic policy with increased state investment to provide employment.¹⁶⁴ At present due to market exigencies, international trading regimes and the influence of the World Bank and the International Monetary Fund, the policies of the SLFP led PA and the UNP are not vastly different. The only difference between the two parties lies in the wholehearted acceptance and enthusiasm of the UNP in embracing neo-liberal economic policies with what appears to be total disregard for the poor and marginalized sections of society, and the reluctance of the PA, mainly due to the pressure of the coalition parties, especially the JVP, and the political astuteness of the PA party leaders who realise that to be seen to privatise and liberalise at the behest of the WB and IMF will only result in a loss of their support base- the Sinhala, rural people, discontented youth etc.

Alongside these economic policies development schemes implemented by consecutive governments have contributed to the conflict in Sri Lanka. Conflict blind development processes have exacerbated existing inter-community tensions and resulted in the 'unmaking of the island's mixed social and cultural geography, and old and deep local traditions of multiculturalism and co-existence between the island's diverse and culturally hybrid inhabitants'.¹⁶⁵ Development schemes, such as the Gal-Oya scheme, which also served as colonization schemes, introduced new crop cultivation, such as sugar, in areas previously used for paddy farming. This resulted in water-shortages in the area and adversely affected those engaged in paddy cultivation in the area, mainly the Tamils and Muslims.¹⁶⁶ In addition, state take over of land belonging to Tamils and Muslims for colonization and development schemes, without provision of compensation, contributed to tension between the settlers and the Tamils and Muslims in the area.¹⁶⁷ On the other hand, despite Jaffna in the north experiencing shortage of land being a money-order economy dependent on the earnings of those working in Colombo and elsewhere in the island,¹⁶⁸ no major development programmes or irrigation projects were initiated in the north.¹⁶⁹ The landless in the North and East therefore were not given any relief.¹⁷⁰ The development/colonization schemes also enabled the creation of Sinhala majority electorates when pockets of Sinhala majority areas were grouped together¹⁷¹, which changed the dynamics of electoral politics and shifted the balance of power in many areas.

The political system has also contributed to the discrimination of minorities and deterioration of inter-ethnic relations in Sri Lanka. Political patronage and interference that were deeply ingrained in the system only worsened when the state took over economic activity and industries. This meant the constituent had to look to the politician to dispense favours.

In the realm of social affairs colonial remnants continue to contribute to the discrimination of certain sections of society. For instance, the state has retained the personal laws system introduced by the Dutch, such as Tesawalamai and Muslim Law, which apply only to certain communities in Sri Lanka. Since these laws have been influenced by Roman-Dutch principles and endorse in different degrees the Roman concept of patria potestas, i.e. the sweeping power of the husband over the family, they discriminate against women.¹⁷² The government has shown reluctance to reform the laws stating the communities themselves should initiate the process.

State inaction in addressing the grievances of the minority groups has also contributed to the shaping of social relations, albeit in a negative way. The needs of those who are in a disadvantaged position via education, health and employment, such as displaced persons and those living in conflict affected areas have not been addressed. At the same time, those living in the South are concerned they will not benefit

from the peace dividend as they believe foreign aid for reconstruction will be channelled only to the north. The state therefore appears to be in a position where it is unable to formulate policies to accommodate the needs and rights of all communities and groups in Sri Lanka. The State through its failure to respond to the socio-economic needs of its citizens is either unaware of the impact of socio-economic factors on conflict between communities or is uncaring of addressing the underlying causes of the conflict in Sri Lanka.

CONCLUSION: THE FUTURE OF DEMOCRACY IN SRI LANKA

This paper's analysis of the working of democracy in Sri Lanka has clearly illustrated that even in instances where the elements deemed necessary for democratic governance may exist the quality of the practice of democracy is heavily dependent on political and socio-economic factors. As revealed by the study it is evident that the working of democracy cannot be translated into an institutional checklist since focusing excessively on institutions and institutional change, while ignoring the politics of institutional change and the will to engage in democratic governance, will be disastrous.

In Sri Lanka the way in which democratic governance might metamorphasize in the transition from conflict to peace and the impact of this transition on the working of democracy is a central concern. It has to be acknowledged that during the post-conflict phase due to public demand and the need to show a peace dividend, emphasis could be on infrastructure and the rebuilding of the economy rather than on the creation of sustainable structures of governance keeping in mind the social, political and economic peculiarities of the Sri Lankan situation.

As illustrated, in Sri Lanka a twenty -year civil strife has resulted in human rights violations and the erosion of the principles of democracy. Respect for the Constitution and the law is at a minimum with resort to violence and illegal means to resolve conflicts increasingly becoming the norm. Hence, discussions on reform should focus on issues of accountability and impunity, respect for the law, maintenance of law and order and prevention of the arbitrary use of power. 20 years of conflict has also resulted in loss of public faith in structures of governance and dismal public participation and influence on law making. This has led to the lack of accountability of state structures and those who rule in the name of the people. This is due to many factors ranging from political interference to lack of funding, training and qualified officials. It has been pointed out that reform programmes have always focused on institutional change while ignoring "the will to reform". The failure of democracy in many countries, especially Latin American countries made reformers aware that "absent sufficient will to reform on the part of key ...officials, efforts to reform judiciaries, police, and other key institutions would be futile"¹⁷³ which is very true of Sri Lanka.

Arbitrary use of state power by the executive and increased politicization have, in many instances led to a blurring of boundaries between political and criminal activity.¹⁷⁴ The state's lack of regard for the rule of law has created a culture of impunity with the erosion of respect for democratic principles and human rights standards. In such a climate local actors and the politics of governance become important factors that influence the working of democracy. This is especially so in societies emerging from conflict where the breakdown of social structures, norms and forms of social control has led to the formation of new political and social actors and the formation of new loyalties, such as strong links between politicians and organized crime. Thus, the future of democracy is dependent on the development of social responses alongside legal responses in the form of "...effective local systems of democracy through which people can exercise their rights and express their grievances..."¹⁷⁵ along with a change in political processes and practices that will result in the prevention of the arbitrary use of power, respect for the rule of law and accountability.

End Notes

¹ Jayadeva Uyangoda, 'Emergency Regulations and the Electoral Process', *LST Review*, Vol.9, Issue 136, February 1999, p. 32.

² Neelan Tiruchelvam, 'Introduction', *The Role of the Judiciary in Plural Societies*, International Centre for Ethnic Studies, 1987, p. xvii.

³ Supra note 1, p. 31.

⁴ President J.R. Jayawardena quoted in Gananath Obeysekera, 'Political Violence and the Future of Democracy in Sri Lanka', *Sri Lanka: The Ethnic Conflict- Myths, Realities and Perspectives*, Committee for Rational Development, Navrang, New Delhi, 1984, p. 85.

⁵ Radhika Coomaraswamy, 'The Uses and Usurpations of Constitutional Ideology', *Ideology and the Constitution: Essays on Constitutional Jurisprudence*, Konark Publishers, 1997, p.9.

⁶ Radhika Coomaraswamy, 'The Constitution and Constitutional Reform', *Ideology and the Constitution: Essays on Constitutional Jurisprudence*, Konark Publishers, 1997, p.28.

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⁸ Radhika Coomaraswamy, 'Legitimacy and the Sri Lankan Constitution', *Ideology and the Constitution: Essays on Constitutional Jurisprudence*, Konark Publishers, 1997, p. 75

⁹ Ibid.

¹⁰ Supra note 6, p. 32.

¹¹ Ibid, pp. 30-31.

¹² Article 2 Second Amendment to the Constitution.

¹³ Gananath Obeysekera, 'Political Violence and the Future of Democracy in Sri Lanka', *Sri Lanka: The Ethnic Conflict- Myths, Realities and Perspectives*, Committee for Rational Development, Navrang, New Delhi, 1984, p. 84.

¹⁴ Ibid, p. 49.

¹⁵ Ibid.

¹⁶ Rohan Edrisinha, "Constitutionalism, Pluralism and Ethnic Conflict: The Need for a New Initiative", in Robert Rotberg (ed.) *Creating Peace in Sri Lanka*, The World Peace Foundation and The Belfer Centre for Science and International Affairs, Cambridge, Massachusetts, 1999, p. 172.

¹⁷ Victor Ivan, *An Unfinished Struggle*, Ravaya Publications, 2003 p. 234-236.

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