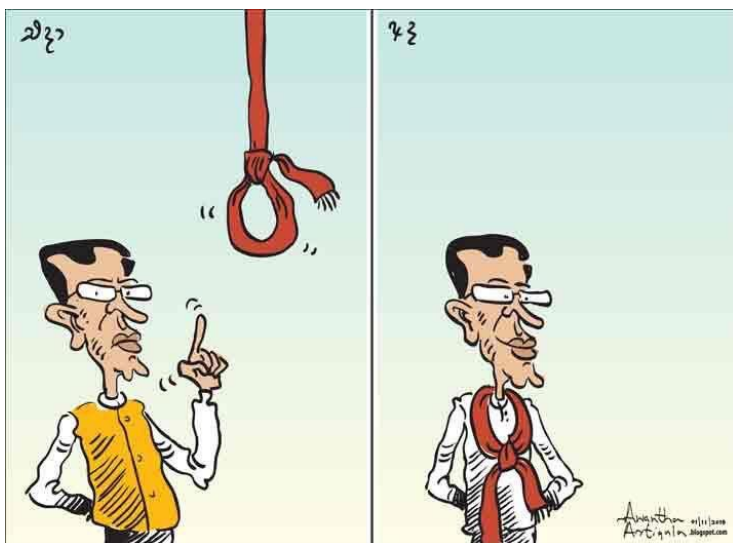




# CONSTITUTIONAL REFORM AND CRISIS IN SRI LANKA

EDITED BY ASANGA WELIKALA

## Constitutional Reform and Crisis in Sri Lanka



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## Foreword

The events following President Sirisena's sacking of Prime Minister Ranil Wickremesinghe and the appointment of former President Mahinda Rajapaksa as Prime Minister, the prorogation and dissolution of Parliament thereafter, plunged Sri Lanka into deep crisis in 2018. What had been attempted was a political coup without any legal or constitutional basis, as the Supreme Court held in its landmark judgment. It was also a blatant reversal of the promise of 2015 as it was a blatant dismissal of the Nineteenth Amendment to the Constitution overseen by President Sirisena. It was in short, an attempt at state capture, which the forces of democracy successfully resisted and may well have to again in the course of the impending presidential and parliamentary elections.

The Centre for Policy Alternatives (CPA), as an organisation committed to liberal democracy in Sri Lanka, is proud to note that it was the only civil society organisation to file a petition in the Supreme Court against President Sirisena's action. It is in this spirit that we publish Dr Asanga Welikala's edited work on the crisis so that one of the most serious recent threats to democracy can be understood and analysed in terms of its particular relevance to the health of Sri Lankan democracy, and its wider significance in the face of populist authoritarianism. We

at CPA both hope and trust that this publication will be a definitive contribution to the literature on the evolution of Sri Lankan democracy, and the wider question of the fate of democracy, globally.

I take this opportunity to thank Dr Welikala for his unstinting commitment to ensure the preparation and publication of the volume. We value the partnership with the Edinburgh Centre for Constitutional Law and the University of Edinburgh since 2015, which has permitted us to make a distinctive contribution to the recent debates on constitutional reform and crisis in Sri Lanka. Likewise, I wish to thank all the authors for their contributions, which ensure that the events of October-December 2018 and thereafter are treated from a variety of perspectives. My sincere thanks to Harshini Amarasinghe, Amalini De Sayrah and Charya Samarakoon at CPA who helped Dr Welikala to bring this publication out.

Finally, I trust that the volume will enlighten the reader of the full significance of what happened and what should not happen again.

Dr P. Saravanamuttu

Executive Director



## Editor's Introduction

On 8<sup>th</sup> January 2015, one of the more momentous changes of government took place in Sri Lanka when Maithripala Sirisena, the candidate of the common opposition, defeated President Mahinda Rajapaksa at a presidential election. In May 2009, Rajapaksa had won the war against the armed secessionist Liberation Tigers of Tamil Eelam (LTTE), an achievement that had eluded all previous presidents. In the aftermath of the war, Rajapaksa used the resulting popularity to not only win a series of elections, but also to concentrate power in himself and his family. He introduced the Eighteenth Amendment to the Constitution in 2010, which removed significant restraints on presidential power and removed the two-term limit on the office. For the first time in Sri Lanka, he also impeached Chief Justice Shirani Bandaranayake and had her replaced with a close legal advisor. The Rajapaksa regime's governing style and ideology were informed by majoritarian ethnic chauvinism, a violent intolerance of dissent, and large-scale corruption and waste caused by a family-centred coterie of actors within nationalist politics and business. Due to this increasing authoritarianism and corruption, Rajapaksa's undoubted popularity began to wane by 2014.

Around this time, the opposition to the Rajapaksa regime began to coalesce around a loose conglomeration of political parties, trades unions, and civil society organisations called the National Movement for Social Justice (NMSJ), whose figurehead was a charismatic senior Buddhist monk, the Ven. Maduluwawe Sobhitha Thera. This movement was eventually successful in building the broadest electoral coalition ever assembled against an incumbent President, around three propositions: (a) that all conceivable political and civil society forces must be united in opposition to the regime; (b) that the force of this unity must be channelled into a single presidential candidate against Rajapaksa; and (c) that the substantive platform of this coalition must be almost entirely, if not exclusively, on constitutional reforms to foster good governance in general, and abolish the executive presidential system in particular. In the last quarter of 2014, it became clear that this was a message that resonated with an electorate tiring of the Rajapaksa regime's excesses, and it was given a major fillip when Maithripala Sirisena, then the general secretary of Rajapaksa's party, defected to become the common opposition candidate.

When Sirisena assumed the office of President, he appointed Ranil Wickremesinghe, then the Leader of the Opposition as the Prime Minister of a minority government. The Parliament

elected in 2010 continued with a pro-Rajapaksa majority, although some MPs in the party had defected with Sirisena and joined the minority government as ministers. The Sirisena-Wickremesinghe government then began to implement their 100-day reform programme, the centrepiece of which was to promulgate a constitutional amendment to curtail the powers of, or abolish outright, the executive presidency. The original draft bill embodying what became the Nineteenth Amendment to the Constitution envisaged abolition, or rather a transformation of the presidential into a cabinet executive, by the simple device of requiring the President to always act on the advice of the Prime Minister. There was however no parliamentary consensus on this, or even consensus within the reform coalition. The Supreme Court also held that such a change would require a referendum in addition to a two-thirds majority in Parliament. These two factors impelled the government to present a more modest bill, which, nevertheless, represented the most significant pruning of presidential powers since the 1978 Constitution was introduced.

The Nineteenth Amendment as enacted in May 2015 by a two-thirds majority (which necessarily included Rajapaksa loyalists), restructured the presidency by empowering the Prime Minister within the political executive, by empowering Parliament against

the executive, by enabling a limited but significant avenue of judicial review over official presidential acts, and by depoliticising appointments to key state offices and services through the restoration of the Constitutional Council and revitalising the independent oversight commissions for the public service, police, the judiciary, elections, human rights, and bribery and corruption.

The constitutional position of the Prime Minister within the executive has been strengthened by removing the power of dismissal from the President, and subjecting the Prime Minister only to the confidence of Parliament. Other ministers may also only be dismissed by the President on the advice of the Prime Minister. Similarly, the President cannot dissolve Parliament during all but the last six months of its five-year term, except through a resolution passed by a two-thirds majority by Parliament itself. Official acts of the President are also now susceptible to the fundamental rights jurisdiction of the Supreme Court. The Constitutional Council, chaired by the Speaker and consisting of MPs and civil society representatives, constrains the President to act on its recommendations, or on its approval, in making key appointments such as judges of the superior courts, the Inspector General of Police, and the Attorney General, and the independent commissions. Crucially, the Nineteenth

Amendment also reintroduced the two-term limit on the presidency and shortened the term of both President and Parliament from six to five years. In these ways, the hyper-presidential model under Rajapaksa's Eighteenth Amendment has been substantially pruned back to a much more democratic model of 'premier-presidential' semi-presidentialism. In addition to these changes at the constitutional level, the reform government also enacted a Right to Information Act (2016) and changed the Standing Orders of Parliament to reform and strengthen the parliamentary committee system in favour of scrutiny and accountability.

However, both since the Nineteenth Amendment did not go far enough in wholly abolishing presidentialism, and also because many other constitutional changes to address especially minority demands had been neglected after the war, the reform coalition under Prime Minister Wickremesinghe asked for a fresh mandate for an entirely new constitution at the parliamentary elections of August 2015. His United National Front for Good Governance won this mandate through a majority of seats at the election, and in January 2016, the government successfully moved a resolution to establish a Committee of the Whole House named the 'Constitutional Assembly', and for a Steering Committee chaired by the Prime Minister and comprising all

parliamentary party leaders and other senior MPs for the management of its business. Parliament when negotiating the content and debating the merits of a new constitution would sit as the Constitutional Assembly, but once a new constitution bill was finalised, Parliament retained the legal authority to pass it into law prior to a referendum, which was required to validate a new constitution.

This process commenced with reasonable vigour, with the Constitutional Assembly dividing itself into subcommittees to go into various substantive areas, and the Steering Committee directly dealing with some of the more contentious matters. For the first time in Sri Lanka, a public consultation exercise was conducted even though it was fairly limited in terms of both time and reach. But due to other issues pressing upon the political agenda, the process began losing momentum from around early 2017, and while the Steering Committee continued its discussions, public interest in constitutional reform began to wane. The government seemed to have no appreciation of the importance of communication with the public, let alone have any plan for continuous public engagement, and very soon the high expectations of 2015 became a thing of the past. Around this time, the personal and political relationship between the President and Prime Minister – crucial to the successful

operation of the semi-presidential executive and even more so for a government of national unity attempting to introduce a new constitution –began to decline. There were multiple causes for this breakdown both proximate and systemic, but ultimately it can be boiled down to the intense, zero-sum pressure of inter-party competition in the culture of Sri Lankan politics that makes cooperation in the national interest impossible, and has undone previous attempts at cohabitation.

When the first state-wide elections since 2015, for local government bodies, were held in February 2018, the two main parties in the ruling coalition led respectively by the President and Prime Minister campaigned against each other, and were duly punished by the electorate. The main beneficiary of the split was former President Rajapaksa, whose new political party pushed the Prime Minister's and the President's parties into second and third place respectively. The electoral admonition was evidently not sufficient incentive for a recommitment to the reform agenda and renewal of the coalition. Instead, the bickering continued with the President even engineering, behind the scenes, a no confidence vote in the Prime Minister in April 2018, which the latter however survived.

But even the continuation of this very public feud – and in parallel the slow death of the constitutional reform process – did not prepare anyone for what happened next. The country was plunged into a major constitutional crisis when on the night of 26 October 2018, President Sirisena without warning dismissed Wickremesinghe and replaced him with Mahinda Rajapaksa as Prime Minister. This was *prima facie* unconstitutional in that Wickremesinghe had not lost the confidence of Parliament, and hence could not be removed, after the changes made by the Nineteenth Amendment. After trying and failing to assemble a parliamentary majority for Rajapaksa, the President also purported to dissolve Parliament on 9 November, an act that was again *prime facie* unconstitutional post-Nineteenth Amendment, given that it occurred during a period within which Parliament could not be dissolved except with a resolution passed by a two-thirds majority. The crisis eventually ended in December after Parliament consistently refused to give confidence for Rajapaksa, and both the Court of Appeal and the Supreme Court held the presidential acts to be unconstitutional. The abridgement of presidential powers to act unilaterally and autonomously of the other branches by the Nineteenth Amendment framework thus passed its first serious stress when the strengthened checks and balances came into effect during the crisis.



An attempt at democratic backsliding therefore ended with a demonstration of institutional resilience. The performance of constitutional restraints and public institutions, and the spontaneous mobilisation of public outcry in defence of constitutional government, revealed the deeper roots of Asia's oldest democracy which are otherwise well concealed behind the ethnic virulence and venality of Sri Lankan political culture. Nevertheless, deeper questions about both political culture as well as the surviving remnants of presidential authoritarianism remain that militate against an over-sanguine assessment of the denouement of the crisis as an unvarnished triumph for constitutional democracy. In particular, the outcome of the crisis seems to have provided no impetus whatsoever for a kick-start of the stalled reform process. Preoccupied with strategic and tactical manoeuvring in an election year, the political elite has all but abandoned further reforms, at least until the next presidential election, due by the end of 2019, is over.

The essays in this collection address all these points, although there is an understandable focus on the high drama of the coup crisis and its implications. Dharisha Bastians provides a gripping first-hand account of the events from the night of 26 October 2018 when the crisis erupted to mid-December when it ended. Kumar David revisits the 'single-issue common-candidate'

strategy that produced the regime change critical to constitutional reform in January 2015. Jayadeva Uyangoda presents a sophisticated structural analysis of the complex political and economic dynamics that underpinned both the failure of constitutional reform and the attempt at an unconstitutional transfer of power in October 2018. Pradeep Peiris dissects the results of a recent (2019) opinion survey on constitutional reform which demonstrates how the lack of public engagement and investment in the constitutional reforms process has all but dissipated the reform mandates of 2015. Sanjana Hattotuwa presents a data-driven analysis of how issues and perspectives are presented, perceived, contested and debated in an increasingly important site of constitutional politics, the social media platforms of Twitter and Facebook. Suri Ratnapala reflects on the crucial normative software without which no amount of institutional reform can deliver a functioning constitutional democracy. Developing this theme further, in my own chapter, I present a descriptive account of the post-2015 reforms process and the coup crisis, evaluate the institutional framework of the Nineteenth Amendment, and discuss the role and content of political culture in a constitutional democracy.

The original research project between the Edinburgh Centre for Constitutional Law and the Centre for Policy Alternatives was conceived before the crisis in 2018 as an exercise in evaluating the successes and failures of the governance reforms process undertaken since 2015. It was intended to produce empirically grounded and analytically rigorous research to inform the debate about how the reforms project could be sustained in the run up to and beyond the next round of national elections in 2019 and 2020, in the context of the widening gap between the promise and the performance of the most avowedly reformist government of national unity elected in 2015. The unexpected coup crisis necessarily changed some of the research objectives of the project. Especially with the populist challenge to liberalism and democratic backsliding as well as the institutional fragility and resilience of constitutional democracies becoming the subject of global academic and policy concern – with an explosion of recent scholarship in comparative politics and constitutional law – events in Sri Lanka have aroused widespread interest.

These essays are some of the first to make an attempt to record the events, and present some form of coherent explanatory account, of the Sri Lankan story of constitutional reform and crisis between late 2014 and early 2019. The essays are

invaluable expositive analyses of these contemporary political events, personalities, institutions, transactions, and processes that have shaped the practice of constitutional law and politics – but which have remained shrouded in mystery and incomprehension for many – by a group of authors who are uniquely qualified and placed to enlighten public discourse on these matters. The essays might therefore best be collectively seen as a preliminary statement of a set of fundamental challenges that await the next phase of Sri Lankan constitutional reform, if and when that comes.

The draft papers were presented at an authors and stakeholders workshop in Negombo in March 2019, and I have no doubt the authors benefitted from the critical discussions at the workshop in finalising their papers. I also hope the political and civil society stakeholders present took away useful insights from the authors' presentations. The volume is accompanied by a further set of research products, including the public opinion survey conducted in January-February 2019 by CPA's polling unit, the Social Indicator (discussed in this volume by Peiris), a set of confidential oral history interviews with key actors and observers during the crisis, and an extensive annotated timeline of the 52-day crisis together with a selection of official documents and reportage from that period which will be available online from

[www.constitutionalreforms.org](http://www.constitutionalreforms.org). All this is intended to further our understanding of the dynamics of constitutional change in Sri Lanka, and my hope is that they will help define not only the future agenda for further research across the social sciences, but also policy perspectives as the country goes to the polls in 2019 and 2020.

I gratefully acknowledge the financial support received from the College of Arts, Humanities and Social Sciences and the School of Law of the University of Edinburgh for this partnership. CPA was further supported by the Royal Norwegian Government, the International Working Group on Sri Lanka, and a private donor. In addition to the authors without whom there will have been no volume to edit – and many of whom heroically laboured through a heatwave and power-cuts in Colombo to submit their chapters in time. I also wish to place on record my personal thanks to colleagues whose assistance and encouragement made my task so much easier. In particular, I thank Anne Sofie Laegran and Shauna Thompson in Edinburgh, and Paikiasothy Saravanamuttu, Harshini Amarasinghe, Amalini De Sayrah, S.H.M Shafraz, Uvin Dissanayake, and especially Charya Samarakoon in Colombo. Conducting primary research into a constitutional coup in its immediate aftermath has not only been a novel experience but also one involving a great deal of

discretion, confidentiality, and trust. I am therefore most grateful to all those actors and observers of the 52-day crisis who cooperated with this project.

Asanga Welikala

Edinburgh

April 2019

# 1

## **The Siege: Inside 52 Days Of Constitutional Crisis In Sri Lanka**

*Dharisha Bastians*

This chapter is an account of the 2018 constitutional crisis, seen from my vantage point as a journalist and, at the moment the crisis erupted, the Editor of *The Sunday Observer*. As a result of my decision to step aside from editorial duties at *The Sunday Observer* once the purported new government took over on October 26, I was free to observe, report, and record the drama that unfolded over the next 52 days as a freelancer and foreign correspondent without any encumbrance – and as a deeply concerned citizen. The chapter is a piece of long-form journalism, not an academic treatise. It is therefore primarily my ringside narrative of events as I saw them in newspaper offices, Parliament, the courts, and indeed in the streets and in social media as the crisis erupted, deepened, and finally dissipated. This account is contained in Part I. But the chapter also offers some deeper reflections and conclusions about the causal dynamics of the crisis, and its longer-term impact on Sri Lanka’s institutional fabric and democratic culture. These are found in Part II.



## **PART I**

### **Lake House on the night of October 26**

Visuals of the 73-year old former president Mahinda Rajapaksa, wearing his signature burgundy shawl and meekly reading out his oath of office before the President were still blazing across television screens when the mobs started marching through the corridors of Lake House, the home of five major state-run newspapers.

The 92-year old publishing house built on the banks of the Beira Lake has been state-run since it was acquired through an Act of Parliament in 1973. Publisher of five major national newspapers and multiple periodicals, Lake House is a propaganda powerhouse. Unshackling it from state control is a popular opposition slogan. In power, no government wants to rule without it. Over 40 years, politicisation has crept deep into its organisational DNA. Politically affiliated trade unions have mushroomed, taking turns to wield influence and win positions when their parties hold state power. Traditionally, an election determines which union will dominate at Lake House for a stipulated number of years. Transitions are usually rough on political opponents, but generally smooth and sufficiently orderly to leave editorials and other departments relatively unscathed.

The transfer of power that occurred on October 26, 2018 on the other hand was unpredictable and jarring. The country was reeling from the shock presidential manoeuvre. Explanation was required. Exhilaration and relief had to be effectively communicated to the people. The new “prime minister” had no media minister; the SLPP did the next best thing. They relied on their loyalists inside the building to execute the changing of the guard.

So within minutes of the swearing-in video being beamed across the island on all major television networks, the Sri Lanka Podujana Peramuna affiliated trade unions marched. They marched into the offices of Editors in Chief, escorted them to the page-making departments, and coerced them into giving the orders to alter the content on the front page of every newspaper that was printed that night. Their orders were clear. Take swift control of the message – no newspaper printed by Lake House that night could be permitted to throw cold water on President Maithripala Sirisena’s move to sack Ranil Wickremesinghe and swear Mahinda Rajapaksa in as Prime Minister under the cover of darkness.

A few kilometres away, similar orders had gone out to unions and SLPP affiliated employees at the state broadcaster. When a group of UNP ministers led by Media Minister Mangala

Samaraweera tried to walk into Sri Lanka Rupavahini Corporation, they were threatened by large union mobs screaming obscenities. The ministers had to be escorted to safety by Special Task Force (STF) personnel. Moments later, the national broadcaster went off air. Senior staffers at the Independent Television Network (ITN), the other state-run broadcaster located in Battaramulla, were forced to flee the building. Within hours, ITN's political programmes were transformed and pro-Rajapaksa analysts were insisting that Mahinda Rajapaksa's appointment as prime minister was patently legal, and made within the constitutional powers Mr Sirisena enjoyed as executive president.

All of the unions at the publicly owned media institutions, claimed to be acting on the orders of Keheliya Rambukwella, the United People's Freedom Alliance MP from Kandy, and former Media Minister in Mr Rajapaksa's cabinet.

At Lake House, journalists stood shell-shocked as editors were forced out of their offices. Some of them had worked at the publishing house for over 30 years; this was the first time they had witnessed such an extraordinarily forceful transfer of power inside the building. On the morning of October 27, Mr Rambukwella spoke to a News Editor at the Sunday Observer. "I hope you know who took over as Prime Minister last night,"

he told her. The unions refused to back down, until they had full editorial control of all five national newspapers published by the Group.

Weeks later, when analysts fleshed out the events of October 26 and its immediate aftermath, the seizure of media organisations minutes after the new Prime Minister had been sworn into office, became the single largest marker that the transfer of power that Friday night was a power grab. The swearing in was a benign – if shocking – ceremony. There were no mobs on the street celebrating or rebelling against the appointment. It was only by seizing the state controlled media within hours of the transition, that the new regime showed it was willing to use force to manufacture legitimacy.

Twenty-four hours after the illegal transfer of power on October 26, 2018, Lake House, Rupavahini and ITN had fallen. For the next 52 days, these state media powerhouses became the chief propagandists of what political scientists and constitutional experts began to call a ‘coup’.<sup>i</sup>

### **The flaw in the plan**

Hunkered down at Temple Trees and insisting that he was the legitimate Prime Minister of Sri Lanka, Ranil Wickremesinghe put his faith in parliamentary democracy.

A cursory reading of the Nineteenth Amendment during the political crisis, made the object of some of its most salient provisions crystal clear. The November 2003 political shake up that eventually defeated Wickremesinghe's UNF government had been top-most in the minds of the drafters when provisions of the constitutional amendment relating to the removal of a sitting prime minister were being considered.

Cohabitation with rival political parties had not gone well for Mr Wickremesinghe, who suffered a similar political setback when former President Chandrika Kumaratunga took over three key UNF ministries on grounds of national security in November 2003. In 2015, Mr Wickremesinghe was taking no chances. The Nineteenth Amendment provisions on the removal of a prime minister were ironclad. The argument based on these provisions, that Mahinda Rajapaksa's appointment as prime minister was patently unconstitutional because his predecessor had never been legally removed, would hold up in any court of law. Legally Mr Sirisena was on remarkably shaky ground.

Within 24 hours of Mahinda Rajapaksa's appointment as Prime Minister, Mr Wickremesinghe's lawyers had the petition challenging the appointment drafted and ready for court on the following Monday (28).

But Ranil Wickremesinghe would not hear of it.

Instead, hours after his ouster, Mr. Wickremesinghe challenged his controversially appointed successor to a floor test in Parliament, stubbornly putting his faith in Erskine-May-esque parliamentary traditions even when the ground beneath his feet was shaking. Perhaps recognising that the legislature was Wickremesinghe's preferred battleground, Mr Sirisena exercised his constitutional powers and prorogued Parliament by Gazette on October 27. This was the first of a series of midnight gazettes that would flag every key milestone of the attempted October 2018 coup. By presidential order, the House would only reconvene on November 16, 2018.

The prorogation order, issued without consultation with the Speaker of the House or other political parties, was President Sirisena's second gift to his former party leader. Over the next fortnight, it would be up to the Rajapaksa family, masters in the art of political coercion and intimidation, to engineer some 20 crossovers and seal a parliamentary majority. Mr Sirisena was banking on Wickremesinghe's decision to keep the question of who was legitimate prime minister out of the realm of the courts. This meant that in the event the Rajapaksa faction managed to get the backing of 113 MPs (the absolute majority in the 225-member unicameral legislature), the UNF and other parties resisting the power grab would have to admit that while the

appointment of the new prime minister had been unconstitutional, Mahinda Rajapaksa would have post facto legitimacy to continue in office.

Prorogation was never part of the initial plan, according to sources close to President Sirisena. He made his move on October 26, placing his fullest confidence in a UNP stalwart, who had pledged to crossover with 20 MPs from his party, once the President ousted Mr Wickremesinghe. Talks between the MPs and President Sirisena had taken place just days before that fateful Friday, at the President's Office in Parliament.

But Mr Sirisena has always been a dark horse. When he talked to the UNP MP about swinging defections, he never indicated that his choice of Prime Minister would be Mahinda Rajapaksa. In the early planning, potential UNP defectors believed the October 26 coup would be led by the SLFP. The key UNP negotiator negotiating defections from his party was led to believe that the President would choose a much more benign option from within his own party as his new prime minister.

To the constituency that voted him into power, President Sirisena's October choice for Prime Minister was the consummate betrayal of his 2015 mandate. The choice also proved to the pro-Rajapaksa constituency that already detested Mr Sirisena for precipitating the fall of their hero from

presidential office in 2015 that he was an inherently treacherous politician. The move to oust Mr Wickremesinghe illegally was viewed even among supporters of Mahinda Rajapaksa, especially in Colombo, as being somehow immoral. There was a clear path for Rajapaksa to assume the premiership legitimately, through an election a few months down the line. The October 26 manoeuvre seemed hasty and ill-planned, and Mahinda Rajapaksa's supporters were instinctively wary of an alliance with President Sirisena.

Angry UNPers flocked to Temple Trees to in a stunning display of solidarity with their prime minister within hours of the secret swearing-in. They camped out in the massive Temple Trees auditorium that was constructed, ironically, during President Rajapaksa's occupation of the iconic residence, and could hold up to 7500 people. By day, the crowds thinned, as supporters headed off to work. At dusk, they trickled back in to camp out for the night. UNP leaders worried that the new regime might use the security forces to storm Temple Trees under the cover of darkness to try and force Mr Wickremesinghe out. After President Sirisena slashed Mr Wickremesinghe's STF detail from 110 to 10, the gates at the Perahera Road entrance to the prime ministerial residence were welded shut. The supporters thronging the halls and gardens of Temple Trees played a dual



role. Keeping vigil at night, they offered protection to the UNP leader and MPs who took up residence at Temple Trees for the duration of the crisis. In the event of forced entry, armed with mobile phone cameras, they would be key witnesses to the moment the political crisis transitioned into a hard coup.

In retrospect, Ranil Wickremesinghe's decision to stay holed up in the residence associated with Sri Lankan prime ministers since independence, seriously derailed the Sirisena-Rajapaksa camp's plans. Wickremesinghe is generally known to fold easily. His new-found spirit of resistance came as a shock to his political opponents. Within days of the October 26 crisis, the UNP mobilised tens of thousands of supporters for a rally in Colombo. The rank and file of the UNP, disillusionment with the leadership notwithstanding, was standing steadfastly by the party.

In just a few days, the crisis also proved that anti-Rajapaksa fervour, while latent for three years of yahapalanaya dithering, still ran deep in the reformist constituency of January 2015.

All this complicated matters for UNP MPs teetering on the fence. Suddenly crossovers to support the October 26 administration presented a lot more risk.

Had they moved to consolidate the illegitimate regime, UNP MPs would be tainted with betrayal too. The immediate public outcry against the appointment of Mahinda Rajapaksa as prime minister and the fact that the UNP leadership had managed to awaken dormant grassroots party support within hours of the power grab at the Presidential Secretariat, gave several MPs who had expressed willingness to crossover cold feet.

Left out in the cold only a few hours after the crisis began, the senior UNP MP renewed negotiations with his own party to remain and support the deposed Prime Minister in exchange for a plum cabinet appointment if and when the coup was defeated and the pre-October status quo was restored. Indications were that negotiations were also taking place simultaneously with President Sirisena and his controversial new prime minister about the very same cabinet appointment. Those talks broke down on October 29, 2018 when President Sirisena swore Mahinda Rajapaksa in as Minister of Finance and Economic Affairs in his new cabinet.

But in spite of these early hiccups, the sustained propaganda push to legitimise the October 26 power grab was generating results. Within 48 hours of the secret swearing-in, a slow trickle of MPs to the UPFA had begun. Every morning began with party leaders pledging support to the legitimate government and

vowing to resist the power grab at Temple Trees where Mr Wickremesinghe was camping out. By sundown, President Sirisena was conducting staggered swearing-in ceremonies for ministers crossing over to join the new regime.

At the time, Ranil Wickremesinghe's decision to let the drama play out in Parliament seemed to be a reckless choice. It soon seemed inevitable that by November 16, when Parliament reopened its doors, the Sirisena-Rajapaksa would have their 113 and the unconstitutional manoeuvre on October 26 would be a fait accompli.

### **The SLFP problem**

With allegations that Mahinda Rajapaksa's brothers and sons were neck-deep in negotiations to win over MPs, rumours of hefty payments being offered to those willing to crossover were swirling within days of the attempted coup. To retain the same MPs, counteroffers had to be made by the UNP. Political circles buzzed with how the offers were made. No money would be transferred until the parliamentarians sealed their defections with a vote for Mahinda Rajapaksa in Parliament. The 'deposit' or 'advance', was the cabinet position in the Sirisena-Rajapaksa administration.

While these hectic negotiations were ongoing, the Sirisena-Rajapaksa camp had to contend with a new battlefield. SLFP stalwarts had suffered a decade under the Rajapaksa family's iron grip on their party. In 2015, that family domination ended, and party seniors were finally given their 'due place' in the SLFP. As far as they were concerned, President Sirisena, having represented the longstanding grievances of the SLFP old guard when he quit the Rajapaksa government in 2014, had done an about face, and reopened the door to family domination of the SLFP.

In the first 10 days, keeping a lid on this SLFP disgruntlement became a major preoccupation for the Sirisena-Rajapaksa faction. UPFA General Secretary Mahinda Amaraweera was regularly dispatched to the homes of senior SLFP MPs, with assurances that President Sirisena was still very much in control of the situation. SLFP strongman Basil Rajapaksa paid occasional visits to soothe ruffled feathers. Communications between senior SLFP MPs and other political actors, especially those from the UNP and other political parties were closely monitored.

Ultimately the resistance by a handful of SLFP MPs proved futile.

When it became apparent that the octogenarian SLFP MP A.H.M. Fowzie was about to decamp on November 2, 2018, President Sirisena dispatched 50 Presidential Security Division personnel to his home, political sources confirmed at the time. That evening, Mr Fowzie was sworn in as Minister for National Unity, Co-existence and Muslim Religious Affairs.

SLFP General Secretary Duminda Dissanayake who kept the lowest possible profile from the onset of the crisis, was practically under house arrest for a week. ‘Friends’ from the SLPP dropped in to visit Mr Dissanayake at his home in the morning. They would leave only after the MP retired to bed, it was learnt from sources close to the SLFP strongman at the time. For days he refused to accept a Cabinet position in the controversial new administration. But at sunset on November 1, he was bundled into a car by his SLFP colleagues and driven to the Presidential Secretariat to be sworn in as Irrigation and Water Resources Minister.

The swearing-in ceremony was the last time Mr Dissanayake was seen for the duration of the political crisis. It is unclear if he ever attended ‘Cabinet’ meetings, but he never showed up in Parliament or made himself available for media interviews. For all intents and purposes, Duminda Dissanayake, former General Secretary of the Sri Lanka Freedom Party, and first of the

SLFPers to step out of the Rajapaksa Cabinet with Maithripala Sirisena in 2014, had vanished.

### **'Range' and the turning of the tide**

Accusations about MP buying and bribing were rampant in the very first week of the political crisis. Hurt by the defections, the UNP levelled these allegations, claiming that the Rajapaksa faction was using pots of money to lure unsuspecting Members of Parliament to support an illegitimate government.

The allegations were easily dismissed, until the now infamous recorded phone call between UNP Puttalam District MP Palitha Range Bandara, and UPFA strongman and broker of the Sirisena-Rajapaksa political alliance S.B. Dissanayake, went public on November 3, 2018.

The explosive conversation, revealed that Dissanayake was offering Range Bandara a Cabinet position, but only if he joined the Rajapaksa government immediately. A second recording between Range Bandara and an emissary of Dissanayake revealed that the claims about vast sums of money being on offer were grounded in fact. 500 million rupees was the offer price for MPs of Range Bandara's stature. Dissanayake's offer was so comical that it became fodder for memes and song spoofs that took over the internet for days after the call was made public.

S.B. Dissanayake's, "*Range, oya enawada*", [Range, will you come?] followed by Palitha Range Bandara's bemused response "*Koheda, Colambatada*" [Where? To Colombo?] became an internet sensation, shared thousands of times across messaging platforms like WhatsApp.

But the leaked telephone call had a far more serious and far-reaching effect. By this time, six MPs had already crossed over and accepted ministerial positions in the controversially installed government. All of those defections were now irrevocably tainted by the suddenly irrefutable evidence that monetary offers were being made in exchange for political loyalty to an illegal administration. Any further crossovers would be stigmatised as resulting from the offer of hefty bribes.

The release of the Range Bandara telephone call marked the beginning of the end for the slow trickle of defections during the October political crisis. Wasantha Senanayake continued to leapfrog from party to party, but for weeks afterwards, President Sirisena and his new prime minister were unable to shift numbers in any significant way. All the while, pressure was mounting on President Sirisena to reconvene Parliament and allow legislators to decide on the country's legitimate prime minister. Between November 3 and November 9, options were fast running out for the administration that usurped power on

October 26. Parliament was set to reconvene on November 16, and they were still short of 113.

### **Speaker-Soldier-Democrat**

In the beginning, there was prorogation.

The President's brazen action to suspend parliamentary sittings until his new prime minister could cobble together a simple majority, incensed lawmakers whose only recourse to challenge the unconstitutional appointment made on the night of October 26 was to subject Mahinda Rajapaksa to a floor test and prove that he did not command the confidence of the House.

Proroguing Parliament effectively tied the hands of legislators determined to resist the coup. Every day that Parliament could not sit offered the illegitimate administration a lifeline to negotiate with MPs and secure defections.

Under pressure from legislators to flout the presidential prorogation order and reconvene the House, Speaker of Parliament Karu Jayasuriya held the first all party representatives meeting on October 30. Citizen protests and political rallies had stepped up calls on the Speaker to bow to the will of the parliamentary majority and reopen the doors of the legislature.



But for the 77-year old, this was no easy feat. He was facing a mutiny of his own, with bureaucrats attached to the Legislature flatly refusing to be part of any move to flout presidential orders. The Secretary General of Parliament, who technically reports to the Speaker, insisted that as government servants, they were bound to abide by the presidential Gazette. A session of Parliament derived legitimacy from the presence of the Mace in the Chamber. With parliamentary officials refusing to cooperate, the Speaker had no mechanism by which to ensure the Mace was delivered to the Chamber.

At the first all-party representatives meeting held in Parliament on October 30, members of the ‘new Cabinet’ breezed in to announce decisions made at the first ‘Cabinet meeting’ that morning. Nimal Siripala De Silva, Mahinda Samarasinghe and other senior SLFPers informed the Speaker that they believed that convening an all-party representatives’ meeting when Parliament had been prorogued was out of order, and said they would not be participating in the discussions. As the ‘Government’ MPs rose to leave the meeting, officials of Parliament who had sat through the discussions until that time, also rose to leave. Their departure evoked a sharp response from opposition lawmakers, who accused parliamentary staff of acting in a partisan manner and failing to do their duty by

Parliament, the institution they were supposed to serve. Despite the outbursts, the bureaucrats stepped out of the meeting.

That day, 121 MPs signed a letter to the Speaker, demanding that Parliament be reconvened. The number was a clear majority. It resulted in the first of several letters being dispatched from Speaker Jayasuriya to President Sirisena, insisting that prorogation of Parliament during a time of political uncertainty was throwing the country into turmoil and could pave the way for violence. The Speaker urged President Sirisena to rescind his Gazette and reconvene the legislature at an earlier date. The pair also had a conversation on the telephone, and Mr Sirisena, by then under enormous pressure diplomatically to allow Parliament to have its say, promised he would reconvene Parliament earlier than planned, perhaps by the 5<sup>th</sup> or 7<sup>th</sup> of November.

On Saturday, November 3, a second all-party representatives meeting was held at the Speaker's Office. The President had failed to issue a fresh Gazette. Angry lawmakers rounded on the Speaker, berating him for the failure to act to protect the rights of Parliament in the face of brazenly unconstitutional and illegal actions by the executive branch. Outside the meeting room, on social media and on street corners, citizens were begging Jayasuriya to act. The mood inside the room was black, as MP

after MP rose to tell the Speaker that he was not being forceful enough.

Badgered and shouted at, the usually mild-mannered Karu Jayasuriya had finally had enough.

“Now I am talking,” he told SLMC Leader Rauff Hakeem when he stood up to continue the barrage.

“I am a Buddhist, and I wear this *silreddha* because I am a peace-loving person,” he said, gesturing to his white national suit. But I have also been a soldier. I know when it is necessary to fight. Most of the time, you will see me in this garment, but I know when to take this off and wear the soldier’s uniform,” Speaker Jayasuriya told lawmakers at the meeting, who fell silent at his words.

He told MPs the difficulty of what they were setting out to do, if the President failed to keep his word and reconvene Parliament the following week. “We need the Mace. We need an audio system. We will require Hansard recording. I have thought about all these things carefully. I have put plans in place to facilitate a sitting of Parliament, even if the Parliament staff refuse to support me,” the Speaker explained.

It was the first time that parliamentarians opposed to the October 26 coup realised that Speaker Jayasuriya meant business.

“But I am urging you all – don’t be in a hurry. I will do what is necessary, when the path of negotiation fails. But first we have to try every avenue to try and get the President to reconvene Parliament,” the Speaker appealed.

Perhaps Speaker Jayasuriya’s words at the meeting found their way to the Presidential Secretariat. Or perhaps the diplomatic pressure on President Sirisena to allow Parliament to decide the country’s prime minister finally proved too strong to resist. Mahinda Rajapaksa told reporters on October 31, one day after the first all-party meeting, that President Sirisena had decided to reconvene Parliament on November 5. Later, UPFA MPs whispered that November 5 was inauspicious, and the President had been advised to reconvene the House on November 7 instead. But on Sunday (November 4) night, when the presidential Gazette was finally issued, Mr Sirisena had advanced the date by only two days. Parliament was set to reconvene on November 14 instead of on November 16 as originally proclaimed.

This meant that political parties that had MPs straining at the leash had to hold their ranks for 10 days or risk losing the floor vote.

The Sri Lanka Muslim Congress (SLMC) and the All Ceylon Muslim Congress (ACMC) were facing mutinies within their parliamentary groups, with individual MPs being approached by the Sirisena-Rajapaksa faction and offered Cabinet positions and other perks. Frantic calls flew back and forth between party leaders Rauff Hakeem and Rishard Bathiudeen when party members went off the radar for more than a few hours. Determined to hold his ranks, in early November, Mr Hakeem moved all of his MPs to Hilton Colombo Residencies at Union Place. Mr Bathiudeen kept lawmakers from his party on an equally shortleash, hosting them all at his own residence. When the horse-trading intensified, both Muslim party leaders and their MPs shaved their heads and flew off to Mecca for a holy pilgrimage on November 7. They would only return shortly before Parliament was set to reconvene.

As for the others, including the Tamil National Alliance (TNA) which had already lost one MP when Batticaloa District parliamentarian S. Viyalendran crossed over, they were going to have to spend the next 10 days, hoping for the best. In the end, however, it transpired that there were leagues to cross between

the party representatives meeting chaired by the Speaker on November 3 and the eventual reconvening of Parliament on November 14. The floor test to determine the country's legitimate prime minister, was still a world away.

### **Sampanthan Vs. Attorney General**

As the constitutional crisis entered its third week, Sri Lanka's highest court became the epicentre of a pitched battle between the executive and legislative branches of the state.

For two weeks, the UPFA had tried to goad the UNF into challenging the October 26 prime ministerial appointment in the Supreme Court. With Ranil Wickremesinghe determined to take the fight to the floor of Parliament, the UNF did not take the bait.

Encouraged by this refusal to seek a judicial remedy, President Sirisena and his new political allies, fast running out of options to engineer a parliamentary majority, decided that the time was ripe for a second unconstitutional manoeuvre.

The power of the executive President to dissolve Parliament at whim following the lapse of one year of the legislature's term was subject to serious dilution with the enactment of the Nineteenth Amendment to the Constitution. In fact, the provisions

governing the dissolution of Parliament went to the very heart of the Nineteenth Amendment, marketed by President Sirisena himself at the time, as taking away powers bestowed upon his office, and vesting them with the legislature. The Nineteenth Amendment could not have been clearer. Parliament could not be dissolved by presidential order, except after the legislature had completed 4.5 years of its 5-year term. Parliament could resolve to dissolve itself, but only if the motion was approved by two thirds of the 225-member assembly.

And yet, Mr Sirisena, egged on by his ‘legal’ advisors, decided to take a leap of faith.

Days of speculation about the impending dissolution of Parliament ended in another Friday night presidential Gazette on November 9, 2018. Parliament was dissolved by executive order, and snap general elections set for January 5, 2019.

The weekend following President Sirisena’s midnight Gazette passed in a whirl of political activity. The Tamil National Alliance and the Marxist Janatha Vimukthi Peramuna sprang into action. Mr Wickremesinghe’s ouster was one thing, but President Sirisena had just moved to usurp powers of the entire legislature, power that could only be exercised if 150 lawmakers willed it to be so. The time had finally come, TNA lawmakers

and the JVP leadership felt, to drag the judiciary pell-mell into the political crisis.

One by one, political parties opposed to the October 26 power grab, decided they wanted a piece of the legal action. By Saturday (10 November) afternoon, the country's most respected President's Counsel had been retained to appear for nearly a dozen petitioners, including every party represented in Parliament, barring the UPFA.

All of them would, in effect, be suing the President of the Republic for violating their fundamental rights.

The party that required the most convincing to take the illegal dissolution of Parliament to court, however, was the one that stood to gain the most from winning the battle. The deposed Prime Minister encouraged other parties to take up the legal challenge, but did not want the UNP to become party to the case. In the early hours of November 10, loyalists of Mr Wickremesinghe rounded on him, insisting that if every other political party was going to court, the UNP, as the single largest party to be represented in Parliament would have to enter the fray. Wickremesinghe reluctantly caved in. President's Counsel Tilak Marapana was to represent the UNP and ahead of his appearance in court on Monday, November 12, he resigned his



portfolio as Minister for Foreign Affairs. The UNP had refused to recognise the new Cabinet, and continued to maintain that they were the rightful holders of ministerial office.

Every constituent party in the UNF coalition filed a separate fundamental rights petition in the Supreme Court. The Centre for Policy Alternatives (CPA) and ordinary citizens also filed separate petitions challenging the presidential order dissolving Parliament. In a shock move, a member of Sri Lanka's independent Elections Commission filed his own petition in the Supreme Court. Dr Ratnajeewan Hoole, a member of the three-member Commission stated in his petition that he believed the dissolution of Parliament by Friday's proclamation was *ex facie* illegal – or bad in law on the face of it, and said he was duty-bound to ensure the Constitution was honoured. Commissioner Hoole maintained that the Commission could not hold an election because Parliament had been dissolved illegally. Ergo, there were no vacant seats to hold an election to fill.

On Monday morning, Sri Lanka's superior courts complex was buzzing with excitement. Remarkably, the petitions filed on November 12, 2018 were taken up the same morning. The courts, it would seem, were refusing to disengage from a political crisis that had shaken the foundations of Sri Lanka's democracy. The last time the tension and energy had been so palpable at the

home of the country's apex court on Hulftsdorp Hill was during the controversial impeachment of Chief Justice Shirani Bandaranayake in 2013.

A three-judge bench of the Supreme Court, led by Chief Justice Nalin Perera, and comprising Justices Prasanna Jayawardane and Priyantha Jayawardane, heard out lawyers representing 11 out of at least 12 petitioners in a marathon sitting that lasted till nearly 6 pm. The sittings were held in Court Room 502 of the Supreme Court complex, packed to the brim with lawyers, litigants, journalists and a host of politicians hailing from political parties represented in the sacked Parliament.

Arguing elementary points of constitutional law, counsel for the petitioners were at their performative best.

Appearing for TNA Leader Rajavarothingiam Sampanthan, President's Counsel K. Kanag-Iswaran distilled the petitioners' case with grace and elegance. "Parliament cannot be dissolved at the whim and fancy of the President. Article 70 (1) places limits on the power of the President to dissolve Parliament. It is a maxim in legal interpretation that special provisions will override general provisions. This is a simple thing. That is why my petition is only two pages," he told the three-judge bench.

Cajoling, entertaining and always forceful, Mr Kanag-Iswaran's submissions often evoked smiles in the courtroom even from an otherwise serious bench. At one point, the senior lawyer was explaining that dissolution of Parliament was eminently possible, but the steps to be followed were clearly laid out in the Constitution and could not be bypassed. To illustrate his point, Mr. Kanag-Iswaran used a popular old song. "It is like the old song says, your lordships. '*If you want to marry me darling, come the proper way*,'" the top litigator quipped, causing ripples of laughter throughout room 502. The chuckles drowned out the equally hilarious response of Chief Justice Nalin Perera: "Mr Kanag-Iswaran, can we also see her?"

TNA lawmaker and President's Counsel Abraham Sumanthiran, ever-dramatic on his feet, breathed fire and brimstone.

"Executive power has been taken away from him. He is half the man that he was," Sumanthiran charged, referring to President Maithripala Sirisena. "He himself referred to the curtailment of his powers during the debate on the Nineteenth Amendment in Parliament. When you look at Article 33, the powers listed are the powers of a ceremonial President, identical to the powers of the ceremonial Head of State in the 1972 Constitution," he argued.

Sumanthiran ended his submissions by throwing his copy of the Constitution down on the table with a bang: “It is unfortunate that we even have to argue this in court.”

But it was the relatively young lawyer appearing for Elections Commissioner Dr Hoole who stole the show with his simple and effective turns of phrase. Attorney Hejaz Hisbullah emphasised the urgency of granting interim relief in the case to stay the election. “The machinery has already started moving,” he told Court, “preliminary work to hold elections have already begun.”

Hisbullah argued that honouring the result of an election was as important as holding elections and allowing people to exercise their franchise. “At an election all people gather to express an opinion. If we allow the President to dissolve Parliament at any time, it says that the opinion of the President trumps all other opinions. There is one word for that, my lords - it is called ‘dictatorship’” the young attorney charged, as audible gasps swept the court room.

Chief Justice Nalin Perera set aside all other matters in courtroom 502 to hold marathon hearings on the dissolution case. Shortly before 6 pm, proceedings were adjourned, but were set to resume the next morning. Attorney General Jayantha

Jayasuriya and intervening petitioners would be heard by the three-judge bench on Tuesday, November 13.

The next day, the three justices patiently heard out the Attorney General's halting two-hour submissions, and gave ear to every petitioner who sought to intervene in the case. Chief Justice Perera even allowed attorney Gomin Dayasri, who was appearing as *amicus curiae* to make a brief submission.

At approximately 3 pm, the bench retired to consider their determination on whether the petitioners would be granted leave to proceed in the case, and whether interim relief prayed for – to stay the election until a final order was delivered – would be granted. Court was adjourned until 5 pm.

A gruelling two-hour wait followed. The air was thick with tension. Outside the walls of courtroom 502, it felt like the country was also holding its breath. Frantic text messages were sent to lawyers stationed inside the courtroom, nearly all of them answered with two words: “Not yet”. The five o'clock hour came and went, with no sign of the judges returning to deliver their determination. Emotions ran high in the sweltering room, packed to capacity despite the lateness of the hour. Finally, at 5.45 pm, the doors opened and the three men whose decision

would alter the course of the attempted constitutional coup, walked in.

His words barely audible, Chief Justice Nalin Perera read out the landmark decision, issuing a stay order on the Gazette dissolving Parliament issued by President Maithripala Sirisena and preventing the Elections Commission from holding a parliamentary poll until a final dispositive decision was reached in the case.

The following weeks would be marked by equally crucial judicial decisions. On December 3, 2018, the Court of Appeal issued a stay order in the Quo Warranto application filed by 121 Members of Parliament, challenging Mahinda Rajapaksa's authority to remain in office after he had suffered the loss of two votes of no confidence in succession in Parliament. The order was the first of its kind in the Commonwealth, and was effectively a sacking of a Prime Minister and a Cabinet of Ministers by a court. After the interim order on the Quo Warranto was issued, Mahinda Rajapaksa never entered the Office of the Prime Minister on Flower Road, or used a prime ministerial letterhead again, except to sign his letter of resignation 10 days later. His ministers never dared enter their ministries again. Justice Preethi Padman Surasena, then President of the Court of Appeal, had effectively stopped the October 26 coup in its tracks.

On December 13, a seven-judge bench of the Supreme Court issued a unanimous final determination in the dissolution case, ruling President Sirisena's action to dissolve Parliament unconstitutional, illegal and declaring the November 9 presidential gazette, void *ab initio*.

But it was the Supreme Court decision on November 13 that first marked the turning of the tide. With the landmark interim order, Chief Justice Nalin Perera, barely a month in office, had set the tone for the judiciary. The courts did not have to remain a passive observer in times of constitutional crisis. It could weigh in and play arbiter; it could fulfil its role as the final guardian and repository of constitutional governance.

At the end of the two-day sittings, a visibly moved Sumanthiran PC hailed the order as the "most important decision the Supreme Court has delivered in its history."

With the dissolution stayed by the country's highest court, Parliament could reconvene at 10 am the next day. And Sri Lanka's constitutional crisis had just become a three-cornered fight.

## **Twin defeats**

Speaker Karu Jayasuriya was taking no chances on November 14, when Parliament was re-summoned after the prorogation of October 26.

The Speaker's Gallery was opened, and diplomats and observers were invited to attend. He also ensured media access rules were relaxed, and issued an order permitting live telecast of the sitting by accredited journalists. An unprecedented number of local and foreign journalists poured into Parliament to witness the session.

Jayasuriya's parliamentary staff insisted on seating MPs according to Gazette notifications issued. The Gazette had declared Mahinda Rajapaksa Prime Minister, so parliamentary staff assigned the 73-year old former President the Prime Minister's seat. The UPFA, its majority still untested in the House, occupied Government benches in Parliament.

122 lawmakers entered the Chamber sporting black pro-democracy sashes. Ranil Wickremesinghe, the controversially deposed Prime Minister had also stepped out of Temple Trees for the first time in two weeks, to attend the sitting. Only 112 MPs could be accommodated in the opposition benches, designated for the UNE, JVP and TNA that day. The surplus



had to find seats on the Government side, where rows remained available.

As the Quorum bell was rung and MPs took their seats, UPFA MPs A.H.M. Fowzie, Piyasena Gamage and Manusha Nanayakkara crossed the well of the House to sit with the opposition.

The session lasted only a few hours, but it was as unruly as it had ever been.

Amid howls of protests by the UPFA, TNA lawmaker M.A. Sumanthiran moved to suspend Standing Orders for the day, in order to vote on a motion of no confidence on the purported new government appointed on October 26. The majority of the House concurred, and JVP Leader Anura Dissanayake read out the motion, which was seconded by his party colleague, Vijitha Herath.

Unable to control the situation, UPFA MPs stepped into the well of the House in droves. They tried to grab the Mace. They called the Speaker a ‘mad fool’. Several times, the Chair called for order, so that a vote by name could be taken. Finally, after several warnings, Speaker Jayasuriya took a vote by voice. “The ayes have it,” the Speaker declared. “The appointed Government has no majority in this House”. Every MP who

voted by voice, later signed the motion. 122 out of 225 parliamentarians had said they wanted Mahinda Rajapaksa gone. A letter was dispatched to the Office of the President, declaring that Parliament had spoken, and that his Prime Minister had been defeated by a floor test in the House on November 14.

And yet, the very next day, ‘Prime Minister’ Mahinda Rajapaksa walked blithely back into the Chamber and sat upon the chair designated for the Sri Lankan prime minister. The UPFA was refusing to accept the result of the voice vote, claiming that there was no tradition to take key parliamentary votes that way. This was patently false, as the Standing Orders of Parliament make clear provision for the Speaker to take a vote by voice.

As the session kicked off, Speaker Karu Jayasuriya announced that as a result of the no confidence vote, the Government stood dissolved under Article 42 (2) of the constitution. “This House does not recognise any MP as Prime Minister or Opposition Leader. There will be free seating today,” he announced from the Chair. Mahinda Rajapaksa stood up to speak. “The Chair recognises Hon. MP Mahinda Rajapaksa”, Speaker Jayasuriya announced. It took Rajapaksa a moment to realise what had just happened. It is important to recall that while a majority in Parliament had rejected him as Prime Minister, President Sirisena, the entire Government bureaucratic machinery and the

media were continuing to address him as Prime Minister. Outside the walls of the chamber, it was as if the November 14 vote had never happened.

All set to read out his speech, Mahinda Rajapaksa suddenly looked up, when he realised Speaker Jayasuriya had referred to him as “Hon. MP”.

Rajapaksa retorted angrily, “Whether it is MP or Prime Minister or just plain old Mahinda Rajapaksa – Mahinda Rajapaksa is Mahinda Rajapaksa! Remember that,” he thundered.

As he began to read out his 20-minute speech, JVP and TNA MPs began to scurry up and down the steps of the opposition benches, whispering to each other and passing messages to key members of every political party. As Rajapaksa concluded, UNP Kandy District MP Lakshman Kiriella rose to call for a division on the former President’s speech by name. Clearly visible even far up in the press gallery, Mahinda Rajapaksa’s face registered complete shock as realisation of what was about to happen dawned on him.

Rajapaksa’s MPs charged up to the chair, openly threatening the Speaker. They poured water on his chair, and threw projectiles in his direction. UNP MPs rushed to the defence of the Speaker and the brawls broke out. Footage during the tussle showed

UNP MPs Ranjan Ramanayake and Palitha Thawarapperuma wielding small knives inside the chamber during the brawling. But once again, the UPFA lost the vote, and Mahinda Rajapaksa, still clinging to the premiership despite two stinging defeats, walked out of the Chamber before the result was declared.

Images of the chaos and rambunctious behaviour inside Sri Lanka's Parliament swept across the world, making headlines in several international newspapers. While local channels blacked out the votes, social media stepped into disseminate the images and video far and wide.

In the lobbies of Parliament, Rajapaksa family members had begun to express helplessness about the situation. There was tacit admission that the former President had accepted Mr Sirisena's offer to become prime minister, under duress from members of his coalition who were concerned about corruption investigations gathering steam and ending political careers ahead of the next election. Another major factor, one family member owned, was the gathering storm within the Sri Lanka Podujana Peramuna about its presidential candidate, with former Defence Secretary Gotabaya Rajapaksa increasingly insistent on contesting the presidency. By taking over the government, the Rajapaksa faction opposed to a Gotabaya candidacy hoped they

could force a parliamentary election first, and defer the tussle for the candidacy.

That evening, party leaders and Speaker Jayasuriya met with President Sirisena to discuss the way forward. Parliament was defeating Mahinda Rajapaksa over and over again, but Mr Sirisena was refusing to bow to the will of the legislature. The President promised the Speaker that he would accept Parliament's verdict and appoint a new prime minister on two conditions. Firstly, the vote had to be taken again on Friday, November 16, by name or through electronic voting. Secondly, he insisted that the motion presented remove references to his having violated the Constitution when he appointed a prime minister on October 26. President Sirisena was rightly concerned that a motion containing that clause could pave the way for impeachment at a later time.

The Speaker agreed to the requests. President Sirisena promised to keep his MPs in line and accept the verdict of the House. Everyone hoped the agreement would prevent further unruliness inside the chamber the next day. Yet this was not to be.

## **Operation ‘Enter the Chamber’**

This was the code name Serjeant-at-Arms Narendra Fernando picked as he marshalled his men on Friday, November 16.

Sittings were due to start at 1 pm but UPFA MPs loyal to Mahinda Rajapaksa entered the chamber early. In an unprecedented display of rowdiness, MPs walked up to the Speaker’s Chair shouting slogans. One of them, the burly MP Arundika Fernando actually sat on the Speaker’s Chair and conducted mock sittings. Others stood near the entrance to the chamber, where the Mace traditionally enters on the shoulders of the Serjeant-at-Arms or his men. For nearly an hour, getting rowdier by the minute, the pro-Rajapaksa MPs agitated. They broke microphones and other equipment, to prevent the Speaker from conducting the sessions. The Quorum bell rang several times, but there was no sign they would take their seats. SLFP MPs, clearly under instructions from the President, watched the dramatic scenes. The three Rajapaksa MPs, Mahinda, Namal and Chamal, did not join in the antics, but watched blithely while their loyalists rampaged.

Up in the press gallery, it seemed almost certain that sittings would not take place that day. Without a murmur, UNP, TNA and JVP MPs walked into the chamber and took their seats. Unlike the previous day, none of them attempted to walk up to

the chair to counter-agitate. Instead, they read or quietly observed the theatrics at the chair. The minutes ticked by endlessly.

The public galleries were packed to capacity that day. Unable to understand what was happening in the Chamber below, the crowds got restless and fidgety. An hour into the ‘takeover’ of the chair by pro-Rajapaksa MPs, opposition benches were packed with parliamentarians, all of them staying deathly still.

Behind the scenes, a secret operation was unfolding. UNF, TNA and JVP MPs opposed to Rajapaksa had been given strict instructions to remain seated and avoid confrontations with UPFA MPs.

It happened in the flash of an eye. The door on the opposition side of the chamber opened suddenly and dozens of police officials, male and female, their arms linked to form a human chain several layers in depth, marched into the chamber. Behind the human shield, a ceremonial guard was holding on to the Mace for dear life. A second official carried a special chair. Behind him, flanked by officials, walked Sri Lanka’s 77-year old Speaker of Parliament in his ceremonial robe.

The public gallery erupted in applause and cheers. Projectiles began flying in the direction of the Speaker immediately from

UPFA MPs near the chair. Large books, purportedly a copy of Erskine May, hurled by Rajapaksa's lawmakers missed the Speaker's head by inches. When they grabbed his chair, another was furnished immediately. Seated at an aisle of the Chamber and hidden by a wall of khaki, Speaker Jayasuriya called the House to Order.

The images from that day form a vital part of coup legend. Tolerant and long-suffering police officers never retaliated as Rajapaksa's MPs threw water spiked with chilli powder in their eyes and hurled books and chairs at them. When UPFA lawmaker Prasanna Ranaweera slapped a police officer at the front of the human wall, the sound reverberated through the chamber, causing shock and anger in the gallery. And yet, the police officers, single-minded in their determination to protect the Speaker, and allow him to conduct the historic session, remained unmoved.

During the uproar, the Serjeant-at-Arms was spotted telling MPs seated quietly in opposition benches to put their headsets on. Journalists took the cue and wore their own headsets in the press gallery. Remarkably, while the chamber remained in a state of complete chaos, the audio system revealed that hidden from view by the wall of khaki: the Speaker was conducting a session of Parliament.



UPFA MPs rioting at the Chair, without the benefit of audio equipment, never knew what was happening.

Standing orders were suspended. A motion was presented and seconded, and finally, the Speaker called for order to take a vote by name three times. Unable to achieve order, the Speaker called for a voice vote. “*AYE*” screamed 122 lawmakers who had remained in their seats throughout the disruption. Above the din created by Rajapaksa’s rioting MPs, no “*NAY*” was ever heard.

“The Ayes have it, the motion is carried,” screamed Speaker Jayasuriya into the FM microphone he had been provided to conduct the session. Moments later, he adjourned Parliament until Monday and was swiftly ushered out of the Chamber. Fearing an ambush by UPFA MPs who had stormed out of the chamber concurrently, the Serjeant-at-Arms led Speaker Jayasuriya through a secret passage to his office, and whisked him off to his residence by car.

As the chamber erupted in Ayes, Mahinda Rajapaksa, turned around to exit the chamber. The gallery erupted in a cacophony of hoots, and Rajapaksa, Sri Lanka’s war-winning former President, looked up at the mocking faces and tried to muster a smile.

The planning for ‘Operation Enter the Chamber’ took about 16 minutes. Speaker Jayasuriya and parliamentary officials were watching the live coverage of disruptions by the UPFA near the Speaker’s Chair. Serjeant-at-Arms Fernando secured the Mace and walked into the Speaker’s Chambers for consultations. Speaker Jayasuriya was insistent on sittings being held that fateful Friday. There was a suggestion to move unarmed Special Task Force personnel in to secure the Chamber. The forcefulness that such a move would symbolise did not sit well with the Speaker. When Fernando told the Speaker he was willing to take full responsibility for his security, but only if Jayasuriya was willing to trust him, the Speaker replied: “I am a former officer. I am ready for anything. You just tell me what the plan is.”

Fernando sought the Speaker’s written authorisation to take police officials into the chamber. Forty-five officers, all of them drawn from the parliamentary police, were to be deployed for the ‘operation’. Traditionally, police officers must remove all belts, badges and insignia as they enter the chamber, to prevent injuries in case of a brawl. The police officers provided the advance and rear guard for the Speaker, ensuring he was not exposed to attack from either side. Another major problem to contend with was audio equipment. Microphones linked to the parliamentary audio system were stationed at the chair. Officials

located a FM microphone, but it was unconnected to the main control system. Within minutes, a sound engineer arrived at the Speaker's Office and successfully connected the FM microphone to the system.

Narendra Fernando, Serjeant-at-Arms, narrated later that Speaker Jayasuriya was exhausted by the end of the tense session. "But somehow, he kept up with me."

By Friday night, President Sirisena was wavering again on his decision to accept the vote in Parliament defeating his Prime Minister for a third time in just as many days. But in the grand scheme of things, this mattered little. The violence and scenes were unprecedented in Sri Lankan parliamentary history. The citizenry stood shell-shocked as the visuals were replayed thousands of times on social media and at least one private media network. The nation had seen the true face of an illegal government, and its naked desperation to cling to power at all costs.

Overnight, Speaker Karu Jayasuriya became the champion of democracy and the hero of the piece. The restraint shown by the police and the Speaker, in the face of unprecedented violence in the House, became the enduring picture of the coup; when brutality and thuggery had faced off against a gentle 77-year old,

his courageous staff and 122 MPs fighting to preserve Sri Lanka's democracy, and still managed to lose the battle.

Five more times, Parliament defeated Mr Sirisena's Prime Minister. The UPFA never attended another vote in Parliament, until Rajapaksa's eventual 'resignation' on December 15.

## **PART II**

### **Three demands**

To effectively analyse the political turmoil precipitated by events at sundown on October 26, understanding the motivations of its chief instigators remains vital.

President Maithripala Sirisena's decision to appoint Mahinda Rajapaksa as his prime minister is relatively easily understood, in light of his desire to secure a second term in presidential office. Weeks earlier, the UNP had officially declined President Sirisena's request to be considered as the UNP presidential candidate at the 2019 poll. Mr Sirisena has the option of contesting the poll as the SLFP candidate, but under his stewardship, his party received a drubbing in the 2018 local council elections, coming in fourth, behind the JVP in some electorates. While he could plausibly contest as the SLFP

candidate in the 2019 presidential race, his best hope would be to become a spoiler in the election, with no real chance of securing a second term. To win re-election, Maithripala Sirisena needs to become the presidential hopeful of one of the two main political camps. One of these is led by the UNP. Remarkably, the other is the Sri Lanka Podujana Party, unheard of two years ago, and now a major political movement led de facto by Mahinda Rajapaksa.

When the UNP dashed his hopes, Mr Sirisena calculated that Mahinda Rajapaksa, his bitter rival, was the next best choice. In return for being considered as its presidential candidate, the Rajapaksa camp reportedly had three main demands for President Sirisena. The first was a caretaker government that would be in charge during an early parliamentary poll. This would allow the Rajapaksa polls machinery to take control of state media and other key state institutions and resources during the election campaign. Rajapaksa loyalists always insisted that Mahinda Rajapaksa did not take the premiership on October 26 to remain in the position long term. All the SLPP really wanted from the October ‘coup’ was a snap parliamentary election, ahead of the inevitable presidential election scheduled for late 2019.

The second ‘demand’ was for a Chief Justice appointment preferred by the Rajapaksa camp. Justice Eva Wanasundera, who was due to retire in December 2018 was top choice. Two weeks ahead of the appointment of Mahinda Rajapaksa as Prime Minister, the nomination was attempted, but ultimately fell through after immense pressure was brought on Mr Sirisena to change the decision. Justice Wanasundera’s name was never dispatched under presidential seal to the Constitutional Council, chaired by Speaker Karu Jayasuriya.<sup>8</sup> Interestingly, the Rajapaksa camp’s second choice for Chief Justice was Court of Appeal Justice Deepali Wijesundera. In January-March 2019, President Sirisena nominated Justice Wijesundera as President of the Court of Appeal three times. Each time, the Constitutional Council rejected the nomination, putting the CC on a major collision course with the executive. As the President of the Court of Appeal, Justice Wijesundera, who retires in December 2019, would have been on the fast track for promotion to the Supreme Court, and from there, as senior-most career judge on the bench, well-positioned for consideration as Chief Justice.

Thirdly, the Rajapaksa faction desperately wanted Mr Sirisena to stall or suspend key investigations against members of the former first family and their loyalists. Several graft investigations against Rajapaksa family members had moved into trial stage. Namal

Rajapaksa and Basil Rajapaksa had already been indicted in money laundering and misappropriation cases. In September 2018, Gotabaya Rajapaksa had been served indictments in the recently set up Permanent High Court at Bar under the Public Property Act, for abusing state funds to build a monument for his late parents in Medamulana, Hambantota.

Furthermore, the Criminal Investigation Department (CID) has been making significant headway on investigations into abductions and murders committed during Mahinda Rajapaksa's presidential tenure. Many of these crimes targeted journalists and dissidents and the investigations resumed in earnest only after the defeat of Mahinda Rajapaksa in 2015 and his brother Gotabaya's exit as Secretary to the Ministry of Defence. CID sleuths have linked the assassination of *The Sunday Leader* Lasantha Wickrematunge, the abduction and torture of journalist Keith Noyahr and the attack on *Rivira* Editor Upali Tennakoon to a specialised Military Intelligence unit known as the Tripoli Platoon led by Major Prabhath Bulathwatte. The Tripoli Platoon was stationed at an army camp in Slave Island and conducted surveillance on journalist targets identified as 'traitors' by the defence establishment. In January 2010, when CID investigators made a major breakthrough in the Lasantha Wickrematunge murder investigation, linking the

murder to Bulathwatte and the Tripoli team, Gotabaya Rajapaksa ordered the CID off the case and handed it over to the Terrorist Investigation Division (TID). On January 18, 2010, weeks after the CID made its breakthrough, Defence Secretary Gotabaya issued a directive to the Secretary to the Ministry of Foreign Affairs to dispatch Major Bulathwatte to Bangkok, Thailand, as a diplomatic officer. The diplomatic transfer was cancelled after Mahinda Rajapaksa won the presidential election on January 26, 2010.

With the fall of the Rajapaksa administration in 2015, the CID has built a significant body of evidence against the Tripoli team and its command structure within the defence establishment. For obvious reasons, these probes have caused deep consternation in some sections of the former ruling family.

### **Derailing justice**

The CID investigator leading nearly every one of these key murder/abduction probes is the Officer in Charge of the Gang Robberies Branch, Police Inspector (IP) Nishantha Silva.

Under the stewardship of Senior Deputy Inspector General of Police (SDIG), Ravi Seneviratne, and CID Director, Senior Superintendent of Police (SSP) Shani Abeysekera, the CID has experienced a renaissance and developed a streak of



independence that has made the agency a thorn in the side of the ruling Sirisena-Wickremesinghe administration, as much as it has become the former Rajapaksa regime's worst nightmare.

With Seneviratne and Abeysekera in charge, the CID has proved to be beyond the control or influence of the politically powerful. The agency has found itself in the crosshairs of no less than President Sirisena, whose efforts to protect his highest ranking military officer Ravindra Wijegunewardane was resisted tooth and nail by the CID officers investigating the abduction and suspected murder of 11 young boys by the Sri Lanka Navy in 2008-2009. Wijegunewardane, a former Navy Commander who now serves as the Chief of Defence Staff stands accused of having allegedly harboured the suspected ringleader of the gruesome Navy abduction-for-ransom racket and preventing his lawful arrest by law enforcement officials.

In the surest indication that the illegal transfer of power on October 26, 2018 would take a toll on high profile investigations and justice processes, on November 18, 2018, President Sirisena attempted to transfer IP Silva out of the CID. His office has repeatedly denied the charge, but his directive to the Inspector General of Police (IGP) has been noted in correspondence between IGP Pujith Jayasundera and the Secretary to the Ministry of Defence, Hemasiri Fernando.

Mr Silva's lightning transfer was set in motion on the night of Sunday, November 18, 2018. IGP Pujith Jayasundera issued the transfer order in writing, dispatching Silva to the Negombo Division on the basis of a 'service requirement'.

The transfer raised eyebrows both locally and internationally, given the portfolio of cases OIC Silva handles at the CID. Most of these crimes are emblematic of impunity for attacks against political dissidents by shadowy sections of the military which enjoyed patronage and protection from sections of the former ruling regime.

During a month-long political crisis, parties to the conflict had focused on waging a political battle, in Parliament and the courts. Silva's transfer was the first indication that the illegal transfer of power on 26 October was moving beyond the political realm.

Human rights activists and lawyers raised the alarm that the de facto Sirisena-Rajapaksa regime was consolidating its grip on power by dismantling investigation processes that had been slowly but surely moving over the past four years. Key suspects in probes the CID was leading used the political upheaval to strike quickly to derail investigations, in full knowledge that the new political dispensation would view the strategy favourably. IP Nishantha Silva has few friends in the Rajapaksa camp.

Mr Silva's role in probing attacks against journalists drew wide support for him in the media. A complaint was lodged with the National Police Commission, that must authorise every police transfer, and the Commission sought an explanation from the IGP about the reasons for the sudden removal of IP Nishantha Silva from the CID.

The daughter of slain editor Lasantha Wickrematunge, Ahimsa, wrote a strongly-worded and poignant letter to President Sirisena, issuing a character certificate for the CID officer who had flown to Australia to question her about her father's murder.

With pressure mounting and insidious motives being attributed to the transfer, IGP Jayasundera reinstated IP Silva at the CID within 24 hours. In a letter to Defence Secretary Hemasiri Fernando, the IGP explained that the transfer had occurred on the orders of President Sirisena. In the revealing letter, the IGP informed the Defence Secretary that he had received a telephone call from Chief of Defence Staff Ravindra Wijegunewardane on 16 November, informing him of a discussion at the National Security Council about IP Nishantha Silva being linked to the LTTE, on 13 November. The very day he received the phone call, IGP Jayasundera wrote to Senior DIG CID Ravi Seneviratne, requesting a report about the officer.

The response from SDIG Seneviratne, in a letter dated 18 November, was to stand steadfastly with Mr Silva, affirming that the top CID sleuth was an exemplary officer with an excellent record for pursuing criminals and securing convictions.

SDIG Seneviratne also accused the country's highest ranking military officer of making the allegation and said the aspersions cast on Mr Silva were an attempt to influence investigations being conducted by the CID sleuth. He went one step further, saying it was clear that the conduct of Admiral Wijegunewardane was an offence punishable under the Victim and Witness Protection Act.

The Chief of Defence Staff was a suspect in a high-profile murder investigation, absconding from law enforcement officers who wanted to question him about allegedly harbouring a fugitive and obstructing his arrest. Wijegunewardane's attempt to influence the IGP to transfer IP Silva was seen as an attempt to intimidate investigators, an offence punishable under the 2015 Victim and Witness Protection Act.

In his letter to the Defence Secretary, IGP Jayasundera wrote that despite this report by SDIG Seneviratne, he had transferred OIC Silva on President Sirisena's orders. Reeling from the pushback, President Sirisena denied involvement in the aborted transfer of the CID officer, and has maintained to date that he

was unaware of the circumstances leading to the IGP's transfer orders on November 18, 2018.

On Monday, November 19, IP Silva and other senior officials of the CID met with a top Defence Ministry official. During the meeting, both Silva and CID Director Shani Abeysekera were offered promotions to move out of the CID. Both officers turned down the promotions, insisting they would take transfers given to them to any local police division instead. The CID officers expressed deep dismay at the willingness of the political establishment to so readily believe the allegations made by a suspect against the investigating officials.

In fact, branding Silva 'LTTE' was grossly unjust, because the officer has been instrumental in dismantling Tiger intelligence networks and led investigations into bomb explosions targeting VVIPs in Colombo.

A few hours after the meeting, Defence Secretary Fernando met President Sirisena and explained in detail why the transfer of IP Silva out of the CID would send all the wrong signals in light of the cases the official was working on, implicating officials in the administration run by the man Mr Sirisena had just appointed Prime Minister. "This will not work, Sir," Mr Fernando told President Sirisena.

Hours after the meeting between CID officials and the top defence official, the transfer orders were revoked. Official notice from the IGP arrived on Tuesday (20). The stunning reversal and massive public support for the CID officer was testament to how integrity and courage on the part of public officials provided its own layer of immunity from political influence even in times of grave uncertainty. Not all police officials were fortunate to have the steadfast backing of their superior officers.

Soon after Mahinda Rajapaksa was sworn in as Prime Minister on October 26, Head of the Financial Crimes Investigation Division SDIG Ravi Waidyalankara was seen at the former President's Wijerama Mawatha residence dressed casually in a pair of shorts. The sight of the senior officer looking so relaxed caused alarm in law enforcement circles because several members of the Rajapaksa family were under investigation by the FCID. But even at the agency, senior officers rushed into the FCID office in Fort on the night of October 26, to secure sensitive case files fearing sabotage of ongoing investigations.

The high-profile nature of his caseload ensured Nishantha Silva's attempted transfer dominated the news cycle. But during the 52-day crisis, several law enforcement officials handling highly sensitive cases at the FCID and elsewhere were intimidated and threatened with reprisals by attorneys

representing members of the Rajapaksa family. Reports of this intimidation never made it to the press. Witnesses were approached during the crisis, and urged to retract their statements to law enforcement or refuse to testify at trial. During the crisis, Mahinda Rajapaksa's son Namal, his brother Basil and several Joint Opposition<sup>xiii</sup> front-liners had their money laundering and criminal misappropriation trials delayed for four or five months at a time. These cases will now come up again months before a major election and are likely to be delayed again.

Another startling development in November 2018 was the decision to reinstate Police Inspector Neomal Rangajeewa at the Police Narcotics Bureau (PNB). Rangajeewa is one of two main suspects in the Welikada Prison Massacre of 2012. After his arrest in connection with the investigation into the murder of 27 prison inmates, Rangajeewa was transferred out of the Bureau. Days after his reinstatement, IP Rangajeewa began to directly threaten witnesses in the case, including a journalist who had written a well-resourced book about the massacre. The journalist, Kasun Pusselawa complained to the National Victim and Witness Protection Authority and the Human Rights Commission of Sri Lanka about the threats. One month later, after Mahinda Rajapaksa had resigned as prime minister and the

pre-October 26 status quo restored, the National Police Commission removed Rangajeewa from the PNB, based on complaints made by the CID that the official was interfering in the investigation into the Welikada murders.

Interestingly, almost immediately after assuming office, 'Prime Minister' Mahinda Rajapaksa moved to dismantle the Secretariat for Coordinating Reconciliation Mechanisms (SCRM), summarily sacking its entire staff. The SCRM functions under the Office of the Prime Minister and is tasked with assisting to implement the Government of Sri Lanka's international commitments on dealing with the country's legacy of war. Part of the SCRM's work involves being a liaison point between the Attorney General's Department, the military and law enforcement agencies on the 'emblematic' cases of particular interest to the UN and the international community. These cases include the attacks on journalists and aid workers, and the cold-blooded murder of five students on a beach in Trincomalee in January 2006. Several SCRM staffers who were sacked during the political crisis reported being threatened over the telephone for being 'traitors to the motherland', and followed around in Colombo, especially at night by men on motorbikes in the month of November 2018. Shortly before Rajapaksa resigned as Prime Minister, he appointed loyalist MP Keheliya



Rambukwella's daughter Chamithri as a director of the SCRM. She never assumed office.

Within weeks of assuming power illegally, the Rajapaksa faction was quick to show where its priorities lay. Dismantling justice and reconciliation mechanisms painstakingly repaired and restored since the end of the Mahinda Rajapaksa's presidency was a primary focus for the 52-day administration.

Over four years, investigations into the crimes and corruption that defined Mahinda Rajapaksa's decade in power have been halting and painfully slow. The probes and prosecutions have been regularly imperilled by a lack of political will on the part of the government that was swept to power on promises to deliver justice to victims. But where investigators have been determined to persist against all odds, there has been progress and breakthroughs in many key cases. President Sirisena's decision to appoint Mahinda Rajapaksa as Prime Minister on October 26 had an almost immediate impact on justice and reconciliation processes. Four months since the illegal power grab was defeated, it is evident that the crisis resulted in tectonic shifts on the road to achieving justice and reconciliation in Sri Lanka.

Mr Sirisena's presidency is fundamentally altered since the crisis. He remains entirely preoccupied with bolstering his nationalist credentials in order to set himself up as a plausible presidential

candidate to the SLPP. He is doubling down against what he views as attempts to target and vilify members of the armed forces.

Mr Wickremesinghe, restored to office in December 2018, has chosen the path of least resistance since his reinstatement. A significant stumbling block to investigators pursuing cases against Rajapaksa era officials and members of the former ruling family from the outset, the Prime Minister's silence on the issue is deafening. A weak and pliant Attorney General's Department, an increasingly hostile President, and a wholly apathetic Cabinet of Ministers have left investigators rudderless and vulnerable to all manner of political machinations. The October crisis proved that the gains made since January 2015 in terms of restoring the rule of law, the independence of the judiciary and minimising political interference in law enforcement and key state agencies were incredibly tenuous.

### **Structural weakness**

Considering the flimsiness of the motive that Mr Sirisena himself claimed had precipitated the illegal ouster of his prime minister, the fact that the anti-constitutional manoeuvre nearly succeeded is testament to the structural weaknesses of the Sri Lankan state.<sup>iv</sup> In spite of the fetters placed on the executive presidency by the Nineteenth Amendment to the Constitution in May 2015,

President Sirisena had the audacity to precipitate the crisis and the bureaucracy had no hesitation falling in line and following the orders of an illegal government. The Attorney General, who came to the Supreme Court during the landmark case against the illegal dissolution of Parliament, practically admitted that he ‘needed instructions’ from his client, the President. He returned the next day to defend Mr Sirisena’s arbitrary, unconstitutional and illegal actions, using legal arguments that defied reason and the basic rules of legal interpretation.

Legal analysts often claim that the Nineteenth Amendment prevented consolidation of the illegal transfer of power in October 2018. But the capitulation of the IGP, the public service and the Attorney General was proof positive that systemic changes as a result of the historic legislation were still a long way off, and that where the Nineteenth Amendment had succeeded, it was dependent on the skill, integrity and sheer force of will on the part of individuals tasked with implementing its provisions. Both the IGP and the Attorney General are state offices vested with special protections to ensure their independence. IGP’s and Attorneys General are offered protection by provisions of the Nineteenth Amendment which stipulate that they may only be appointed with approval from the Constitutional Council. The Removal of Officers (Procedure) Act No 5 of 2002 sets out

criteria for their removal through a special resolution of Parliament. Neither IGP Pujith Jayasundara nor Attorney General Jayantha Jayasuriya faced any danger of losing their jobs if they had failed to follow the orders issued by an illegal government. 122 Members of Parliament, who were opposing the power grab, would have stood against any attempt by the 52-day prime minister to remove the officials through a legislative process. Yet their capitulation before the centres of executive power was absolute.

The 2018 presidency is a shadow of what it was between 1978-2015. But in spite of the curtailment of presidential powers through the Nineteenth Amendment, state officials continue to suffer from a deep-rooted psychosis that likens the holder of presidential office to an all-powerful monarch. The President is the law. He is the state. His desires are policy.

Even a weakened presidency continues to enjoy the same servility from its subjects. If Mr Sirisena could attempt the political manoeuvre he did in October 2018 and survive to tell the tale, the presidency as it stands still clearly contains far too much power - even if most of it is mythological. A President with greater political acumen and popular appeal may have succeeded where Mr Sirisena failed. And all of the checks and balances could have been reversed, virtually overnight.

## **Tiger by the tail**

On December 16, 2018, Sri Lanka's worst constitutional crisis since independence ended as abruptly as it began – 'worst' in the sense that never before had a Head of State attempted the subversion and usurpation of his own government in such a nakedly illegal fashion. Ranil Wickremesinghe was reinstated as Prime Minister and the UNF renewed its uneasy and acrimonious co-habitation with President Sirisena. Now openly hostile to the political party whose supporters won him the presidency in 2015, Mr Sirisena continues to pursue a political marriage with Mahinda Rajapaksa and SLPP to win the former President's support for his re-election bid. Mr Rajapaksa's supporters blame President Sirisena for costing their hero goodwill and political capital by his October 2018 antics. The SLPP does not see Mr Sirisena as a viable candidate to rally around. President Sirisena remains terrified of his future prospects and security in a country once more in the grip of Rajapaksa family rule. Having thrown his lot in with the Rajapaksas on October 26, 2018, Mr Sirisena burnt his bridges with the reformist constituency that supported his candidacy in January 2015. The UNP rank and file detest the man who tried to steal the government from their party, and seethe against the

party leadership that will not ensure the President faces retribution for his actions in late 2018.

When IGP Pujith Jayasundera went to the Wijerama Mawatha residence of former President Rajapaksa on October 29 and saluted him in the presence of his brother and former Defence Secretary Gotabaya Rajapaksa, it seemed like all was lost. The photograph of that salute was disseminated widely, to send a clear message to the people of Sri Lanka that while abstract constitutional debates about the rights and wrongs of the transfer of power on October 26 continued, the ground had already shifted.

But even with the full force of the police and military at their disposal, total control of state media and a willingness to break all the rules to hold power, Mr Sirisena and Mr Rajapaksa found themselves no match for ceaseless citizen protests, a judiciary determined to uphold constitutional principles, and a legislature determined to defeat the illegal October power grab.

In the final analysis, the October 2018 turmoil was the best argument ever made against Sri Lanka's executive presidential system in place since 1978. For 52 days, constitutional governance in Sri Lanka was under siege, held hostage to one man's bitterness against a political rival and his desperation to cling to power beyond January 2020.

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<sup>i</sup>A handful of privately owned or independent media institutions resisted the change. Media ownership became a key determinant in how news organisations would report on the constitutional crisis. By October 2018, all three major private television networks were aligned to the Rajapaksa faction or President Sirisena, for a variety of reasons. The Big-3 amplified the propaganda machinery of the state, featuring voices supportive of the illegal transfer of power, and affecting a near blackout of resistance to the controversially installed regime. With the exception of the *Daily FT*, *Sunday Times*, and the Sinhalese independent newspapers *Anidda* and *Ravaya*, every other newspaper capitulated and recognised the controversially installed prime minister. The fact that neither the *Daily FT* nor the *Sunday Times* ever referred to Mahinda Rajapaksa as “prime minister” bolstered the credibility of both publications. Many times during the 52-day crisis, DFT referred to the transfer of power as a coup in its newspaper columns. It remains unclear why the rest of the print media chose the path of least resistance, and in some cases, active collusion with instigators of an illegal power grab. One hypothesis centres on fundamental dearth of support for the incumbent UNFVG regime, even within the media. Over 3.5 years, the press had a ringside seat to the classic dysfunction, lethargy and apathy that the UNP-led government has embodied. The second, and perhaps more forgivable reason, might have been the very real fear of reprisal against the press that refused to fall in line. The regime that wrested power on October 26 has a chequered history of ‘interactions’ with the press. The era of media repression and self-censorship had only ended three years ago. This may have been too short a time to blunt the memory of what the future could hold for journalists and editors who dared to cross the line. A third, and extremely plausible reason, could have been the failure of the media to comprehend basic constitutional principles and ignorance about the changes wrought on the executive presidency through the enactment of the Nineteenth Amendment to the Constitution. The Nineteenth Amendment decreed that the President could no longer remove the prime minister at will and it clearly articulated the manner in which the legislature could move to remove an incumbent premier. Much of the

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press behaved during the crisis as if the pre-Nineteenth Amendment presidency still existed. In this flawed understanding, Mr Sirisena remained all-powerful, and fully entitled to hire and fire his prime ministers at will. No less than three times in the first two weeks of the crisis he had precipitated, President Sirisena addressed the nation, his allegations against Prime Minister Ranil Wickremesinghe growing increasingly wild and hysterical with every televised appearance. Mr Wickremesinghe was corrupt, arrogant, classist and inept; he, Mr Sirisena, had no choice but to remove him for the sake of the country.

<sup>ii</sup>The Constitutional Council (CC) is a 10-member constitutional body comprising parliamentarians and civil society representatives. The Council is tasked with maintaining independent commissions and monitoring their affairs. It also approves or recommends nominations for high ranking state posts including superior court judges, the Attorney General, the Auditor General, and the Inspector General of Police.

<sup>iii</sup>The informal pro-Rajapaksa caucus in Parliament, a group of approximately 54 UPFA lawmakers who opted to remain in opposition when the rest of their party joined the UNF to form a national government in 2015.

<sup>iv</sup>A self-styled anti-corruption activist named Namal Kumara revealed details of an alleged assassination plot targeting Maithripala Sirisena and former Defence Secretary Gotabaya Rajapaksa in September 2018. The informant claimed he had telephone recordings with senior police officials to prove the plot was credible. A Deputy Inspector General of Police was arrested in connection with the investigation, but on suspicion of plotting an attack on fellow senior police officers, rather than VVIPs. The allegation was investigated thoroughly by the Criminal Investigation Department, which subjected Kumara's mobile telephone and all the recordings discovered to in-depth analysis by the Government Analyst, and even flew the mobile to Hong Kong to have the manufacturer recover deleted recordings in order to substantiate his claims that the most incriminating conversations had been deleted in a fit of panic. The telephone analysis proved Namal Kumara's claims were baseless. Furthermore, when Kumara's own background was



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investigated, the CID found that he is an army and air force deserter, who had falsified documents provided to the Sri Lanka Army. Even more disturbingly, the CID discovered that Namal Kumara had once been employed by Avant Garde, the controversial private security firm that is under investigation for raking in millions of dollars in profit by maintaining floating armouries equipped with weapons licenced to the Sri Lankan government. The arms were leased to the private firm, during Gotabaya Rajapaksa's tenure as Defence Secretary, without necessary Cabinet and other approvals. Retired military officials went to work at Avant Garde, whose Chairman Nissanka Senadhipathi, a former Army Major is believed to be a close associate of the former Defence Secretary. In the weeks ahead of the crisis, Gotabaya Rajapaksa met President Sirisena at S.B. Dissanayake's residence, where the former Defence Secretary reportedly spoke at length about the alleged plot to kill them both, as revealed by Namal Kumara. These strange nexuses have given rise to serious suspicion that the entire Namal Kumara assassination saga was part of psy-ops executed by sections of the intelligence services still affiliated to the former Defence Secretary, in a bid to cause serious consternation in the Sirisena camp and hasten the fallout between the President and his Prime Minister. The DIG implicated in the scandal was known to be a close associate of IGP Jayasundera, who was believed to have been the Prime Minister's choice to head the Police Department. Mr Sirisena is reported to have complained bitterly in Cabinet the week before he sacked Mr Wickremesinghe, claiming that the UNF Ministers were not taking the plot seriously enough.

## 2

### Revisiting The 'Single-Issue Common-Candidate' Strategy: Successes And Failures

*Kumar David*

Were I to confess, as I guess I must, to have been the initiator of the Single-Issue Common-Candidate (SI-CC) concept, I guess I will have to face a volley of brickbats thanks to the frolics of the incumbent president. Nevertheless, I will argue in this essay that the strategy was correct and achieved its objective and more. Its failure was subjective – the man himself. I do concede that of the potential bonus dividends hoped for, only some were delivered. But first a bit of chorology; a few pieces dating my early proposals for SI-CC, all from *The Sunday Island*, are as follows.

I have said in my April 21, 2013 column: “I mooted the SI-CC concept a year ago”, so I must have first germinated it in 2012.<sup>1</sup> My February 9, 2014 column notes, “I raised the option of a common opposition candidate on an SI ticket about and year ago.”<sup>2</sup> On July 12, 2014 I confirm that I had developed the SI-CC concept in full and presented it to Reverend Sobhitha’s National Movement for Social Justice (NMSJ) in July 2014.<sup>3</sup> So, depending on your point of view, I was the herald of a useful strategy or harbinger of a colossal blunderer.

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<sup>1</sup> ‘Sobitha Hamuduruvo: A Voice of Sanity’, *The Sunday Island*, 21<sup>st</sup> April 2013.

<sup>2</sup> ‘Sobitha Hamuduruvo Takes a Stand’, *The Sunday Island*, 9<sup>th</sup> February 2014.

<sup>3</sup> ‘UNP’s Knotty Bond with Executive Presidency’, *The Sunday Island*, 13<sup>th</sup> July 2014.

## The Single-Issue

Allow me to summarise what was in my mind at the time and what many people, sometimes in a confused way as I will explain anon, accepted, and what the January Eighth Movement worked for.<sup>4</sup> In one phrase: ‘Stop the Free-fall to Dictatorship!’ The backdrop was a perception that the return of Mahinda Rajapaksa for a third term would spell autocracy. The crafty removal of term limits, the egregious removal of Shirani Bandaranayake from the position of Chief Justice, assassination of journalists, white vans, the impunity and impudence with which his two younger siblings misused the armed forces, police and state institutions, and the crooked financial deals for which they are now arraigned before the courts, validate the charge of creeping dictatorship. The slogan ‘Either Mahinda goes or it will Dictatorship’ stands vindicated.

The Single-Issue (SI) concept, in hindsight, wrapped three strands together: defeat Rajapaksa, re-impose term limits, repeal the executive presidency. At the time, they all seemed one. I did not think through (and it would have been counterproductive to meander into such details) that there were actually three strands

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<sup>4</sup> What I mean by the ‘January Eighth Movement’ is the coalition of anti-Rajapaksa forces including leftist parties and rights groups that campaigned for SI-CC in the January 8, 2015 presidential election.

entwined. But life, 'thou cunning'st pattern of excelling nature,' outsmarted us all; in the real world, the threads unravelled after the election.

The electoral victory was spectacular and Mahinda's defeat on January 8, 2015 was liberation. 'The people that lived in darkness saw a great light and Lanka no longer walked in the valley of the shadow of death', if you will permit me bits and pieces of my youthful conditioning to filter in. Secondly, the Nineteenth Amendment to the Constitution re-imposed term-limits (a recent challenge saying that the two previous presidents were exempt, petered out). The disappointment was that due to pressure from President Sirisena the executive presidency was not abolished but its powers trimmed, in hindsight, a wrong and dangerous compromise of the Wickremesinghe-Sirisena honeymoon when the former held more aces in his hand.

A fair grading of the achievements of the SI strategy is 2.5 out of 3, or a bit more if you feel generous about the restoration of democratic breathing spaces (even a nobody like this scribbler can now sleep in the same bed on successive nights). The breathing spaces include new oversight bodies (Missing Persons, Right to Information, Constitutional Council, Police, Elections) manned by persons of integrity, and a media which is no longer in its entirety, a Rajapaksa mouthpiece. Therefore, I am inclined

to say the defeat of Rajapaksa, the imposition of term-limits, the greater democratic space in the country, and the creation of oversight bodies to restrain excesses of the state authorities, all taken together, are notable victories for democracy and the January Eighth Movement.

There were other potential benefits that many were hoping would flow from the defeat of Rajapaksa but did not materialise, chief among them anticipated punishment of corrupt politicians and corrupt family members of the Rajapaksa clan. During Rajapaksa's two terms, it was widely alleged and repeated on the election platform that kickbacks had grown on an unprecedented scale and in a style never imagined before. The most egregious was the Chinese connection where money in billions of rupees changed hands and millions of dollars were stashed away. What made this grotesquely clear were numerous allegations<sup>4,5</sup> that the hundreds of millions of rupees were injected into the Rajapaksa election campaign by the China Harbour Construction Company.<sup>5</sup> *The New York Times* too

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<sup>5</sup> Economy Next, 'China-related Investigation Underway: Sri Lanka PM':

[https://economynext.com/China\\_related\\_investigation\\_underway\\_\\_Sri\\_Lanka\\_PM-3-11239-.html](https://economynext.com/China_related_investigation_underway__Sri_Lanka_PM-3-11239-.html); Excerpts from *The Sunday Times* Political Column, 'CID Commences Investigation into *New York Times* Allegation: Chinese Company Paying US\$ 7.6 Million

carried the same revelations. However, they have been firmly denied by the company.

There was public expectation that the corrupt would be punished but somewhere in the nexus between Sirisena, Rajapaksa and Wickremesinghe, everything fizzled out. The rout of the UNP in the February 2018 local government elections is attributable to frustration at its failure to bring a single big crook to book. There are ongoing cases in special courts but public opinion has turned cynical. Punishment of the corrupt and the criminal was not on the Single-Issue agenda but a hoped-for bonus on the wish list. It did not materialise.

A second item on the wish list was a new constitution incorporating provision for the Tamils and the Muslims to administer themselves in the Northern Province and parts of the Eastern Province. Now there is not a soul in the country who does not see that a new Constitution will not be enacted by Parliament in its current term. We are in a festival of shadow-boxing in preparation for election season. Ranil Wickremesinghe goes through the weary motions on behalf of a constitution that will not be. Mahinda Rajapaksa and his brigades fan plain-vanilla Sinhala chauvinism, as do innumerable

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Through Standard Chartered Bank to Mahinda Rajapaksa's Election Campaign': <http://dbsjeyaraj.com/dbsj/archives/59984>

chauvinist, Buddhist and Gotabhaya Rajapaksa backing outfits. The TNA helped defeat the Sirisena-Rajapaksa plot in October-December 2018, but after so doing it has to protect its flank from wacky Tamil ultras like C.V. Wigneswaran and Gajendrakumar Ponnambalam. The JVP feints revolutionary élan in the battle against the executive presidency. What the nation is witnessing is the spectacle of many teams fanning out all over the sports field, each talking to a different audience, each playing a different game. A new constitution there will not be, this time; another bonus denied.

### **The Common Candidate**

The necessity of uniting and putting forward a common candidate was acknowledgement of Mahinda Rajapaksa's electoral strength. He had won a war, he had great charisma, his machine could bend and abuse every organ of state power in the elections, and a mountain of money stood behind him. Sans a common person behind whom leftists and radicals, liberals and democrats and the national minorities could unite, I am certain Rajapaksa would not have been defeated. That's easy to explain.

More complex is a failing that we share with other cultures. Very soon in the SI-CC process and well before the Sirisena crossover I found that nine out of ten people were agog about who the common-candidate would be, but took the fundamental and



more important Single-Issue concept lightly if not impatiently: “Yes, yes, of course we know all that; but tell me who is the candidate, will it be Sobhitha, or Chandrika or perhaps Ranil?” The choice of candidate captivated the public mind; the basic objective receded into the shadows. This is why in the third paragraph of this essay I used the expression ‘in a confused way’ to describe some who rallied to the cause. More important, this is the reason why the public has failed to sustain demands for policy objectives and been blindsided by personalities.

The Common-Candidate (CC) side of the strategy has been an unhappy story. The influence people like this writer could have exercised in the choice of candidate was negligible; the most was suggesting names and wrangling among ourselves about who was most likely to win. The names that were floated as potential CCs were Sobhitha Thero (generally the favourite), Kumaratunga (can she win?), Wickremesinghe (can he not lose?), and a few other oddballs. Frankly, the veritable tactical coup that Kumaratunga and Wickremesinghe pulled off was way above the ability of types like me and it came as a surprise. Despite the hat having dropped on an unbecoming head, it was at the time welcomed by all including yours faithfully. The likes of me were grateful to Ranil and Chandrika for pulling off a deft stratagem.

There is no denying that the individual has turned out to be a misfit and it is true there were early indications that he was unsound. But even if we had been more alert at the time and had picked up the warning signs of personality disorder, should ‘we’, or could ‘we’ have rejected the candidate after Ranil and Chandrika made their move? I think not; the ‘remove Rajapaksa’ imperative was overriding. I recall when explaining the SI-CC concept, before the Ranil-Chandrika surprise, saying and writing things like “Even a mad-hatter is ok but we must be rid of this peril of dictatorship”. Some evil goblin must have been listening; nemesis has taken its revenge!

The ‘we’ in this paper and the para above is the self-styled January Eighth Movement consisting of some left parties including the JVP and a powerful assembly of civil society and rights movements which came together to defeat Rajapaksa and carry the weight of the election campaign. It is noteworthy that on October 26-27, 2018 when Wickremesinghe and the UNP were deflated it was again a fast responding collection of people’s movements that mobilised at Temple Trees, Viharamahadevi Park and in many parts of the country, including the Colpetty rally; they stiffened the fight to defeat the coup. Without taking anything away from the Supreme Court, I am also of the view

that the public outcry and anger encouraged the Court to take a strong stand.

Since this chapter is in the nature of a post-mortem on SI-CC, I will grade the CC part as only half successful and plead “How on earth could ‘we’ have foreseen that the candidate was so dreadful despite the warning signs that, admittedly, ‘we’ ignored?” The warning signs were youthful signals of personality defect revealed by his daughter but only in 20186, a reprehensible role as acting defence minister during the war, and a proclivity to double-cross (dine on hoppers and stab at dawn).<sup>6</sup> Hence it does not come as a surprise when he creates 52 days of mayhem in matters of state, hires and fires provincial governors as though they were kitchen staff, interferes in policy matters sans understanding, and goes off to the Philippines with an entourage that has no relevance or role, only to return singing the praises of Duterte’s killing machine and promising to repeat the carnage at home.

I am not mincing my words about how unsuitable the person chosen as the Common Candidate has been, but I make bold to ask again, had ‘we’ known, could ‘we’ have changed our minds? That would have implied allowing Rajapaksa to return for a third term. And I emphatically answer NO! Even had ‘we’ known of

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<sup>6</sup> Chathurika Sirisena (2018) *Janadhipathi Thaththa* (Sarasavi Publishers).

the personality problem, it was a Mephistophelean contract ‘we’ could not have voided. Withdraw support and allow Rajapaksa a third term! Anyone who says this has not grasped the crux of the Single-Issue.

## **Mephistophelean Contract No. 2**

There were no illusions about the class character of the economic programme of the post-presidential election, post-August 2015 parliamentary election, government – the *yahapalanaya* government. Several left parties participated in the January Eighth Movement to defeat Rajapaksa and all except the JVP backed the UNP against the Rajapaksa cohorts in August 2015 and later in February 2018.

Did the SI-CC strategy foster illusions that the Wickremesinghe-UNP government would perhaps take a social democratic turn and adopt an economic policy orientation palatable to people like this author? I must register a very firm NO; I had no such illusions. This was a second Mephistophelean contract that the anti-Rajapaksa left knowingly entered into (the JVP only once in the January 2015 elections). We had no doubt that the UNP government, particularly under Wickremesinghe’s leadership, would plumb for a traditional liberal economic orientation. That is, the government would expect the local elite and capitalist

classes to lead development and there would be exaggerated hope of attracting foreign direct investment.

A critique of the government's predictable liberal economic orientation is out of place in this essay other than to say that its orientation contradicts how the left would craft policy, in particular the role of the state as a driver. What is relevant to this paper is that the left worked for the defeat of the Rajapaksa's presidency and the defeat of his party at the subsequent parliamentary elections and did so knowing that the UNP's economic orientation was not the left's cup of tea. Mephistophelean Contract No.2 that I accepted from day one with my eyes open.

### **What Next?**

This last section is about strategising for 2019 the final year of the SI-CC presidency. A crucial question is whether the peril of dictatorship, if a Rajapaksa takes the reigns again, has passed. Have the clan and the political forces behind it 'learned a lesson' and is it going to be normal democratic statecraft afterwards? I am afraid that would be too sanguine a conclusion given the dangerous (racist, proto-fascist and dicey business and professional class) alignments ripening behind Gotabhaya, the most likely Rajapaksa-side candidate. The question then is, has the SI task of averting a dynastic authoritarian regime been

accomplished, or do we still need to put together a large alliance of left, civil society and liberal movements since the danger is still potent? I am inclined to the view that the danger is not past.

Though there is uncertainty about many matters one beacon of certainty stands out. There will be presidential polls by December 8, 2019 at the latest. Allowing six weeks for campaigning and a month for nominations, the Elections Commission will likely call for nominations in August/September. This is the reason why a new formation is taking shape around the JVP and January Eighth style radical civil society movements. One of them is called *Vidayaka Janadhipathithvaya Ahasikirime Viyaparaya* (VJAV) or Movement to Abolish the Executive Presidency. The emergence of third options is healthy, but there will come a stage nearer the presidential election when all similar forces will have to align with traditional liberal political formations in order to push back the danger that I spoke of in the previous paragraph. It will be rather like a rerun, mutatis mutandis, of the 2015 Single Issue tactic. Unless you are confident that the danger of proto-fascism has passed a defensive consolidation is needed.

The watchword around which VJAV is initially rallying is the proposed Twentieth Amendment to the Constitution which seeks to abolish the executive presidency. This is unlikely to

succeed, unless Mahinda Rajapaksa reckons that his future role is that of Prime Minister and it suits him to cut the presidency down to a ceremonial role. But extremists see in a strong Gotabhaya presidency a bulwark against Tamil separatism, therefore they will not let Mahinda weaken the presidency any further. Still, if the Twentieth Amendment succeeds, which you may know by the time you read these words, it will be an entirely different ballgame thereafter and we have to draw up our paper and start redesigning from square one.

If as is likely the Twentieth Amendment fails, no one knows how the choice of presidential candidate will be dealt with in the Rajapaksa camp. The man sitting on the horns of a dilemma is none other than Mahinda Rajapaksa himself; he faces tricky decisions, personal, political and family. There is not much purpose in our speculating on this now. The UNP on the other hand is spoilt for choice - Wickremesinghe, Sajith Premadasa and Karu Jayasuriya - and it is not possible to say so early in the game which can collect more votes. Nobody at this time, the UNP included, knows who's best. If the next Parliament commits itself to a ceremonial presidency who would want to be lame duck President for a few months?

Sirisena's political life is over, he knows it, and is making the best of it vacationing in as many parts of the world at public expense

as time permits, accompanied by an entourage of opposition MPs who can in no way represent the government. His antics of which there will be many (the most recent is juggling with provincial election dates) will be ignored by Parliament, the machinery of government, police and military as nomination day approaches. Though expensive comedian and nuisance, his erratic swings (like Trump) could make him dangerous at times. The public cannot afford to let down its guard till he is shoed out; the mobilisation that defeated the 52-day lunacy must remain alert.

Finally, I would like to argue that a network of organisations (VJAV could be one) should mobilise not be only for a short-term anti-dictatorial alliance, but the organisation must have continuity beyond the elections and evolve into a programmatic alliance with long-term aims. The programme must weld together a commitment to economic justice with social cohesion. The Australian Labor Party is on course to win the next election in May this year on an ambitious agenda of spending commitments on housing, health, infrastructure, and education, funded by a proposed abolition of tax concessions that favour the rich, combined with patriotism and national cohesion. It is responding to inequalities of wealth and power, a global curse that is creating political havoc in many countries, and attempting



to checkmate the appeal of the Alt-Right.<sup>7</sup> For an extended discussion see reference 7.

For an initiative of this nature to work in this country, ethnic inclusivity and social cohesion are sine qua non. Easier said than done but no social, economic, and development plan will achieve anything if any social class or community feels it is excluded.

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<sup>7</sup> Adrian Pabst, 'What the Left can learn from Australian Labor', *NewStatesman*, 16<sup>th</sup> January 2019:  
<https://www.newstatesman.com/world/2019/01/what-left-can-learn-australian-labor>

# 3

## Making Sense of The October Conflict And Its Aftermath

*Jayadeva Uyangoda*

## Introduction

Sri Lanka's constitutional crisis which erupted on October 26, 2018 went on till it was defused by judicial intervention, invalidating the President's order dissolving Parliament issued on November 9. The basic contours of the constitutional crisis are elaborated in other chapters of this book and they need no repetition here. What nevertheless warrants acknowledgement for the analysis developed in this chapter is the fact that President Sirisena took a series of unprecedented and surprising political actions that were, even in the eyes of ordinary citizens with a plain understanding of Sri Lanka's constitution and its Nineteenth Amendment, blatantly unconstitutional. They included three major political decisions and actions, namely, the appointment of a new Prime Minister and a Cabinet, dismissal of an incumbent Prime Minister and his Cabinet, and the dissolution of Parliament. All transgressed the letter and spirit of the Nineteenth Amendment.

With these actions, the coalition government of the United National Front (UNF) and the United Peoples Freedom Alliance - cum - the Sri Lanka Freedom Party (UPFA-SLFP) came to an abrupt end.<sup>8</sup> Then, the swearing in of Mahinda

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<sup>8</sup> The UNF consists of the United National Party (UNP) and a few other small parties. The UNP is the UNF's dominant partner. The

Rajapaksa as the Prime Minister and several MPs of the Joint Opposition as new Cabinet Ministers marked an immediate re-constitution of the ruling coalition as well.<sup>9</sup> It was a regime change by executive action. Thus, President Sirisena's actions that began on October 26 appeared, from the very beginning, to be elements of a pre-planned political intervention aimed at a regime change by stealth.

This chapter's aim is to make political sense of this failed constitutional coup by placing it in the context of power struggles among Sri Lanka's political elites. Its key argument is that President Sirisena's constitutional transgression was (a) a sudden eruption of a power struggle that gradually developed within the *yahapalanaya* coalition regime since its inception, and (b) in that power struggle, the Constitution became an object of capture by a new coalition, at the core of which was a newly consolidated

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UPFA is another coalition led by the SLFP and it was formed in 2004. President Sirisena became the leader of both the UPFA and SLFP in January 2015, after he became the country's President. The *yahapalanaya* regime is technically a 'national government' between the UNF and UPFA. When Sirisena was elected President in January 2015, he was the candidate of the UNF, and was opposed by the UPFA and SLFP.

<sup>9</sup> The group of about 50 MPs within the UPFA group in Parliament who are loyal to Rajapaksa has been known as the 'Joint Opposition'. Many or most of them also became members of Rajapaksa's new party, the Sri Lanka Podujana Peramuna (SLPP).

power bloc that had an immediate interest in capturing state power.

The chapter is organised in the following manner. In the next section, the thesis of ‘constitutional coup’ is examined in order to discern and highlight the core political motivation of President Sirisena and his partners. This discussion will be followed by a section under the sub-title ‘Power Struggles and State Capture’, which presents an account of the background that facilitated the conditions for the launching of the constitutional coup of October 26. Then the chapter’s focus shifts to the sub-theme of ‘Disintegration of the *Yahapalanaya* Coalition amidst an Internal Power Struggle.’ The final substantive section, before the ‘Conclusion’ will be on the sub-theme ‘The New Class and Its Political Project.’ It speculates on the class and economic interests that back the political goals of the new power bloc.

### **‘Constitutional Coup’?**

In a very early reaction to President Sirisena’s twin actions of removing Ranil Wickremesinghe from the post of Prime Minister and appointing Mahinda Rajapaksa in his place, Asanga Welikala described it as a ‘constitutional coup’.<sup>10</sup> Rajesh

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<sup>10</sup> Asanga Welikala, ‘Paradise Lost? Preliminary Notes on a Constitutional Coup’ (2018a) *Groundviews*, 27<sup>th</sup> October 2018:

Venugopal, to emphasise the gravity of what happened on October 26 argued that it was not a constitutional coup, but “really an unconstitutional seizure of power” that had “no validity.”<sup>11</sup> While agreeing with both Welikala and Venugopal, I take the metaphor of ‘constitutional coup’ to make a point which is reflective of the substantive analysis developed by both. The point I am emphasising is that the series of events that occurred in late October and November 2018, was a two-stage attempt aiming first at capturing the Constitution and then capturing the State.

The constitutionality of President Sirisena’s moves throughout the crisis has been in serious doubt. The UNF as well as Sirisena’s critics repeatedly emphasised this point. Meanwhile, what surprised political observers was the tenacity with which President Sirisena held on to the position that his actions were entirely in accordance with the powers given to the President under the Nineteenth Amendment. When the constitutionality of his actions was severely criticised in the public debate, President Sirisena did not relent. A host of leading lawyers also

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<https://groundviews.org/2018/10/27/paradise-lost-preliminary-notes-on-a-constitutional-coup/>

<sup>11</sup> Rajesh Venugopal, ‘The Second Coming of Sri Lanka’s Mahinda Rajapaksa’ (2018a) *The Wire*, 9<sup>th</sup> November 2018: <https://thewire.in/south-asia/sri-lanka-mahinda-rajapaksa>

publicly defended his position. Among them were a former professor of law, a former Chief Justice, and several Presidents' Counsel who were active political cadres of the Rajapaksa power bloc. The arguments put forward to defend President Sirisena's actions indicated that he had been assured by some constitutional experts that his actions could be defended before a court of law by means of a specific interpretation of some key clauses of the Nineteenth Amendment. That interpretation rested on the assumption that the President's powers that previously existed under the Eighteenth Amendment as well as the original 1978 Constitution over the Prime Minister, the Cabinet and Parliament had not been explicitly removed by the Nineteenth Amendment enacted by the Sirisena-Wickremesinghe administration. Indeed, when the dissolution of Parliament was challenged before the Supreme Court, this was the basic premise of all counsel, including the Attorney General, who defended President Sirisena's actions. But the Supreme Court, in a unanimous decision, dismissed this approach to interpreting the Nineteenth Amendment and found the dissolution of Parliament by President Sirisena unconstitutional.

Now, this background provides us an opening to uncover a hidden political agenda that was at the core of Sri Lanka's

constitutional crisis. The timing of President Sirisena's action of dismissing a legitimate government on a Friday evening, on the eve of a weekend, had more than its superstitious content. It had, as Welikala noted, "the element of surprise to cover up the illegality of removing the serving Prime Minister" who commanded the majority support in Parliament.<sup>12</sup> Moreover, it also suggested that this was a pre-planned 'constitutional coup' with a hurriedly laid down plan to be executed over the weekend, in order to secure a parliamentary majority by persuading a number of Ministers and MPs belonging to the UNF and other parties to accept Cabinet positions under the new Prime Minister. What is noteworthy is that when President Sirisena appointed Rajapaksa as his Prime Minister on Friday October 26, Rajapaksa as Prime Minister did not have a parliamentary majority. Both Sirisena and Rajapaksa had to, and they had obviously planned to, manufacture the necessary parliamentary majority over the weekend and the few days that followed. The very next day, on October 27, President Sirisena prorogued Parliament till November 16.

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<sup>12</sup> Asanga Welikala, 'The Coup d'Grace on the Coup d'Etat?' (2018b) *Groundviews*, 14<sup>th</sup> November 2018: <https://groundviews.org/2018/11/14/the-coup-de-grace-on-the-coup-detat/>



The lure of cabinet office as well as money was to be liberally employed in the exercise that meant to legitimise constitutional illegality by means of a parliamentary vote. When all attempts made by Sirisena and Rajapaksa to secure a parliamentary majority under the cover a prorogued Parliament failed, Sirisena dissolved Parliament on November 9, and called for fresh parliamentary elections on January 17, 2019. While the proroguing of Parliament was within the ambit of presidential powers, the dissolution was an action that violated the explicit provisions of the Constitution. The three actions of sacking a Prime Minister, appointing a new Prime Minister, and dissolving Parliament unilaterally without satisfying the conditions laid down in the Constitution were serious constitutional transgressions by President Sirisena. When these actions are viewed together in relation to their explicit political objective, they constitute a package of actions designed to capture the Constitution by unilateral executive action.

In the overall scheme of things that underlay the political crisis caused by President Sirisena's actions in late October and early November, the capture of the Constitution was to be the prelude to capturing the State by 'constitutional' means. If the dissolution of Parliament as well as the appointment of a new Prime Minister were validated, first politically by Parliament and then

judicially by the courts, it would have meant the effective invalidation of the Nineteenth Amendment and bringing back the Eighteenth Amendment through the legal backdoor, thereby paving the way for Sri Lanka's free fall into an authoritarian constitutional-political order. Thus, the political significance of the interventions made by the Court of Appeal and the Supreme Court to invalidate President Sirisena's actions is enormous. It is no exaggeration to say that Sri Lanka's judiciary prevented a coup by the executive to capture (a) the constitution, (b) the legislature, and, (c) eventually the state.

Now, what is specifically unique in this instance is that unlike in the familiar stories of capturing of state power, the key actors did not suspend the Constitution or declare a State of Emergency in order to seize power, although they operated in an absolutely secretive manner. They did not use the coercive power of the state available to them either. The armed forces were kept out of the scene, except when the heads of the armed forces and the police were invited to the swearing-in ceremony of Mahinda Rajapaksa as the new Prime Minister. The entire series of actions was peaceful, low-key, and without spectacle, although its effect was shock and disbelief. It was a soft deployment of coercive power by acting within a purportedly legal framework. The low-key manner of the operation only disguised its immediate

intention – the capture of state power through the capture of the legislature and the constitution.

This unusual sequence of events raises an important question: what made such a constitutional coup possible and what led its protagonists to do what they unsuccessfully did, namely, to stage an attempt at capturing the legislature, constitution, and then the state? The broad answer to this puzzling question proposed in this chapter is that it was the eruption of a power struggle between two rival power blocs that had matured since the regime change occurred in January 2015. The power struggle that unfolded since early 2015 has had a complex genealogy, and unique and changing configurations of agendas, interests, and re-constitution of political enmities. The chapter attempts to present a coherent account of this unique instance of a failed constitutional coup, with the risk of not adequately capturing all its richness, nuances, and horrors.

### **Power Struggles and State Capture**

Intra-elite power struggles have not been new to Sri Lanka's politics and they are the stuff that has made politics an arena of continuing competition for political power. What nevertheless makes intra-elite power struggles a theme of inquiry and analysis is the specificity of their circumstances, the means employed, and the consequences they produce.

Since independence, dynamics of Sri Lanka's parliamentary competition and electoral politics have been propelled by a recurring conflict between three factions of the elite, as organised in three separate political party entities: the UNP, the SLFP and the Federal Party. The UNP and SLFP have been parties primarily based in Sinhalese society and their social core consisted of two competing groups of the Sinhalese elite. Their conflicts had largely emanated from the economic interests of the core social classes they represented. The UNP was the party of dominant elites in Sinhalese society with their economic and social interests closely intertwined with the colonial economy. The SLFP, since the days of its formation in the early 1950s, advanced the interests of new layers of the middle class in Sinhalese society, constituting itself as a new elite and challenging the political power of the dominant elite organised within the UNP.<sup>13</sup> The Federal Party represented a third elite in Sri Lankan society, the Tamil regional elite socially based in the Northern

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<sup>13</sup> For detailed discussions on the formation and evolution of post-independence elite competition in Sri Lanka, see Howard Wriggins (1963) *Ceylon: Dilemmas of a New Nation* (Princeton University Press); Marshall R. Singer (1964) *The Emerging Elite: Study of Political Leadership in Ceylon* (M.I.T. Press); Calvin A. Woodward (1969) *The Growth of a Party System in Ceylon* (Brown); Tissa Fernando, 'Elite Politics in the New States: The Case of Post-Independence Sri Lanka' (1973) *Pacific Affairs* 46(3): 361; James Jupp (1978) *Sri Lanka: Third World Democracy* (Cass).

Province. Sri Lanka's electoral and parliamentary politics has been the primary arena within which these three elite groups could negotiate their competing agendas for political power.<sup>14</sup>

This relatively peaceful pattern of political competition shifted outside the arena of Parliament only when non-elite social classes entered the power struggle in both the Sinhalese and Tamil societies from the early 1970s. The rebellions launched by the Janatha Vimukthi Peramuna (JVP) in 1971 and during 1987-89, and the Tamil secessionist insurgency that lasted nearly thirty years since the later 1970s, were violent and extra-parliamentary campaigns to gain state power. Faced with violent challenges to their dominance from subordinate social classes, the two leading elite groups of Sinhalese society worked together in a framework of competitive alliance to preserve the political order that guaranteed their dominance. That understanding continued with usual competitive tension and rivalries

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<sup>14</sup> For interpretations of Sri Lanka's post-independence elite conflicts from the perspective of ethnic interests, see Robert Kearney (1973) *Politics of Ceylon (Sri Lanka)* (Cornel University Press) and Wriggins (1963). Recent changes in the UNP and SLFP are discussed in Amita Shastri, 'United National Party: From Dominance to Opposition and Back' in Amita Shastri and Jayadeva Uyangoda (Eds.) (2018) *Political Parties in Sri Lanka: Change and Continuity* (Oxford University Press): 100-133; and Jayadeva Uyangoda and Keerthi Ariyadasa, 'Sri Lanka Freedom Party: Continuity through Ideological and Policy Shifts' in Shastri and Uyangoda (2018): 134-158.

throughout the period of civil war. The civil war and the secessionist threat to the state seem to have prevented any open eruption of their rivalries which had nevertheless remained sharpened under the autocratic UNP regimes presided over by J.R. Jayewardene and R. Premadasa during the 1980s and early 1990s.

The end of the civil war in 2009 seems to have opened up political space for re-sharpening the contradictions between the two main camps of the Sinhalese elite.<sup>15</sup> It occurred along with a process of re-drawing the boundaries between the two factions soon after the war ended in May 2009. Even a brief account of that shift would shed light on why and how the competition between the two elite groups transformed itself into an open power struggle. A key milepost in this process was the election of Mahinda Rajapaksa as Sri Lanka's President in 2005 and his 'capture' of the SLFP leadership by ousting the old guard of the party, associated with the Bandaranaike family. Chandrika Bandaranaike Kumaratunga, the former President for two terms, and the heiress to the Bandaranaike political legacy, saw herself marginalised within the party. Mahinda Rajapaksa's consolidation of his personal authority over the party founded

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<sup>15</sup> For a useful account of the reinvention of elite conflict prior to 2015, see Harini Amarasuriya, 'Elite Politics and Dissent in Sri Lanka' (2015) *The South Asianist* 4: 1-22.

and managed by two generations of the Bandaranaike family, also paralleled with Rajapaksa's attempt to build his own family as the new ruling family. There was a formidable presence of Rajapaksa family members in the new structure of government – Mahinda Rajapaksa as an exceedingly powerful President, his older brother as the Speaker of Parliament, one younger brother as the Secretary to the Ministry of Defence, another brother as the Minister of Economic Development, and a young son as an MP. The latter emerged as a very influential political functionary within the party as well as the government. Rajapaksa began to groom him to be his political successor. Thus, the Rajapaksa family did not hide its ambition of building itself as the foremost and unrivalled ruling family in post-civil war Sri Lanka.<sup>16</sup>

Indeed, these political ambitions of Mahinda Rajapaksa became crystalised after the war victory over the LTTE in 2009, the sole credit for which he sought to share between himself and his brother, who was his Secretary of Defence. A key short-term goal of Rajapaksa's agenda appears to be an attempt to politically neutralise his two main competitors, Chandrika Kumaratunga of

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<sup>16</sup> Venugopal offers the most recent analysis of Mahinda Rajapaksa's unique political career that saw his rise to power in 2015, consolidation in 2010, and subsequent setbacks after 2014: Rajesh Venugopal (2018b) *Nationalism, Development and Ethnic Conflict in Sri Lanka* (Cambridge University Press).

the SLFP and Ranil Wickremesinghe of the UNP, so that the political fortunes of his family would be secured without serious contenders to political power from the traditional dominant power elites of both the UNP and the SLFP. He used his personal popularity gained after the military victory over the LTTE to win the parliamentary and presidential elections in 2010 with massive majorities and then change the constitution under the Eighteenth Amendment to suit it to his long-term political ambitions. The dramatic increase of the scope of powers of the President and the abolition of the two-term limit on the incumbent President signalled that Rajapaksa had actually begun to transform Sri Lanka's political order and its constitutional foundations in a manner that would not have been anticipated by Sri Lanka's traditional dominant elites as well as their contemporary successors. In that Mahinda Rajapaksa seems to have wanted to complete the project of authoritarian capture of the state which former President J.R. Jayewardene left incomplete.

Understanding the political significance of Mahinda Rajapaksa's overall project of authoritarian capture of the state requires an account of the way in which he embarked on creating and promoting a new power bloc outside the traditionally two dominant ones. Rajapaksa seemed to have realised that for his



project to succeed he had to build a fresh power bloc, backed by a new coalition of forces that are personally and politically loyal to himself and his family. When he embarked on this project in 2009-2010, he already had the support of a broad coalition which he built during the war. After 2010, he seems to have begun to consolidate this coalition into a distinct power bloc. The core component of this new power bloc built around Mahinda Rajapaksa and his family was the parliamentary group of the SLFP/UPFA; the defence establishment under the authority of Gotabaya Rajapaksa; entrepreneurial groups that benefitted from the war economy, security industry, and government contracts; the Buddhist Sangha and the Sinhalese nationalist intellectual establishment; and professional groups directly benefitting from the patronage politics of the Rajapaksa regime. Rajapaksa decided in late 2014 to seek a new and unprecedented third term in office as Sri Lanka's President with a sense of confidence that he would secure a popular mandate for his authoritarian state capture project.

However, the last few months of the year 2014 saw the development of cracks within the Rajapaksa power bloc, allowing a small faction of dissidents to emerge in secrecy, and surprisingly without Rajapaksa being aware of the possibility of the dissidents staging a minor break-up of his party and

government. The sudden desertion by Maithripala Sirisena, the SLFP's General Secretary and the Minister of Health, to the opposition UNF, along with a small group of MPs, in October 2014, marked the beginning of a new process that soon led to the dislodging of Mahinda Rajapaksa, his family, and his power bloc from power. As a political reward for his defection from the Rajapaksa camp and also for rocking its foundations, Sirisena was immediately offered the joint opposition candidacy at the forthcoming presidential election. It galvanised the opposition forces, eventually succeeding in electing Sirisena to the presidency on January 08, 2015.

Maithripala Sirisena's joining the UNF in October 2014 and his winning the presidency as the common candidate of the UNF-led coalition seem to have led to several different and contradictory outcomes with regard to the configuration of political rivalries and alliances among factions of the two dominant power blocs. First, it weakened the Rajapaksa-led power bloc and disrupted Rajapaksa's authoritarian political ambitions. A few months later, it further weakened the Rajapaksa camp when Rajapaksa lost the leadership of the UPFA as well as the SLFP. Second, it strengthened the Wickremesinghe-led power bloc significantly. Third, it also resulted in a political merger of the Wickremesinghe-led power

bloc and the Chandrika Kumaratunga faction of the SLFP. Fourth, the newly enlarged power bloc led by Wickremesinghe with Sirisena as its new co-leader, advanced a political reform project that sought to arrest and nullify the authoritarian potential of the Rajapaksa-led power bloc. The Nineteenth Amendment to the Constitution enacted by the new regime dashed most of the personal ambitions of Mahinda Rajapaksa when it imposed a ban on individuals who had held two terms in the office from contesting future presidential elections.

Indeed, these developments indicated the possibility of a serious and irrecoverable political setback to Mahinda Rajapaksa's project of authoritarian state capture. However, the fifth outcome of the presidential election of January 2015 with regard to the political dynamics among rival power blocs was the emergence of a third power bloc under the leadership of President Maithripala Sirisena soon after he assumed the leadership of the SLFP and the UPFA. He seemed to have launched a project of consolidating the coveted position of the SLFP's leadership, and as the new successor to the Bandaranaike family, as the party's new leader.

The discussion in the next section focuses on the trajectory of the *yahapalanaya* regime, which led to an unusual reconfiguration of the elite conflict in 2018.

## **Disintegration of the Yahapalanaya Coalition amidst an Internal Power Struggle**

The *yahapalanaya* coalition that was formed in October 2014 under the joint leadership of Sirisena and Wickremesinghe had one key objective, namely, to dislodge from power Mahinda Rajapaksa, his family, and the social-ideological bloc which Rajapaksa had established as his immediate power base. The new coalition regime positioned itself as a threat to the Rajapaksa-led power bloc not only in its election campaign, but also in its policy agenda launched soon after winning the presidency. It immediately embarked on a constitutional reform initiative to put into practice the election promise of abolishing the executive presidential system. Although the new coalition government could not agree to abolish the presidential system as a whole, the Nineteenth Amendment it introduced took away the core powers of the President-led executive and established a new constitutional order with key elements of a Westminster-type parliamentary and cabinet government. It was a hybrid constitution which was designed to bring the Rajapaksa model of constitutional autocracy to an effective end.

Yet, there were two other policy measures that had far reaching consequences for the sharpening of inter-elite conflict. The first was the new government's promise to inquire into allegations of

large-scale corruption involving political and official figures of the previous government. The government took new measures to launch criminal investigations into corruption, leading even to the arrest of some accused, including a few from the family circles and close associates of former President Rajapaksa. In some cases, the possible involvement of Rajapaksa family members was investigated. The range of such cases included murders, embezzlement and misuse of public money, and illegal financial deals. The second was the steps taken by the new government to inquire into serious human rights violations such as alleged war crimes, abductions, killings, and disappearances. Some of the individuals who were investigated had been active in the inner circles of the Rajapaksa power bloc.

Thus, soon after the regime change of 2015, the Rajapaksa power bloc came under siege, with the prospects of its key individuals being prosecuted on a range of issues such as different acts of corruption, human rights violations, war crimes, murder, abductions, disappearances and abuse of power. This was an unusual development in Sri Lanka in view of the fact that in the past, corruption and other allegations made during election campaigns by opponents of a ruling party came to be seriously investigated only once. That was after the 1977 parliamentary elections by the UNP government of J.R.

Jayewardene against the SLFP leadership. The new government of Sirisena and Wickremesinghe had thus appeared to deviate from the traditional elite consensus in Sri Lanka that had protected defeated political opponents from prosecution.<sup>17</sup> This breach of an unwritten convention indicated that the conflict between the two power blocs had actually been escalating.

While the conflict between the *yahapalanaya* regime and the Rajapaksa power bloc intensified soon after the former came into power in 2015, the Sirisena-Wickremesinghe coalition itself began to develop internal contradictions, soon leading to its slow disintegration. The main reason as well as the context for the conflict seems to have been the alteration of the balance of power within the coalition that began to occur within the first year in office. This shift in the internal balance of power of the coalition seems to have begun soon after President Sirisena assumed the leadership of the UPFA/SLFP, which was until then led by Mahinda Rajapaksa, the defeated President. Rajapaksa had earlier changed the SLFP party constitution to bring the party under his control when he was the country's President by

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<sup>17</sup> There was another minor deviation when the Chandrika Kumaratunga government of 1994 brought the leaders of the defeated UNP government, including Ranil Wickremesinghe, before a Presidential Commission which inquired into serious human rights violations during the mid- and late 1980s. However, there were no prosecutions.

introducing a new clause that the country's President would automatically be the SLFP's president as well. Sirisena's assumption of the UPFA-SLFP leadership led to an unusual situation where the party that contested against Sirisena and the *yahapalanaya* coalition in January 2015 became a partner in the new coalition government under the leadership of President Sirisena himself, within a few weeks of Sirisena assuming office as the President of the country. Besides, when Sirisena assumed office as the President in January 2015, he did not have a power base of his own. His electors were essentially the voters of the UNP and its UNF coalition partners, TNA, JVP, and large numbers of unaffiliated, independent voters. Except for his hate-laden critique of the Rajapaksa power bloc, and the popular slogan of *yahapalanaya*, he did not have a policy platform of his own either. Things began to change when the leadership of the SLFP and the SLFP fell on President Sirisena's lap. He suddenly found a power base, a strong one at that, of his own.

This alteration of the balance of power within the *yahapalanaya* coalition government, apart from the fact that the line of demarcation between the government and the opposition became blurred when the SLFP-UPFA became partners of the ruling coalition, has led to the emergence of two equally strong power-centres within the government. The Prime Minister led

one of it, the UNF, and the President led the other, the UPFA-SLFP alliance. The two coalition partners appeared to make progress in the first year with a shared policy agenda. However, in the second year onwards, sharp differences on policy became apparent. These differences appeared prominent on two major policy issues: constitutional reforms and economic policy.

On constitutional reforms, the coalition's position at the presidential election was to abolish the presidential system altogether and replace it with a cabinet-parliamentary system designed along the Westminster model. That was also a major personal pledge made by Sirisena when he was the presidential candidate as well as when he assumed office as the country's President. Soon after he became the leader of UPFA-SLFP and the two entities became a joint partner of the coalition government with his own group of MPs, Sirisena acquired a position of relative strength within the government. He was no longer a President elected by UNF voters alone; he was now a President with the backing of a parliamentary group and several ministers in the Cabinet. Soon, Sirisena began to waver in his commitment to abolishing the presidential system. Instead, he wanted to reform the presidential system, keeping a limited, yet significant, range of powers unaffected. The Nineteenth Amendment, which created a hybrid system of government, with



a President and a Prime Minister with more or less equal powers and a Parliament free of executive control, was the outcome of a constitutional compromise designed by the two centres of power within the government.

President Sirisena also soon abandoned his promise of being a one-term President. Representing the interests of the SLFP-UPFA group in the government, he began to indicate that he would want to contest another term as President. In fact, during the constitutional negotiations, Sirisena also bargained on the option that the new constitution would have a transitional clause enabling him to continue as President for a second term. This obviously clashed with the political ambitions of Ranil Wickremesinghe whose constitutional reform vision envisaged the abolition, not reform, of the presidential system so that he would be the Prime Minister in a new system of parliamentary-cabinet government. These contending approaches to further constitutional reform beyond the Nineteenth Amendment between the two leaders came to the surface when the Wickremesinghe camp launched a new process of drafting a new constitution, without direct participation of the Sirisena camp. In retrospect, one can see how the Constitution continued to be the site of inter-elite power struggles as well as the individual political agendas of the top leaders of those elite blocs.

The economic policy differences paralleled with the differences in the constitutional reform agenda. The UNP has been openly committed to free-market economic reforms and its policy package had been crafted within the paradigm of neo-liberal reforms. President Sirisena initially did not have an economic policy vision. In fact, the *yahapalanaya* government's economic policy framework has been singlehandedly designed by Wickremesinghe, a committed neo-liberal reformer. Initially, Sirisena did not seem to question his Prime Minister's economic policies. Soon, he began to show his discomfort with Wickremesinghe's neo-liberal policies and his new position was obviously shaped by the SLFP's policy ideology of cautious adaptation of free-market economics, with a continuing role for a limited public sector. In economic policy Wickremesinghe and the UNP opted for a close alliance with global capital whereas Sirisena, echoing the SLFP's doctrine of economic nationalism, began to voice the interests and concerns of the recently emerged class of entrepreneurs who have been a key social component of the Rajapaksa-led power bloc.

If the *yahapalanaya* regime in its second year in office began to show tension between the two power-centres of the coalition, in the third year, it showed signs of the coalition entering a phase of slow disintegration. The contradictions between the UNP and

the UPFA-SLFP partners of the coalition seemed to sharpen in a context where, strangely enough, no attempts seem to have been made by its co-leaders to manage and resolve the disputes based on policy, power-sharing within the state structure, and future ambitions of its leaders. There were also mutual accusations that both groups were attempting to enter into political deals with members of the Rajapaksa family. Wickremesinghe was alleged to have developed a secret understanding with Mahinda Rajapaksa to weaken the Sirisenaledd SLFP, by even slowing down criminal and corruption investigations and even prosecutions against members of the Rajapaksa family and its power bloc. Sirisena in turn had developed a close political understanding with Gotabaya Rajapaksa, using his presidential powers to protect him from investigations and prosecution. This was the time when Basil Rajapaksa, Mahinda's brother, had launched a new political party called Sri Lanka Podujana Peramuna (SLPP) as a proxy for his brother and his power bloc. The formation of the SLPP in November 2016 by the Mahinda Rajapaksa camp was politically significant in that it marked a clear manifestation of the inter-elite power struggle had assumed the shape of a tripartite conflict, instead of traditional bipartite polarisation.

The year 2018 was crucial for the re-alignment of inter-power bloc relations in a manner that saw, quite unexpectedly, a confluence of interests and agendas between the Sirisena and Rajapaksa camps. In 2018, Sirisena launched an offensive against the Wickremesinghe camp, with two immediate goals in mind. The first was to assert his own authority as the President within the coalition government and thereby to demonstrate to Wickremesinghe that he, Sirisena, should no longer be treated by the latter, Wickremesinghe, as a junior partner in the government. The second was the weakening of the power of both Wickremesinghe and the UNP within the coalition government, so that he, as the President, could emerge as the real centre of power. The most effective measure that Sirisena took to achieve these two goals was the appointment of a Presidential Commission of Inquiry into allegations of making illegal profits of nearly Rs 15 billion by the family of the Governor of the Central Bank through the sale of Central Bank bonds in 2015. Although the Commission did not implicate Wickremesinghe in the bond scam, the evidence placed before the Commission irreparably damaged both Wickremesinghe and the UNP. The fact that the Central Bank Governor, who was accused of personally facilitating his own son-in-law to execute the bond scam, was an appointment handpicked by

Wickremesinghe himself, pointed the finger towards Wickremesinghe and his inner circle of decision-makers.

Sirisena's offensive and the resultant sharpening of contradictions between the two camps of the government had its roots in the Nineteenth Amendment too, once again highlighting how the Constitution has repeatedly been the site of factional power struggles among Sri Lanka's political elites. As mentioned earlier, the Nineteenth Amendment did not abolish Sri Lanka's presidential system. It did not create a complete cabinet-parliamentary government of the Westminster mould either. What it actually created was a hybrid constitutional model, maintaining features of a semi-presidential and semi-cabinet-parliamentary system. In the new hybrid system, the President's powers to directly control the Prime Minister, the Cabinet, and Parliament were removed and they were made immune from arbitrary control of the President. However, the President was still the Head of State, head of the government, head of the Cabinet, and Minister of Defence, along with constitutional authority in a range of other areas. What appears to have happened soon after the passing of the Nineteenth Amendment in May 2015, was that Prime Minister Wickremesinghe and his UNP began to treat President Sirisena as a nominal Head of

State under a constitution designed on the lines of the Westminster model.

Meanwhile, Wickremesinghe acted as if he was the real centre of power in the government, although in public he treated his President with a great deal of respect and dignity. Sirisena's public complains that the government took all the major decisions without consulting him may or may not be an exaggeration. Yet, Wickremesinghe did show a tendency to monopolise policy-making in almost all areas governance, specifically with regard to the economy, foreign affairs and international relations, education, industry, trade and commerce, rural and regional development, urban development, transport, constitutional reform, legal reform, health, women's affairs, and minority rights. What Wickremesinghe's style of governance showed was that it was the inner circle of his power bloc that asserted itself as the most powerful centre of power in the *yahapalanaya* coalition government. Thus, Sirisena's belated realisation of, and the reaction to, his marginalisation within the regime had an element of taking revenge as well.

The local government elections held in January 2018 marked the first stage of the open power struggle between the three power blocs. The three camps decided to contest the all-island

local government elections separately, obviously to test their individual electoral strengths and then make political calculations for future strategies, particularly with regard to the presidential and parliamentary elections due in 2019 and 2020. The Rajapaksa camp gave the highest political value to this election, because this was the first test of power for the newly formed SLPP, contesting against both the UNF and SLFP-UPFA. For Sirisena, this was also the first opportunity for the SLFP-UPFA under his leadership to test the extent of the electoral support intact without the support from the Rajapaksa power bloc. Meanwhile, for Wickremesinghe, pushing Sirisena's SLFP-UPFA to a poor third position after either the SLPP or UNF seems to be the desired outcome of the local government election. Wickremesinghe's tactical goal was quite open, and Sirisena would have interpreted it as one designed to make him politically weaker and irrelevant. Thus, from the point of view of the unfolding power struggle among Sri Lanka's three elite power blocs, the election outcome had the potential to set in motion a new phase of alliances and conflicts. The results of the local government election showed exactly that outcome, the SLPP emerging as the overall winner, the UNF second, and the SLFP-UPFA a poor third, which opened up the space for some re-configuration of the elite conflict.

During the few months after the local government elections, the Sirisena camp seems to have decided to make a strategic move to align itself with the Rajapaksa camp in a bid to oust Wickremesinghe and the UNP from power, and eventually to transfer power to a new coalition between the SLFP-UPFA and the SLPP. That required a parliamentary majority. Teams from the Sirisena and Rajapaksa camps made attempts for several months to forge a new coalition, inviting MPs from the UNF as well to join the new alliance and change the government. As a tactical cover, the Sirisena camp began to float idea of a 'caretaker government' of all parties under Sirisena's leadership as President, seeking to isolate, and in turn dislodge from power, Wickremesinghe and the UNP. However, Wickremesinghe and his power bloc would block all these moves and maintain their parliamentary majority intact.

Meanwhile, what appeared quite clear during this period were two very significant developments. The first was the re-drawing of battle-lines among the elites along two axes, thereby polarising the elite conflict along two camps, the Wickremesinghe camp on one side, and the new alliance of the Sirisena and Rajapaksa camps on the other side. The second was the return of Mahinda Rajapaksa's authoritarian state capture project as an immediate political agenda.



The exact political intentions of both Sirisena and Rajapaksa, who had a relationship of political enmity for four years since October 2014, are not very clear. Details of political negotiations between the two camps, conducted prior to October 26, 2018, are not in the public domain either. Yet, what remains undisputed are two of its major dimensions. The first is the commitment shared by both camps to oust the Wickremesinghe-led power bloc from power, and capture the state so that political power could be shared by two power blocs led respectively by Sirisena and Rajapaksa. The second is the realisation, also shared by both blocs, that the Nineteenth Amendment was an obstacle to their political objectives. Thus, making use of the Nineteenth Amendment in order to nullify it through a series of actions, without worrying about the constitutionality of those actions, seems to be the approach that determined the series of events launched on October 26, jointly by President Sirisena and Mahinda Rajapaksa. The aim underlying these actions, as argued in this chapter, was the capture of the Constitution, the capture of Parliament, and finally the capture of the State.

A proper understanding of the resurgence of Rajapaksa's project of authoritarian state capture, as outlined so far in this chapter, also requires an account of social and material interests and

forces that would have backed such a major political move. The identification of the social forces whose material interests and political interests seem to have coincided is crucial for such an understanding. The next part of the chapter will make an attempt at proposing an outline for such an inquiry.

### **The New Class and Its Political Project**

The proposition that can be advanced, that needs to be analytically tested in future research, is the following: Sri Lanka's post-liberalisation capitalism has spawned a new entrepreneur class that distinguishes itself from its conventional counterparts by its unconcealed, unapologetic and aggressive political ambitions. The following are a few tentative assumptions about the nature and political behaviour of this entrepreneurial class:

- It is a class of entrepreneurs that developed amidst Sri Lanka's economic liberalisation, the war economy, the expansion of the services sector, accumulation through finance and *rentier* capital, and public sector corruption.
- It is a class that evolved in close alliance with the leading sections of the political class and the bureaucratic elites that managed the Sri Lankan state, politics and the economy during the war, and the successive phases of Sri Lanka's economic globalisation.

- The past four years of the *yahapalanaya* regime provide evidence, hard as well as anecdotal, of the consolidation of a politically ambitious coalition of material and political interests that have three constituencies: (a) elements of the political class that are politically mobilised around the Rajapaksa family; (b) civil as well as military bureaucratic elites who have networks of influence and interests within the state structure; and (c) the class of entrepreneurs that is now a veritable stakeholder of state power, due to its access to enormous sums of finance capital that is globally mobile, wealth and material resources that are spread across nation-states, and its access to the institutional levers to control the economy as well as political institutions.
- This is a class of business tycoons, who have accumulated enormous personal and business wealth within a short span of two to three decades, representing a new global model of corporate elite. They are big-time entrepreneurs. Representing a global trend of this class, some of them are heavily involved in the media, advertising, communication, construction, contracts with the public sector, and financial services industries. Unlike their counterparts in India, Indonesia, Thailand,

Burma, Bangladesh, South Africa or Nigeria, or in the post-socialist states in Eastern Europe, they are not industrialists because of the non-industrial nature of Sri Lanka's post-liberalisation capitalism. What is distinctly new about them is that they are investing in politics directly and seriously as a domain of commercial business. For them, politics is a lucrative field of investment as well as profit and wealth-making which has enabled them to exercise control over individual politicians, officials, government decisions, and of course policy frameworks. And they have also acquired a direct stake at the constitution of the regime, its Cabinet, its Parliament and its inner decision-making committees.

- This is a class of big business tycoons that takes politics seriously in the sense that they have a commitment to capturing the state through controlling political parties, political institutions, political processes, and eventually voters. It is this commitment to capturing the state through proxies that constitutes the *differentia specifica* between them and the conventional bourgeoisie. Their proxies would be presidents, prime ministers, ministers, MPs, secretaries to key ministries, heads of banks, agencies that control the stock market, and of course the

law enforcement institutions, ranging from the police to the judiciary. Their project is not merely to influence public policy and state behaviour. They want to define policy and state behaviour. That is why some of their representatives have already begun to define the nature of the constitutional order, the state and the political institutions that their proxies would build for Sri Lanka in the not so distant future.

- Media and anecdotal evidence suggest that it is the key figures of this entrepreneurial class that played the crucial role of intermediaries and architects of the negotiations between Sirisena and Rajapaksa camps prior to and during the constitutional coup. They would certainly have funded the two camps too. The electronic and print media under their ownership managed the propaganda and ideological war for the state capture project.

## Conclusion

The discussion developed in this chapter demonstrates the following:

- i. The political events that began to unfold in Sri Lanka on October 26, 2018 were components of a major story of a shift in inter-elite power relations in contemporary Sri Lanka. The shift in inter-elite power relations had spawned a power struggle that led to a project of state capture by a tactical coalition of two power blocs, one led by former President Mahinda Rajapaksa and the other led by the incumbent President Maithripala Sirisena.
- ii. The alliance between the Sirisena and Rajapaksa power blocs represented a confluence of tactical agendas. The Sirisena project was motivated by the need to consolidate his own position as the new contender to claim political power representing a third power bloc, while Rajapaksa had the goal of reviving and re-launching his authoritarian project of state capture.
- iii. Sri Lanka's constitution has been the site of numerous power struggles among the political elites. The constitutional crisis of October 2018 was

the most dramatic of such power struggles rooted in the constitution. It was produced by a bid to capture the constitution as the first steps for the goal of capturing the state.

- iv. This failed state capture project also represented the material and social interests of new entrepreneurial classes whose political agendas are focused on capturing the state through political proxies.

Although Sri Lanka escaped from a constitutional *coup d'état* in the third week of December last year after judicial intervention, the intensity of the elite conflict is not yet over. The actors that brought the crisis to the open seem to continue with their manoeuvres and interventions. There are also attempts being made to reconfigure inter-elite alliances and re-draw the battle lines among power blocs-in-war. The elections that are due in this year as well as next year will certainly be the moments in which the question of who controls the state and the economy, rather than the government and the governing institutions, might emerge as the question around which political struggles would be organised.

# 4

## Possibilities of Democratic Constitutional Reforms

*Pradeep Peiris*<sup>18</sup>

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<sup>18</sup> The author wishes to thank Hasini Lecamwasam of the University of Peradeniya, Sakeena Moinudeen and Marimuttu Krishnamoorthi of Social Indicator for their invaluable assistance in completing this chapter.



## Introduction

The constitutional reform debate in Sri Lanka has been continuing for decades with no end in sight. It has been oscillating between hope and disenchantment, and often encounters crisis. The unexpected ending of the Rajapaksa regime and the forming of the *yahapalanaya* government in 2015 engendered hope for meaningful reconciliation and a stronger democracy among liberal democrats in the country. However, with the October 2018 political turmoil caused by President Sirisena's unconstitutional decision to dismiss Ranil Wickramasinghe as the Prime Minister and dissolve Parliament, constitutional reform has once again landed in crisis.

All the progressive democratic policies and constitutional proposals that are being discussed in between elections suddenly disappear once an election is called. As much as votes matter for gaining power, political culture matters for gaining votes. Hence those aspiring to get elected have started appealing to existing political culture rather than rational policies or reform proposals. In this context, public opinion figures decisively in democratic constitutional reforms, and this chapter analyses the opinions and attitudes of the general public on the constitution and constitutional reforms. To this end the chapter has been organised in three parts: (a) awareness of the public about the

constitution and who influences public attitudes towards the constitution; (b) how do people perceive different reform proposals; and (c) do people feel that they need a new constitution?

### **Study context and methodology**

This chapter is mainly based on the Constitutional Reform survey conducted by Social Indicator, the survey arm of the Centre for Policy Alternatives (CPA) in early 2019. The survey captures the opinions and attitudes of 1300 randomly selected citizens across all 25 districts in the country. The respondents who participated in the survey belong to all major ethnic groups in the country and all age groups between 18 to 60 years. Equal proportions of men and women participated in this survey. The field work was carried out from 24<sup>th</sup> January to 14<sup>th</sup> February 2019. Therefore, this survey reflects public opinion on the constitution and its proposed reforms at a time when the constitution received heightened attention in the country. The political turmoil the country was plunged into since President Sirisena's abrupt dismissal of Ranil Wickramasinghe from the premiership, and the dissolution of Parliament resulted in an intense debate on the constitutionality of the President's actions. Since then, the UNP and civil society fought against the injustice on streets, inside Parliament, and in the courts. Chaos in

Parliament and legal battles in courts, and their unprecedented coverage on traditional and social media contributed to increase public awareness and interest in the constitution, which is normally considered a subject of lawyers and a few elite politicians.

### **Public Knowledge and Awareness on the Constitution and Constitutional Reforms**

In the wake of the constitutional crisis and the heightened debate on the constitutionality of politics, citizens showed a high degree of awareness of the constitution. About 85% of Sri Lankans claimed that they are somewhat aware of the constitution, while only 4% stated that they are aware of the constitution to a large extent. About one tenth of the citizens stated that they do not know of the existence of a document called the ‘constitution’. Millennials reported a slightly higher level of awareness compared to citizens whose age is thirty years or above. However, awareness of the constitution did not vary depending on whether the person lives in an urban or a rural locality. The findings of the survey suggest that there is an alarmingly high degree of ignorance of the constitution among minority ethnic communities. While 94% of the Sinhala community claimed that they have some awareness of the constitution, only 45% Tamil, 56% up Country Tamil, and 66% Muslim communities

claimed the same.<sup>19</sup> Not only did the minorities perceive themselves as having less awareness, but also when asked about facts<sup>20</sup> about the current constitution they showed they are less knowledgeable. For example, 43% of the Sinhalese respondents who participated in the survey managed to correctly answer at least one question, while only 17% Tamil, 5% Upcountry Tamil,

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<sup>19</sup> In Sinhala and Tamil language questions were worded as follows:

Q1 ශ්‍රී ලංකාවේ ආණ්ඩුක්‍රම ව්‍යවස්ථාව පිළිබඳ ඔබගේ දැනුවත්භාවය වඩාත් හොඳින්ම පිළිබිඹුකෙරෙනුයේ

පහත කුමන ප්‍රකාශයෙන් ද?

1- ආණ්ඩුක්‍රම ව්‍යවස්ථාව පිළිබඳ මා බොහෝ දුරට දැනුවත්.

2- ආණ්ඩුක්‍රම ව්‍යවස්ථාව පිළිබඳව මා හට යම් තරමක දැනුමක් ඇත.

3- ආණ්ඩුක්‍රම ව්‍යවස්ථාව පිළිබඳව මා දන්නා නමුත් එ 'ඒ' පිළිබඳ වැඩි දැනුමක් මා හට නැත.

4- ආණ්ඩුක්‍රම ව්‍යවස්ථාව පිළිබඳව මා දැනසිටි මුත් එය කුමක් ද සහ එහි අන්තර්ගතයකට අකාරද

යන්න දැනගැනීමට මම කිසිදාක උත්සාහ කර නැත.

5- "ආණ්ඩු ක්‍රම ව්‍යවස්ථාවක්" යනුවෙන් දෙයක් කියෙනවා කියලා මම දන්නේ නැත.

Q1. பின்வரும் கூற்றுகளில் எந்தக் கூற்று இலங்கையினது

அரசியலமைப்பு தொடர்பாக நீங்கள்

எவ்வளவு அறிந்திருக்கிறீர்கள் என்பதை நன்கு பிரதிபலிக்கின்றது?

1. அரசியலமைப்பு தொடர்பில் பெருமளவு அறிந்து வைத்துள்ளேன்

2. அரசியலமைப்பு தொடர்பில் ஓரளவு அறிந்து வைத்துள்ளேன்

3. அரசியலமைப்பு தொடர்பில் அறிந்திருக்கின்றேன், ஆயினும் அது

பற்றிய அறிவு இல்லை

4. அரசியலமைப்பு தொடர்பில் அறிந்திருக்கின்றேன் ஆயினும் அதன் உள்ளடக்கம் தொடர்பில்

அறிவதற்கு எந்த முயற்சியும் எடுக்கவில்லை.

5. 'அரசியலமைப்பு' என்றதொரு விடயம் இருப்பது தொடர்பில் நான் அறிந்திருக்கவில்லை

<sup>20</sup> This survey posed two questions about the current constitution; a) Which year was the current constitution introduced to the country? And b). What was the latest amendment added to the constitution?

and 22% Muslim communities managed to do so. In terms of gender, although there is no significant difference in their perceived awareness of the constitution, survey findings show that there is a significant knowledge gap between men and women on the constitution – while 54% men managed to accurately answer at least one question about the current constitution only 24% of the women managed to do the same.

The survey also inquired into their awareness of the constitution drafting process that the *yahapalanaya* government initiated after coming to power in 2015. 63% of Sri Lankans claimed that they are aware that the *yahapalanaya* government has been engaged in drafting a new constitution. Compared to two year ago, this is clearly an increase. Back in February 2016, only 57% of Sri Lankans claimed that they are aware of the government’s constitutional reform process.<sup>21</sup>

This awareness is generally high across ethnic groups (Table 01). Awareness is relatively higher among men and younger citizens (18-29 years). A significant percentage, however, also claimed that they have little knowledge if not no knowledge about it.

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<sup>21</sup> The survey conducted in February 2016 asked “How would you describe your level of awareness about the current constitutional reform process in Sri Lanka?”

**Table 01: The *Yahapalana* government states that they have been engaged in drafting a new constitution for the country. Were you aware of this process?**

	Sinhala	Tamil	Up Country Tamil	Muslim
<b>Yes</b>	67	57	44	42
<b>No</b>	33	42	56	58
<b>Base</b>	1018	132	39	102

### **Construction of Opinion on Constitution**

The survey shows that television news and television political debates are the most common source of information for people about the new constitution. People also have learnt about the new constitution making process through newspapers as well as through word of mouth. Among millennials TV news, social media and TV debates are the most popular sources of information through which they learn about the process of constitution drafting. People above 29 years have learnt about the new constitution through traditional sources such as TV news, TV debates, and newspapers. Compared to millennials, older people are less influenced by social media

and only 17 % of those who belong to the ‘above 29’ category claimed that they have learnt about the new constitution through social media. There is no significant difference between urban and rural respondents in terms of how they learnt about the new constitution. However, compared to rural dwellers, more people in urban localities have learnt about the new constitution through social media.

**Table 02: How did you learn about the new constitution?**

Although the constitution matters to all citizens in the country, only very few have the capacity to read and understand it. Unlike other political institutions and processes, constitutional reforms or drafting is not something that takes place frequently. Therefore, matters regarding the constitution are somewhat distanced from the average citizen. In this context, in the event of constitutional reforms or drafting people often rely on the opinion of other knowledgeable individuals/institutions.

The findings of the survey show that the majority of Sri Lankans – little over a quarter - trust the opinion of the judiciary to decide whether the new changes to the constitution are good for the country or not. Interestingly, close to one fifth of Sri Lankans claimed that they would consult the opinion of the leaders of their respective religions when deciding on proposed

Source of information	National	Age		Locality	
		18 to 29 Yrs	Above 29 Yrs	Urban	Rural
Through members of the family/ friends/ colleagues	38.5%	32.7%	39.8%	30.3%	40.6%
Through Facebook and other web-based news outlets	24.0%	55.3%	17.4%	31.2%	22.2%
News papers	47.4%	45.1%	47.9%	49.8%	46.8%
TV political debates	63.4%	51.6%	65.9%	54.1%	65.7%
Radio political debates	14.2%	20.8%	12.8%	13.2%	14.5%
TV news	74.3%	67.8%	75.7%	72.5%	74.8%
Radio news	27.6%	13.6%	30.6%	25.3%	28.2%
Total	<b>818</b>	<b>144</b>	<b>675</b>	<b>162</b>	<b>657</b>

constitutional reforms. Ironically only 17.5% stated that they would consult the opinion of their political leaders, who should ideally have been primarily responsible for political mobilisation in a democracy, when deciding on constitutional affairs.

Demonstrating differences in their political culture, people from different ethnic communities exhibited somewhat different



approaches when deciding on matters relating to the constitution. A majority of the Sinhalese and Upcountry Tamils prefer to trust the opinion of the judiciary on this count, while a majority of the Tamil and Muslim communities turn to their community leaders' opinion. Compared to other communities, the influence of the opinion of religious leaders is considerably high in the Sinhala community. About 22% of the Sinhalese stated that they would trust the opinion of their religious leaders when deciding whether a particular constitutional change is good for the country or not. Although the opinion of the party leadership is not the first preference in general, 19% of Muslim and 18% of Sinhalese communities stated that they would seek the opinion of their party leaders when it comes to deciding on constitutional reform.

Compared to their older counterparts, millennials relied more on the opinion of the judiciary and of the elders when deciding on constitutional reform. There is some trust, among those who are above 29 years, on the opinion of party leaders in this regard. Interestingly, the young – who are generally expected to be radical and secular – as well as old equally trust the opinion of religious leaders, though this is mainly observed in the Sinhalese community. Those who are from rural localities trust

the opinion of religious leaders as well as party leaders more than their urban counterparts.

**Table 03: In the event of constitutional reform, who do you think has the best capacity to state that a constitutional change is good for the country or not? By Respondent Ethnicity**

	Ethnicity			National	
	Sinhala	Tamil	Up Country	Muslim	
			Tamil		
My party leadership	18.3%	10.6%	15.8%	18.8%	17.5%
Religious leaders who represent my religion on a national level	22.4%	6.1%	5.3%	6.9%	19.0%
Courts and Judges	26.8%	27.3%	39.5%	10.9%	26.0%

The elders in my community	9.8%	37.9%	13.2%	23.8%	13.9%
Experts	3.6%	0.0%	2.6%	3.0%	3.2%
Others	6.5%	5.3%	7.9%	13.9%	7.0%
Don't Know	12.5%	12.9%	15.8%	22.8%	13.4%
	1017	132	38	101	1288

Sinhalese communities' political party allegiance also shows a very interesting correlation with whose opinion they would consult when making decisions such as supporting constitutional reforms. Since the October 2018 constitutional coup, two main political blocs have emerged in Sinhalese community.<sup>22</sup> A group supporting President Sirisena's new alliance with Rajapaksa and those who are against it. Those who support the Sirisena-Rajapaksa block comprise the supporters of the Sri Lanka Podujana Peramuna (SLPP), a majority of the Sri Lanka Freedom Party (SLFP,) and minor Sinhalese parties that support both the SLFP and SLPP. Its opposition block comprises

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<sup>22</sup> These new power constellations were strongly visible during the period of the turmoil and soon after it. With time and new political realities, the clarity and the strength of these new political constellations seem to have worn off.

supporters of the United National Party (UNP) and of other small parties and civil society groups who stood up against Sirisena's unconstitutional move. A majority of the communities who can be identified as supporters of the Sirisena-Rajapaksa block<sup>23</sup> seek the opinion of their religious leaders – in this case senior Buddhist monks – on matters related to constitutional reform. In addition, they expect their party leadership to tell them whether to support or oppose constitutional reforms. In contrast, those who are against the Sirisena-Rajapaksa block rely on the opinion of the judiciary.

**Table 04: In the event of constitutional reform, who do you think has the best capacity to state whether a constitutional change is good for the country or not? By Support for main power block**

	<b>MS-MR block</b>	<b>Anti-MS-MR block</b>
My party leadership	21.8%	17.1%

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<sup>23</sup> Based on their approval of Sirisena's decision to sack Ranil Wickremesinghe as Prime Minister, respondents were categorised into two categories: Those who supported the Sirisena-Rajapaksa bloc, and those who opposed them.

The religious leaders who represent my religion on a national level	26.8%	15.0%
Courts and Judges	22.2%	32.9%
The elders in my community	5.4%	15.2%
Experts	4.2%	2.7%
Others	6.1%	5.8%
Don't Know	13.3%	11.4%
	518	414

## Reform proposals and public support

The current constitutional drafting process of the *yahapalanaya* government focuses on many proposals that aim at strengthening the country's democracy and achieving reconciliation in the country. The Buddhism chapter in the current constitution, the unitary character of the state, and devolution of power to provinces have been some of the key contentious areas that received attention in the constitutional reform debate. In addition, various civil society groups have been advocating for many years that the electoral system be reviewed, abolish the executive presidency, and increase the accountability of Members of Parliament to strengthen democracy. In the

following section this paper discusses the survey findings that demonstrate the public attitudes towards those contentious issues that the constitution drafting process has had to deal with.

## **Secular state**

Debates about the Buddhism Chapter in the current constitution started as far back as the 1940s. These debates have been on a wide range of proposals that span from a secular constitution to a constitution that provides special privileges to Buddhism. The long-standing grievances and demands of Buddhist leaders and electoral promises of the Sinhalese politicians culminated in section 6 of the first republican Constitution of 1972.<sup>24</sup> Since 1972, the main structure of the Buddhism chapter has remained unchanged with only slight changes in the wording.<sup>25</sup> Article 9 of the current constitution states that:

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<sup>24</sup> The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster Buddhism while assuring to all religions the rights granted by section 18(1)(d).

<sup>25</sup> Schonthal, B and A Welikala, 'Buddhism and the Regulation of Religion in the New Constitution: Past Debates, Present Challenges, and Future Options', *CPA Working Papers on Constitutional Reform*, No.3 of 2016: <http://constitutionalreforms.org/wp-content/uploads/2016/06/Buddhism-and-the-regulation-of-religion-in-the-new-constitution-Working-Paper-3.pdf>

*The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)*

As many liberal scholars and minority leaders have argued, the Buddhism chapter contributed towards institutionalising a hierarchical relationship between Buddhism and other religions in the country<sup>26</sup> which led to, to borrow the term from Ketheshwaran Loganathan, ‘high voltage nationalism’ in the country (Loganathan 1996,52).<sup>27</sup> The Public Representation Committee on Constitutional Reform (PRC) setup in December 2015 also left the Buddhism clause untouched, while feebly attempting to also squeeze in all other religions to Article 9.<sup>28</sup>

As the survey results depict, a majority of Sri Lankans prefer that Buddhism is given foremost place in the constitution. This is

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<sup>26</sup> Kapferer B (2011) *Legends of People, Myths of State: Violence, Intolerance, and Political Culture in Sri Lanka and Australia*, (New York)

<sup>27</sup> Loganathan, K (1996) *Sri Lanka: Lost Opportunities: Past Attempts at Resolving Ethnic Conflict* (Centre for Policy Research and Analysis): 52.

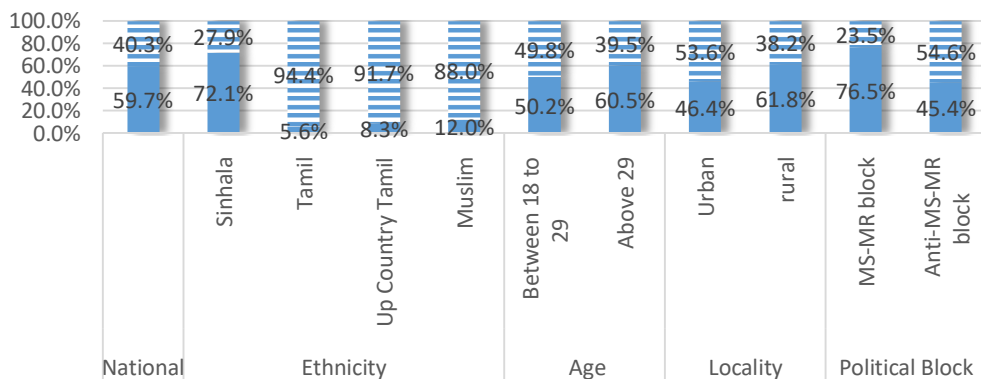
<sup>28</sup> *Report of the Public Representative on Constitutional Reform* May 2016, accessed 07/04/19, [[https://english.constitutionalassembly.lk/images/pdf/PRC\\_1.pdf](https://english.constitutionalassembly.lk/images/pdf/PRC_1.pdf)]

chiefly stemming from the Sinhala community, with 72% of them opting for this option, while an overwhelming majority of the minority communities is of the opinion that no religion should be given foremost place in the constitution.

There is more support among young citizens than older ones and those who live in urban localities than rural localities for a secular constitution. Those who supported the Sirisena-Rajapaksa alliance in the wake of the October 2018 constitutional coup strongly supported a non-secular constitution where Buddhism is given foremost place. However, it is important to note that there is substantial support for a constitution that gives foremost place to Buddhism among those who oppose the Sirisena-Rajapaksa political alliance as well. Therefore, it is difficult to assume that any political constellation for the 2020 presidential election would come forward to change the current *status quo* of Buddhism in the constitution.



**Figure 01: Special status for Buddhism**



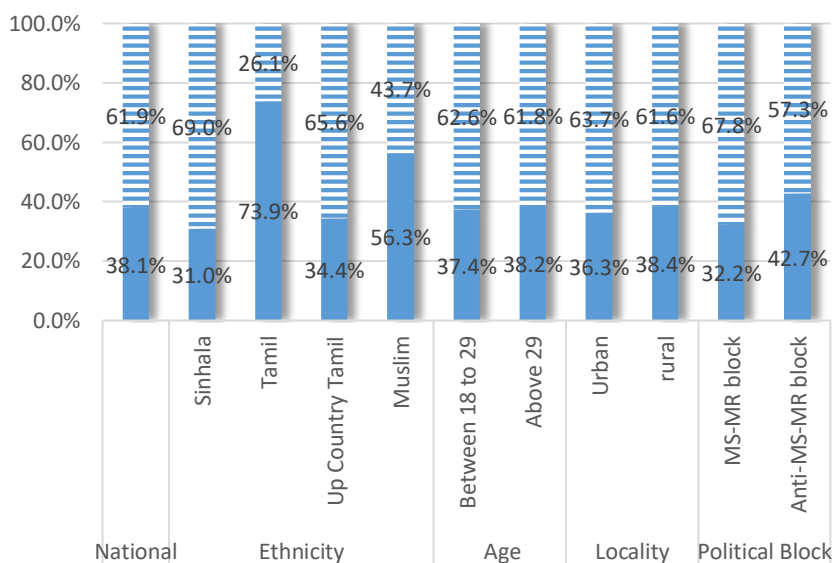
- In order to maintain every citizens' right to equality, no religion should be given the foremost place in the constitution
- It is okay for the majority religion to be given the foremost place in the constitution.

## Power-sharing proposals

Time and again, throughout the history of independent Sri Lanka, the Sinhalese political leadership has promised to share powers with minority communities and backtracked. Provincial Councils that were introduced under the the Indo-Lanka Accord in 1987 transformed the pledges for power sharing in the country to some form of concrete action for the first time. Since then the power-sharing debate among the Sinhalese political leadership mainly focused on limiting versus expanding the powers of the Provincial Councils under the Thirteenth

Amendment to the Constitution. Meanwhile, the Tamil political leadership continued to demand a federal form of power-sharing for the North and East as the only path to lasting peace in the country.<sup>29</sup> Despite decades of elite bargaining on power-sharing at the national level, as confirmed by public opinion data, average citizens are nowhere close to a consensus on this matter.

**Figure 02: Increasing Powers of the Provincial Councils**



■ It is ok to decentralize certain powers but powers of the central government should not be reduced.

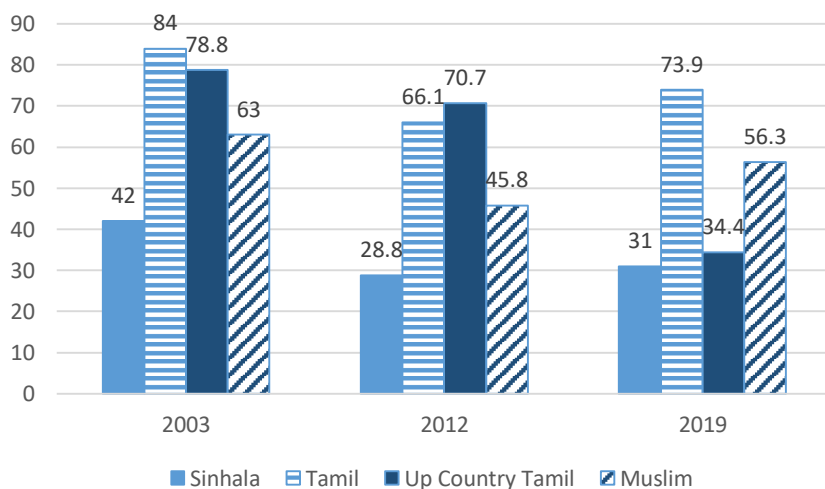
■ Power needs to be devolved to the Provincial Councils while reducing the Power of the central government.

<sup>29</sup> M.A. Sumanthiran, interview with Manjula Frenando, *The Sunday Observer*, March 31, 2019

At the national level, a majority does not agree with reducing the powers of the central government, but are agreeable to decentralising certain powers. Although this is mainly the stance of the Sinhalese community, a significant majority of the Up Country Tamil and a considerable percentage of the Muslim communities also share this opinion.

The overall attitude of the Sinhalese and Tamil communities towards power-sharing, as the above graph demonstrates, seems to have remained unchanged at least over the past decade and half. Despite the various pledges of their political leadership in Colombo, the Sinhalese community seems to express very weak support for power-sharing over the years. On the contrary, the Tamil community has expressed strong support for power sharing during as well as after the war. What this temporal analysis highlights is that not all minority groups see power-sharing as a critical demand of their community. At the height of the 2001-2003 peace negotiations, in a backdrop of all protagonists in that round of peace talks extending their commitment to find peace through a federal constitution, all minorities accepted power-sharing as a major part of future peace. Therefore, it is clear that the political realities of communities are gradually changing and power-sharing is not at the top of their priority list.

**Figure 03<sup>30</sup>: Change of Support for Power Sharing by Ethnicity**



A significant majority of the Sinhala and Up Country communities think Sri Lanka should be called as a ‘Unitary State’ in the new constitution. About 42% of the Muslim and 37% of the Tamil community share the same view. However, 63% of the Tamil community want Sri Lanka to be called a ‘United Republic’ in the new constitution. This further reconfirms the fact that the popular support for a federal form of constitution is weakening even among the minority

<sup>30</sup> This graph presents the findings of the KAP survey of 2003 and Constitutional survey of 2019 conducted by Social Indicator, and the State of Democracy in South Asia survey of 2012 conducted by the Social Scientists’ Association.

communities in the country. At one point, the ending of the ethnic war and its disastrous economic consequences motivated the Sinhalese political elites to convince their electorate to accept a form of power-sharing with the minority communities. Such a political position was not only seen as a good democratic move by the politicians but also as a shrewd electoral strategy to win minority votes. In the absence of large-scale violence, Sri Lanka's ruling parties – the UNP, the SLFP or SLPP – would not advocate policy positions such as power-sharing unless they are strongly convinced that there would be a net electoral gain for standing for power-sharing or a federal form of state. What the findings of the survey demonstrate is that the Sinhalese major political parties may not make any substantial electoral gain from all the minority communities for advocating a reform such as power-sharing. As a result, even a party like the UNP, which traditionally enjoys substantial minority votes, would not take a risk in putting forward a constitutional proposal that includes reforms such as substantial power-sharing before the upcoming presidential and parliamentary election in 2019 and 2020.

### **Executive presidency**

The Executive presidency was introduced by President J.R. Jayewardene in 1977-8 ostensibly to achieve political stability in the country that was needed to introduce rapid economic

reforms.<sup>31</sup> It was argued that electing this powerful position from the entire country as one electorate would contribute towards safeguarding the interests of minority communities.<sup>32</sup> However, opposition parties and civil society groups have experienced severe oppression under the executive presidency, and it did not take that long for people to realise that this powerful position leads to semi-authoritarian rule undermining the country's democracy.<sup>33</sup>

Therefore, abolishing the executive presidency has been a key election promise of almost all presidential candidates since President Chandrika Bandaranaike in 1995. Not only those who opposed it when it was introduced by President Jayewardene, but the UNP itself started campaigning against it perhaps due to their own reasons. Concentration of enormous powers in the hands of one person typically leads to authoritarian rule

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<sup>31</sup> Bastian, S 2017, 'Understanding the Current Regime', *Sri Lanka Brief*, January 2, accessed 07/04/2019, [<http://srilankabrief.org/2017/01/understanding-the-current-regime-sunil-bastian/>]

<sup>32</sup> Jeyaraj, D.B.S. 2017, 'Abolishing J.R. Jayawardene's Executive Presidency', *Daily Mirror*, October 14, accessed 07/04/19, [<http://www.dailymirror.lk/article/Abolishing-J-R-Jayawardene-s-Executive-Presidency-138460.html>]

<sup>33</sup> Welikala, A. 2015, *The Executive Presidency and the Sri Lankan State: Myths and Realities*, Groundviews, January 20, accessed 07/04/19, [<https://groundviews.org/2015/01/20/the-executive-presidency-and-the-sri-lankan-state-myths-and-realities/>]

undermining the democratic space. This happened under all the past and present Presidents, irrespective of their party or their position on the executive presidency at the time of contesting. For many years, there appeared to be multiparty consensus on abolishing it, but upon assuming power no initiative has been taken to see it through.

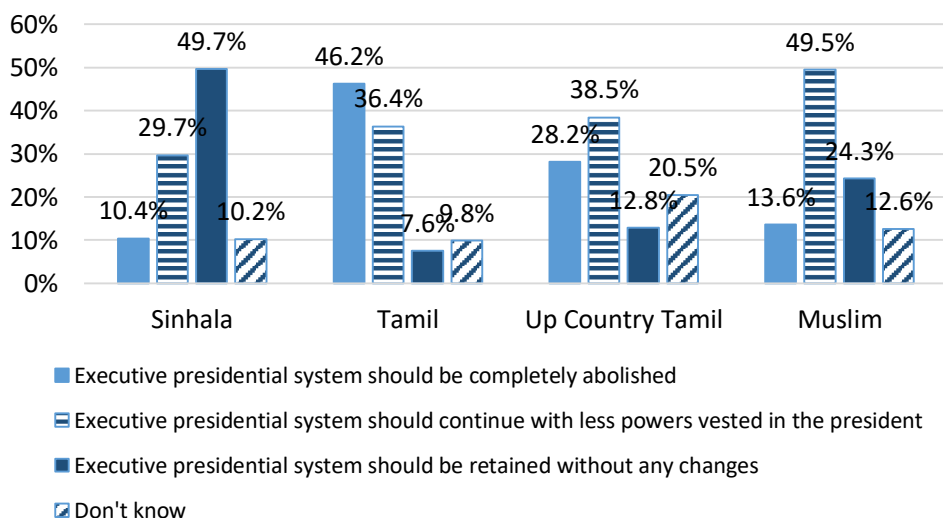
Current President Maithripala Sirisena was put forward as a common candidate at the January 2015 election to contest Mahinda Rajapaksa's semi-authoritarian presidency. The main election slogan of the *yahapalanaya* coalition was to restore democracy in the country, and abolishing the executive presidency was deemed necessary to that end. President Sirisena pledged that he will not seek another term as he understands the danger of concentration of so much of power in one person's hand. However, political analysts saw the Presidents' unconstitutional move to unseat the Prime Minister as a strategy to secure another term with the support of his former rival Mahinda Rajapaksa.<sup>34</sup> The campaign to abolish the executive presidency has once again received new impetus in the wake of

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<sup>34</sup> Singh, M 2018, 'Sri Lanka: How unconstitutional coup is becoming unprecedented threat to Asia's oldest democracy', *Daily Financial Times*, December 14, accessed 07/04/19, [<http://www.ft.lk/opinion/Sri-Lanka-How-unconstitutional-coup-is-becoming-unprecedented-threat-to-Asia-s-oldest-democracy/14-668821>]

President Sirisena's failed coup attempt. The Janatha Vimukthi Peramuna (JVP), a southern Marxist party, is currently seeking a parliamentary consensus for a Twentieth Amendment to the Constitution to abolish the executive presidency.

**Figure 04: Abolishing the Executive Presidency**



As the survey findings suggest, there is not clear support for the abolition of the executive presidency among any community other than Tamils. There is strong support amongst Sinhalese community to retain the position as it is or with reduced powers. Quite contrary to minority friendly arguments put forward in the early 1980s, this position seems to have attracted the Sinhalese community more than their minority counterparts. This support



very much comports with the policy position of Sinhala Buddhist nationalist parties such as the Jathika Hela Urumaya (JHU). Quite contrary to national level elite debates, there is stronger support among rural communities and those who are above 29 years to retain the executive presidency as it is or with some amendments to its powers. An overwhelming majority (84.6%) of those who support the Sirisena-Rajapaksa alliance want the executive presidency to continue. Ironically, a two-thirds majority of the anti Sirisena-Rajapakse power bloc – who suffered due to authoritarianism and power abuses of President Rajapaksa – also support the continuation of the executive presidency with some revision to its powers.

### **Electoral system**

The electoral system plays a critical role in shaping the country's political system. The first-past-the-post (FPP) electoral system Sri Lanka had till 1977 has contributed towards a particular party system and political culture in the country. Politics in general began to experience a radical change since the proportional representation (PR) system came to define electoral competition in the country. The current PR system was introduced to address issues in the previous FPP system, particularly the over-representation of the parliamentary majority, unfavourable to

the just representation of ethnic and culture minorities.<sup>35</sup> In fact, since the introduction of the PR system, no single party has managed to secure a decisive parliamentary majority like at the elections of 1970 or 1977. It has also increased minority representation in the legislature. However, increased political violence especially within parties, lack of accountability of politicians towards their electorate, and exceeding expenses of electoral campaigning that has led to corruption have triggered a debate on the need for a new electoral system.<sup>36</sup> The current electoral reform discourse suggests a mixed method to replace the current PR system. This method was experimented for the first time at the local government election that was held in February 2018.

The report of the Public Representation Committee on Constitutional Reform stresses the importance of a new electoral system.<sup>37</sup> However, survey findings indicate that the majority prefers continuation of the existing PR system, especially

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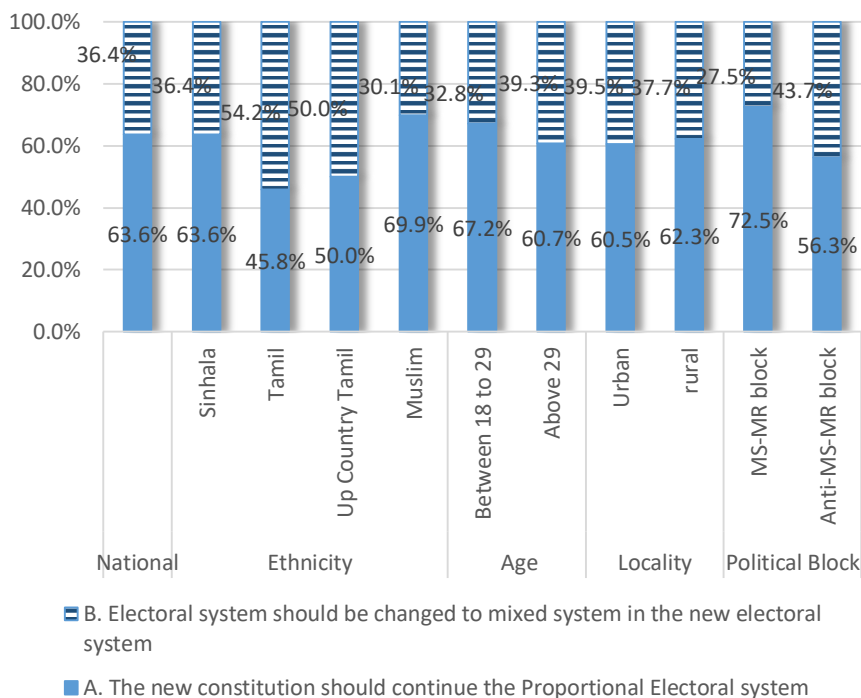
<sup>35</sup> Bastian, S 2003, 'The Political Economy of Electoral Reform: Proportional Representation in Sri Lanka', in S. Bastian, & R Luckham, *Can Democracy be Designed?* Zed Books, London

<sup>36</sup> Peiris, P 2018, 'Changing Dynamics of the Party-Voter Nexus', in A. Shastri and J. Uyangoda, *Political Parties in Sri Lanka: Change and Continuity*, Oxford University Press, Delhi

<sup>37</sup> *Report of the Public Representative on Constitutional Reform* May 2016, 162, accessed 07/04/19, [[https://english.constitutionalassembly.lk/images/pdf/PRC\\_1.pdf](https://english.constitutionalassembly.lk/images/pdf/PRC_1.pdf)]

Sinhalese and Muslim communities. A significant majority of those who supported the Sirisena-Rajapaksa alliance is of the opinion that the current PR system should continue. Therefore, irrespective of subtle differences among various groups, the majority prefers continuation of the current PR system.

**Figure 05: Proportional Representation System V Mixed System**



## Ending Crossovers

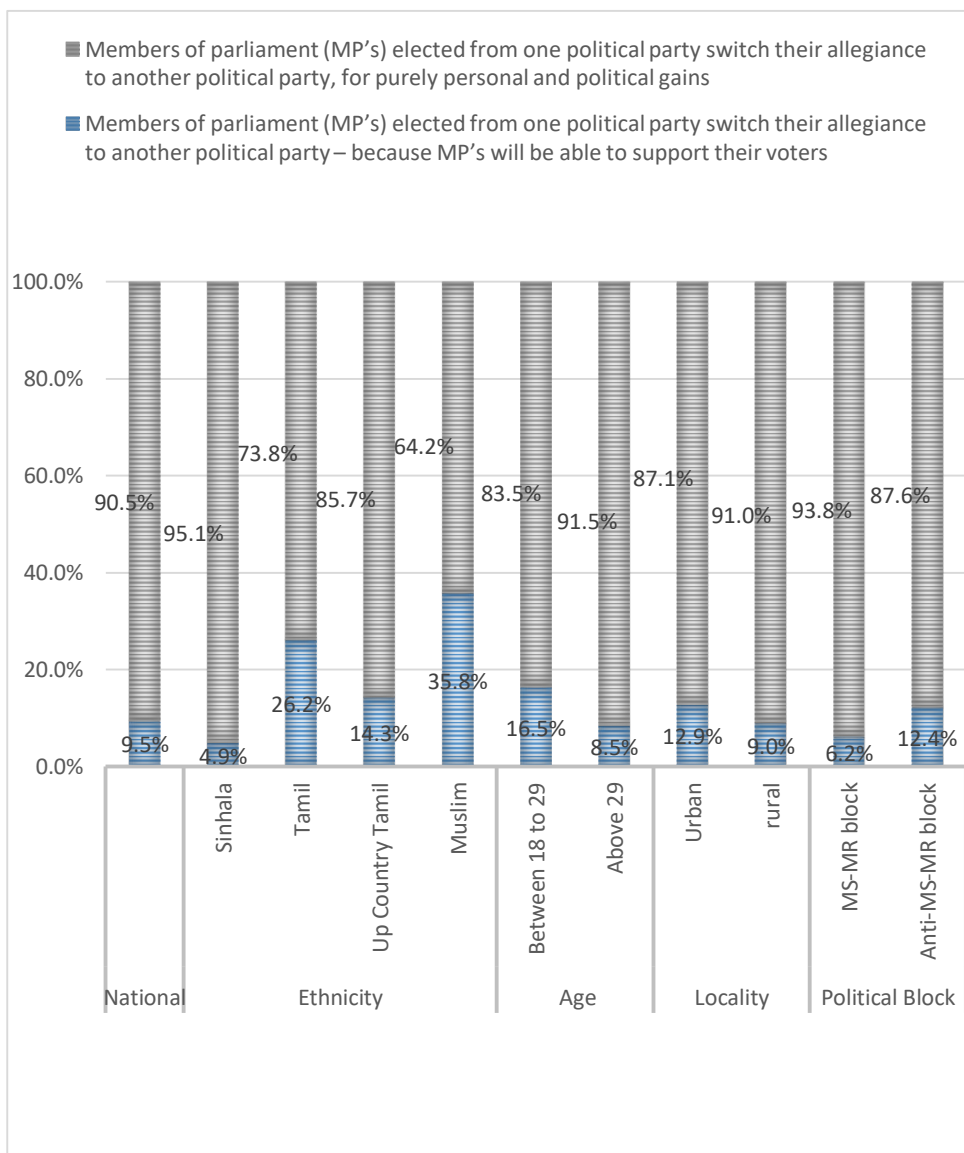
MPs crossing over has a long history. In a representative democracy, theoretical and operational arguments can be found for and against MPs crossing over to the opposition camp after getting elected from one party or alliance.<sup>38</sup> Unlike in early crossovers, contemporary crossovers are mostly from the opposition to the ruling party/coalition. Although it is very difficult to decide whether it is principle- or perks-driven, all crossovers are rewarded with either cabinet portfolios or other privileges<sup>39</sup>.

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<sup>38</sup> Some scholars support crossovers on the basis of the MPs' ability to vote or act in Parliament according to one's conscience. Meanwhile others argue that under the PR system people vote for the party and the MP is elected from the party ticket. Therefore, MPs should resign instead of crossing over to the Opposition camp if s/he cannot agree with the position of the party.

<sup>39</sup> UNP parliamentarian Palitha Range Bandara revealed to the Bribery Commission on 2<sup>nd</sup> January 2019 the attempts made by President Maithripala Sirisena's purported government to bribe MPs in order to secure a majority in Parliament  
[\[http://www.colombopage.com/archive\\_19A/Jan02\\_1546453729CH.php\]](http://www.colombopage.com/archive_19A/Jan02_1546453729CH.php)

**Figure 06: Support and opposition to MPs crossing over**



There is very strong consensus among all social, cultural and political groups to stop MPs elected from one political party from switching their allegiance to another party. Therefore, this is one area where reforms seem to be most desired by the public.

In summary, public attitude towards the proposals used in this study can be divided into three categories: i) Ones with public approval across all sections of society; ii) Ones with no strong approval, with no ethnically partisan support either; and iii) Ones with clear disapproval of the majority, and with pronounced ethnically partisan tendencies. This throws into light the challenges one may encounter in introducing a new constitution.

### **Public support for a new constitution**

The electoral victory of the *yahapalanaya* government lay the foundation for a new constitution drafting process. As noted, a Public Representation Committee on Constitutional Reform (PRC) was formed in December 2015 to engage with the people in this regard. According to the report of the PRC, over 2500 persons and organisations had appeared to make representations.<sup>40</sup> The Constitutional Assembly was created on 9<sup>th</sup> March 2016 for the purpose of drafting a new constitution in

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<sup>40</sup> *Report of the Public Representative on Constitutional Reform* May 2016, vii, accessed 07/04/19, [[https://english.constitutionalassembly.lk/images/pdf/PRC\\_1.pdf](https://english.constitutionalassembly.lk/images/pdf/PRC_1.pdf)]

	Ethnicity				Power Block	
	Sinhala	Tamil	Up Country Tamil	Muslim	MS- MR block	Anti- MS- MR block
We need a new Constitution	14.5%	67.4%	40.0%	24.5%	11.1%	30.5%
The current Constitution should continue but with some needed changes	57.6%	22.0%	35.0%	57.8%	54.9%	55.2%
No need of any changes to the current constitution	15.2%	3.0%	15.0%	5.9%	19.8%	6.8%
Don't know/ not sure	12.7%	7.6%	10.0%	11.8%	14.2%	7.4%
Base	1017	132	40	102	541	632

which all 225 MPs sit as a committee chaired by the Speaker. However, there are sections who question the bona fides of the process and allege that the new constitution is a threat to the country.

According to the survey results, little over one-fifth of Sri Lankans believe that the country needs a new constitution. The majority prefers continuation of the current constitution with some needed changes. Support for the new constitution mainly stems from the Tamil community, while Sinhalese and Muslims prefer continuation of the current one with needed changes.

**Table 05: Should the current Constitution be wholly replaced with a new Constitution or should the current Constitution continue but with some needed changes?**

It is interesting to note that not only a majority of the people who express allegiance to the Sirisena-Rajapaksa bloc, who openly criticise the idea of a new constitution, but also those against this political bloc, support the continuation of the current constitution with or without changes. This lack of popular support and ethnically partisan public opinion would certainly pose a gigantic challenge for the *yahapalanaya* government - considering its current weak standing in Parliament - in introducing a new constitution.



## Conclusion

This chapter offers a general picture on what average Sri Lankans think about the *yahapalanaya* government's initiative on drafting a new constitution, and to what extent people are willing to support key proposals forwarded therein.

Ethnically partisan public opinion on the constitution and its reform proposals demonstrate two paradoxical political realities in the country. The majority Sinhalese community generally resists not only specific proposals but the idea of reforming the current constitution. Especially reforms to constitutional clauses that privilege the majority community – at the expense of religious and ethnic minority communities – encounter very strong resistance from the Sinhalese. Therefore, the idea of achieving lasting peace by addressing minority grievances through constitutional reform will be an excessively challenging task. Perhaps due to the fear of losing their privileged position, a majority of Sinhalese resist abolishing the executive presidency which they consider as a powerful tool in securing their interests. The Sinhala community only exhibits its willingness to consider reform aspects that are somewhat ethnically neutral and deemed as less threatening; proposals such as electoral reforms and ending crossovers of MPs. Although there is some receptivity

among millennials and urban communities to constitutional reform, ethnic identity seems to override other identities.

The findings of this study highlight another important dilemma in the majority-minority dichotomy. Often in the conflict resolution discourse the majority-minority categories have been treated as homogeneous categories. As a result, the term ‘minority grievances’ has been assumed to represent the grievances of all minority communities. The findings of the study indicate that the gulf between the choices and attitudes of the minority communities is widening, and not all reform proposals are viewed in the same spirit. While a majority of the Tamil community continues to stick to their original reform demands, the opinion of the Up Country Tamil community and Muslim community demonstrate a transition towards the opinion of the Sinhalese community. For example, on issues of power-sharing and the unitary state they show some resemblance to the Sinhala community’s attitude. Therefore, constitutional reforms not only face the majority community’s resistance, but it has to deal with fractured minority demands as well.

In the context of a lack of popular support for constitutional reform, no political party that aspires to power would try to enact a new constitution, especially in the months running up to an election. The current agent of constitutional reform, the UNP,

not only faces the challenge of convincing Sinhala nationalists and Sirisena-Rajapaksa loyalists, but also their own bases who are of the opinion that the current constitution should be continued with some needed changes. Therefore, observations flowing from this survey suggest two pathways for a new constitution: If one is to have a new constitution with popular support and participation, the draft should be toned down to minimal and uncontroversial reforms such as electoral reforms and restricting crossovers. However, a new constitution that would address minority grievances could only be the result of elite bargaining, and not popular participation.

# 5

## Framing A Putsch: Twitter And Facebook In Sri Lanka's Constitutional Crisis

*Sanjana Hattotuwa*

## Introduction

Without any forewarning or indication, on 26<sup>th</sup> October 2018, Maithripala Sirisena, the incumbent President of Sri Lanka, unilaterally, unconstitutionally and illegally, sacked the sitting Prime Minister at the time, Ranil Wickremesinghe, and appointed in his place former President Mahinda Rajapaksa.

Rajapaksa, who was President from 2005-2015, is credited with ending Sri Lanka's 27-year-old war with the Liberation of Tamil Tigers Eelam (LTTE). However, public records around how the war ended, coupled with wide-ranging allegations of large-scale corruption, gross human rights abuses, rampant nepotism and violence post-war, overwhelmingly coloured his tenure in office. When the presidential election was held in January 2015, Rajapaksa had ruled for ten years with growing authoritarianism and near total impunity.<sup>41</sup> During this period, Sri Lanka witnessed a level of abductions, disappearances, extra-judicial killings and torture that year on year placed it as one of the most dangerous countries in the world for activists and independent journalists.

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<sup>41</sup> *Sri Lanka: Political Turmoil Puts Rights At Risk*, Human Rights Watch, <https://www.hrw.org/news/2018/10/27/sri-lanka-political-turmoil-puts-rights-risk>

The action by the President in October 2018 left Sri Lanka's constitutional fabric in tatters. Overnight, it plunged the country into unprecedented and complete chaos, with competing, contested and conflicting centres of power and political authority. The military was quick to side with the new Prime Minister, posing for photo opportunities shared over social media.<sup>42</sup> The resulting optics, which featured salutes by the Inspector General of Police in front of the much-feared former Secretary of Defence, Gotabaya Rajapaksa (Mahinda Rajapaksa's brother), were disturbing and distressing.<sup>43</sup> Unsurprisingly, economic instability followed very quickly with a rapid depreciation of the rupee against the US dollar.<sup>44</sup> The unprecedented and significant downgrade of credit ratings by Fitch Ratings, Standard & Poor's (S&P) and Moody's Investor Services had both an immediate and disastrous long-term impact on Sri Lanka's external debt re-financing, fiscal consolidation

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<sup>42</sup> Commander Calls on New Prime Minister, <https://www.army.lk/news/commander-calls-new-prime-minister>

<sup>43</sup> IGP Pujith Jayasundara in discussion with MR, *Daily Mirror*, <http://www.dailymirror.lk/article/-IGP-Pujith-Jayasundara-in-discussion-with-MR-157464.html>

<sup>44</sup> Economic Consequences of the (Un)constitutional Coup in Sri Lanka, <https://www.sguardian.org/economic-consequences-of-the-unconstitutional-coup-in-sri-lanka/> and Sri Lanka 'coup' cost US\$1bn in reserves, credit downgrade: PM, [https://economynext.com/Sri-Lanka-coup-cost-US\\$1bn-in-reserves-credit-downgrade-PM-3-13111.html](https://economynext.com/Sri-Lanka-coup-cost-US$1bn-in-reserves-credit-downgrade-PM-3-13111.html)

and policy outlook. The tourism industry was hard hit with a high number of cancellations.<sup>45</sup> Over 250 statements or comments by the international community, including bilateral agencies like the UN as well as the EU, leading financial institutions and the Commonwealth, repeatedly called for restitution of constitutional order.<sup>46</sup> Unprecedented diplomatic rebukes over Twitter by both the Canadian<sup>47</sup> and German<sup>48</sup> ambassadors responded to allegations of foreign interference by Namal Rajapaksa MP, Mahinda Rajapaksa's eldest son. Wickremesinghe, as the de jure Prime Minister, was under siege and garrisoned. Rajapaksa, as the de facto Prime Minister, went on to take control of the government and appoint his MPs, who in turn selected their officials. Staff in Parliament initially refused to recognise the Speaker's constitutional role, and instead only took orders from the President. The period also saw, in addition to the heightened production of misinformation online whipping up tensions against minority political parties and politicians,

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<sup>45</sup> Sri Lanka's political crisis spurs tourists to cancel in peak season, <https://www.reuters.com/article/us-sri-lanka-politics-tourism/sri-lankas-political-crisis-spurs-tourists-to-cancel-in-peak-season-idUSKBN1O512D>

<sup>46</sup> Official statements, comments and press releases around the constitutional crisis - October 2018, [https://docs.google.com/document/d/1AKjPLrDha2QffGx96jng3IYxbxH0ptUPwtpHkEo\\_la8/edit?usp=sharing](https://docs.google.com/document/d/1AKjPLrDha2QffGx96jng3IYxbxH0ptUPwtpHkEo_la8/edit?usp=sharing)

<sup>47</sup> <https://twitter.com/McKimmonDavid/status/1065132749575532544>

<sup>48</sup> [https://twitter.com/joern\\_rohde/status/1065867288862236672](https://twitter.com/joern_rohde/status/1065867288862236672)

unprecedented kinetic and verbal violence in Parliament by MPs belonging to the former President's party, which included rampant vandalism as well as throwing chairs and dustbins at the Speaker.<sup>49</sup> All this was broadcast live and widely engaged with over social media. Finally, in just two days after the President's unilateral action, all state media in the country was violently taken over by those partial to the former President. Many leading private media houses, owned by individuals with ties to or stood to gain from the Rajapaksa family back in power, also supported the President's actions and the new PM. Throughout the constitutional coup, the coverage extended to the production and broadcast of blatantly false news reports.<sup>50</sup> Combined, this led to what was, throughout the constitutional coup, blanket censorship on anything that held the process and critical architects in a negative or critical light, coupled with the heightened production of partial, partisan and parochial media frames and misinformation.<sup>51</sup>

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<sup>49</sup> Chilli powder and chairs thrown in Sri Lanka parliament on second day of violence over constitutional crisis,

<https://www.telegraph.co.uk/news/2018/11/16/chilli-powder-chairs-thrown-sri-lanka-parliament-second-day/>

<sup>50</sup> <https://www.facebook.com/1577135869/posts/10215484447415805/>

<sup>51</sup> Sri Lanka's Democracy Hangs in the Balance after 'Coup Attempt', <https://freedomhouse.org/blog/sri-lanka-s-democracy-hangs-balance-after-coup-attempt>



Ultimately, a Supreme Court ruling on the unconstitutionality of the President's action<sup>52</sup> led to the reinstatement of Wickremesinghe as Prime Minister by mid-December.<sup>53</sup> The 52 days of the constitutional coup offered much by way of primary resource material to help understand the role, reach and relevance of social media in times of significant and unexpected political upheaval, as well as specific to Sri Lanka, the coup's entrenchment, expansion, evolution and ultimate failure.

Quantitatively looking at millions of Facebook updates and hundreds of thousands of tweets, spread across around a thousand accounts per platform, and qualitatively looking at many hundreds of photos, memes, videos and other multimedia content shared widely at the time, the author was able to track and trace the evolution of the political developments in near real time. Further, the more granular study of social media content allowed for the identification of key political, partisan perspectives. Finally, the material collected allowed for the critical observation of trends and patterns in social media

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<sup>52</sup> Sri Lanka's President isolated after ruling in constitutional crisis, <http://www.ft.lk/news/Sri-Lanka-s-President-isolated-after-ruling-in-constitutional-crisis/56-668898>

<sup>53</sup> Ranil sworn in as Prime Minister, <http://www.dailymirror.lk/article/Ranil-sworn-in-as-Prime-Minister-159853.html>

production and distribution at scale, over specific platforms, media and languages, during an unprecedented political crisis.

## **Demographics and democracy**

Demography and democracy do not share a common destiny. The contestation of democratic norms, processes and institutions on social media serves to strengthen perceptions and weaken participation variously. Simplistic assumptions around the role, reach and relevance of social media need to be critically assessed against what we know of the make-up of Sri Lanka's electoral as well as socio-political dynamics.

The presidential election in 2010 saw around 700,000 first time voters.<sup>54</sup> The presidential election in 2015 saw nearly one million new voters.<sup>55</sup> The local government election in February 2018 saw 700,000 new voters.<sup>56</sup> As the country heads into another presidential election at the end of 2019, around 15% of the total electorate in 2018 (15.7 million) is between 18-34, having voted three to four times at a national election. The study of how this

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<sup>54</sup>

[https://en.wikipedia.org/wiki/2010\\_Sri\\_Lankan\\_presidential\\_election](https://en.wikipedia.org/wiki/2010_Sri_Lankan_presidential_election)

<sup>55</sup> In Predicting Presidential Elections?,  
<https://www.colombotelegraph.com/index.php/in-predicting-presidential-elections/>

<sup>56</sup> Decisive role in local polls for new generation of 700,000 voters,  
<http://www.sundaytimes.lk/171224/columns/274422-274422.html>

demographic is informed and engages politically is therefore central to the fuller capture of the country's democratic potential. The 2012 census report places 30.1% of the population between 20 and 39.<sup>57</sup> Additionally, a study conducted by UNICEF on the use of the internet and web by adolescents and children<sup>58</sup> indicates high use, engagement and awareness. This means that the 15-19 census demographic, constituting 8.1% of the total population, are 'digital natives', whose embryonic and peer-influenced digital habits and hygiene impact their political engagement, ideology and participation. The 2012 census report also notes that by 2041, the population of those over 60 will double, or in other words, that Sri Lanka has an ageing population. It matters then that issues like digital (media) literacy, or the study of how citizens engage with media platforms and content, is emphasised to determine how what is visible, embryonic or already entrenched today by way of media engagement will shape socio-political interactions in decades hence, alongside technological evolution.

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<http://www.statistics.gov.lk/page.asp?page=Population%20and%20Housing>

<sup>58</sup> <https://www.unicef.org/srilanka/reports/keeping-children-sri-lanka-safe-and-empowered-online>

As Gil de Zúñiga<sup>59</sup> argues, the “frequency and size of political discussion networks, seeking information via social network sites is a positive and significant predictor of people’s social capital and civic and political participatory behaviours, online and offline”. This chapter primarily outlines several overarching trends of user interactions at scale on Facebook and Twitter around a specific period. While new research flags how inextricably entwined social media is with violence generation<sup>60</sup>, others flag more prosocial outcomes as a consequence of social media use<sup>61</sup>.

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<sup>59</sup> Gil de Zúñiga, H. (2012). Social Media Use for News and Individuals’ Social Capital, Civic Engagement and Political Participation. *Journal of Computer-Mediated Communication*, 17(3), 319–336. <https://doi.org/10.1111/j.1083-6101.2012.01574.x>

<sup>60</sup> Camber Warren, T. (n.d.). Explosive connections? Mass media, social media, and the geography of collective violence in African states. <https://doi.org/10.1177/0022343314558102>

<sup>61</sup> Reilly, P. (2016). Tweeting for peace? Twitter and the Ardoyne parade dispute in Belfast, July 2014. *First Monday*, 21(11). <https://doi.org/10.5210/fm.v21i11.6996>; Richey, S., Sajuria, J., van Heerde-Hudson, J., Hudson, D., Dasandi, N., & Theocharis, Y. (2018). Tweeting Alone? An Analysis of Bridging and Bonding Social Capital in Online Networks - Javier Sajuria, Jennifer van Heerde-Hudson, David Hudson, Niheer Dasandi, Yannis Theocharis, 2015. *American Politics Research*, 43(4), 708–738. <https://doi.org/10.1177/1532673X14557942>; Theocharis, Y., Vitoratou, S., & Sajuria, J. (2017). Civil Society in Times of Crisis: Understanding Collective Action Dynamics in Digitally-Enabled Volunteer Networks. *Journal of Computer-Mediated Communication*, 22(5), 248–265. <https://doi.org/10.1111/jcc4.12194>

The author, in line with research <sup>62</sup> that suggests social media is neither inherently pro-democratic or pro-authoritarian (to use just two ends of a spectrum on political authority) places for consideration the thrust and parry of conversational trends on Twitter and Facebook during a significant political crisis in Sri Lanka as a singular and significant moment for research and reflection, eschewing simplistic projection or prescription.

### **Social media landscape**

With well over 6 million users of Facebook in 2018, extant quantitative and qualitative data on usage shows the platform predominantly accessed over smartphones and used in Sinhala. Active Twitter users in Sri Lanka are harder to come by and ascertain. Statistical methods and data visualisations on Gephi, based on primary data collected by the author late-October to mid-December 2018, clearly demonstrates however that Twitter use and users significantly grew and expanded, respectively, during the constitutional coup. The interplay between Facebook

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<sup>62</sup> Couldry, N. (2015). The myth of 'us': digital networks, political change and the production of collectivity. *Information Communication and Society*, 18(6), 608-626. <https://doi.org/10.1080/1369118X.2014.979216>; Thorson, K. (2014). Facing an uncertain reception: Young citizens and political interaction on Facebook. *Information Communication and Society*, 17(2), 203-216. <https://doi.org/10.1080/1369118X.2013.862563>

and Twitter is a complex social media ecology. Platform affordances play a key role in the way each app or platform is employed for political communications and information flows. Facebook data gathered is limited to just public pages even though content produced and engagement over private profiles, groups, Facebook Messenger and WhatsApp – all owned by the same company – would also be significant. For research purposes, however, content over encrypted instant messaging apps or locked into personal profiles cannot be accessed or monitored, and rightfully so.

There are also clear differences in scale. Based on data collection through the year as well as episodic analysis of key socio-political and social media processes in the country since 2006, engagement by way of video views, likes, shares and reactions – some of which are platform affordances unique to Facebook – are also much higher than on Twitter. In Sri Lanka, Facebook is in tone, timbre and thrust a conversational domain different to Twitter, with significantly more users, greater volume of content production and higher engagement. Both complicating this and contesting fixed, static definitions is the fact that the two platforms speak to and engage with very different audiences, that in turn morph and merge over time. Twitter often acts as a feeder or entry point to more substantive content

(which includes longer videos and articles) on Facebook. Twitter is also a source of breaking news and information. These fluid dynamics, beyond the scope of this chapter, require grounded, further study.

However, there are obvious lessons for academics as well as policymakers, anchored to hard data-driven evidence going beyond the subjectively known, intuitively grasped or anecdotally shared. In Sri Lanka, even today and more so in the future, the distinction between social media and traditional or mainstream media is blurred to a point where attempts to distinguish or differentiate between the two are rendered moot. Conversely, media that leverages affordances of the web, smartphones and online social networks can and do, in times of political crisis, play a role distinct from the role or reach of newspapers, TV and radio. Sri Lanka saw extremely violent communal riots in March 2018 against the Muslim community. The nature and extent of the violence generated global headlines including front-page *New York Times* reportage. And yet, later the same year, a sudden onset political crisis resulted in markedly different social media dynamics. One example, as widely reported, held social media as an accelerant of violence and hate. The other, comparably far less covered in the international media, helped secure or restore constitutional governance.

It is the second point the rest of this chapter is concerned with, where volume (embracing amplification and production), velocity and vectors of social media, each of which individually and in combination, worked within a specific temporal period to both promote the normalisation or legitimacy of, and staunchly pushback against, 2018's constitutional coup. A more detailed capture of social media dynamics by the author published in 2018<sup>63</sup> places the critical consideration of social media in the context of a country where there is an enduring democratic deficit, contested and complex media landscapes, and a significant percentage of the electorate between 18-34 voting for the first, second or third time. The multivariate stimuli, complex and intertwined markers, new markets around information and the resulting variable permutations around democratic, institutional, electoral, societal, political and conversational health across digital domains require much deeper study than this chapter will delve into. However, the following meta-capture of several dominant trends and patterns are proposed by the author as those that will undergird democratic consolidation and electoral dynamics as much as threats or risks to both.

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<sup>63</sup> *Digital Blooms: Social Media and Violence in Sri Lanka*, [http://toda.org/files/policy\\_briefs/T-PB-28\\_Sanjana%20Hattotuwa\\_Digital%20Blooms-Social%20Media%20and%20Violence%20in%20Sri%20Lanka.pdf](http://toda.org/files/policy_briefs/T-PB-28_Sanjana%20Hattotuwa_Digital%20Blooms-Social%20Media%20and%20Violence%20in%20Sri%20Lanka.pdf)



More recent academic writing on the nature of social media anchored to specific contextual and temporal domains suggest the near impossibility of generalising from contemporary or historical captures of data<sup>64</sup>. In other words, 2018's primary examples of social media mobilisation, whether for violence generation,<sup>65</sup> political mobilisation,<sup>66</sup> the normalisation of a coup<sup>67</sup> or democratic agitation and pushback<sup>68</sup> do not offer prescriptive methods or even accurate predictions around how social media, within and beyond electoral cycles, will morph, merge and meander with society and polity in the future.

Finally, though this chapter will limit itself to Twitter and Facebook, Sri Lanka's social media landscape shows constant evolution, in addition the instant messaging growth flagged above which is beyond the scope of rigorous observation. YouTube

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<sup>64</sup> Munger, K. (2018). Temporal Validity in Online Social Science When is Social Science Possible ?, 1-29.

<sup>65</sup> After Sri Lanka riots, Facebook staff to learn Sinhala insults to curb extremist content on platform, <https://www.hindustantimes.com/world-news/facebook-staff-to-learn-sinhala-insults-after-sri-lanka-riots/story-x76JuPFs2XoPEMJbAPdEAP.html>

<sup>66</sup> Doing the math: The Jana Balaya rally, <https://www.facebook.com/notes/groundviews/doing-the-math-the-jana-balaya-rally/10160761731445641/>

<sup>67</sup> SOCIAL MEDIA COUP, <https://lmd.lk/social-media-coup/>

<sup>68</sup> How Sri Lankans Are Resisting Rajapaksa's Soft Coup Attempt, <https://thediplomat.com/2018/12/how-sri-lankans-are-resisting-rajapaksas-soft-coup-attempt/>

videos and comments as well as Instagram are two key loci of political communications and sites of political contestation. Leading politicians and political parties have official accounts on YouTube and Instagram, or unofficial affiliated accounts managed anonymously or pseudonymously. These complex media ecologies<sup>69</sup> are inter-dependent viral networks for digital conversations, where pathologies (understood as content that incites or exploits violence, social division and hate) or inoculation (understood as content that strengthens democratic norms, institutions and discourse) co-exist. At scale and in the millions, this content informs and influences mainstream media print and broadcast coverage,<sup>70</sup> as well as political debate and discussions conducted face to face, referencing content born digital. The author proposes that a strong binding glue of democratic discourse in Sri Lanka today is social media, in line with research that contends digital content (over social media) fuels connective action in society<sup>71</sup>.

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<sup>69</sup> Bennett, W. L., Segerberg, A., & Yang, Y. (2018). The Strength of Peripheral Networks: Negotiating Attention and Meaning in Complex Media Ecologies. *Journal of Communication*, 68(4), 659–684. <https://doi.org/10.1093/joc/jqy032>

<sup>70</sup> Aluthgama riots: Social media breaks SL media's shameful silence, <https://www.firstpost.com/world/social-media-breaks-sl-medias-shameful-silence-on-aluthgama-riots-1572793.html>

<sup>71</sup> Lance Bennett, W., & Segerberg, A. (2012). THE LOGIC OF CONNECTIVE ACTION: Digital Media and the Personalization of

## Data collection

Data was collected using a range of tools and platforms. Twitter data was collected by the author daily over 2018 using NVivo's NCapture plugin for Google Chrome.<sup>72</sup> Data was exported to Microsoft Excel 365 and OpenRefine<sup>73</sup> for further analysis. Facebook data was captured using the Netvizz app.<sup>74</sup> Tableau<sup>75</sup> was used for disaggregation, visualisation and analysis. A custom Python script was used to collect key Twitter hashtags during the constitutional coup. Gephi<sup>76</sup> was used for all Twitter visualisations. Some network analysis and data collection were also done using NodeXL Pro,<sup>77</sup> especially around the study of bots and trolls on Twitter. The Media Ownership Monitor (MoM)<sup>78</sup> by Verité Research and Reporters Without Borders (RSF) provided the definitional frameworks for the disaggregation of content on Facebook published by mainstream

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Contentious Politics. *Information, Communication & Society*, 15(5), 739–768. <https://doi.org/10.1080/1369118X.2012.670661>; Poell, T., & van Dijck, J. (2017, December 21). *Social Media and New Protest Movements*. Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3091639](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3091639)

<sup>72</sup> <https://www.qsrinternational.com/nvivo/what-is-nvivo>

<sup>73</sup> <http://openrefine.org/>

<sup>74</sup> <https://apps.facebook.com/107036545989762/>

<sup>75</sup> <https://www.tableau.com/>

<sup>76</sup> <https://gephi.org/>

<sup>77</sup> <https://www.smrfoundation.org/nodexl/>

<sup>78</sup> <https://sri-lanka.mom-rsf.org/>

media. All content used for research was published in the public domain and accessed over Facebook or Twitter APIs in compliance with each platform's strict data governance frameworks. Additional cloud-based visualisation, analysis and data collection was conducted on CrowdTangle.<sup>79</sup>

### **Twitter during the constitutional coup**

Hundreds of the author's tweets during the time of the constitutional coup, based on data collection over Twitter and Facebook, provided analytical frames<sup>80</sup> that were in turn, during the temporal period of the constitutional coup, widely quoted and used by others to help understand political, democratic and discursive dynamics.

Based on the collection of around 332,000 tweets from May to December tagged with #lka or #srilanka, two of the most used and popular hashtags in the country, social network analysis reveals that the average path length is just 3.7. However, based on an independent collection of around 181,000 tweets collected from late-October to mid-December of the same hashtags, the average path length increases to 5.1. The network diameter also increased at this time, from 11 to 17. An average path length

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<sup>79</sup> <https://www.crowdtangle.com/>

<sup>80</sup> <https://twitter.com/sanjanah/status/1078764920542351360>

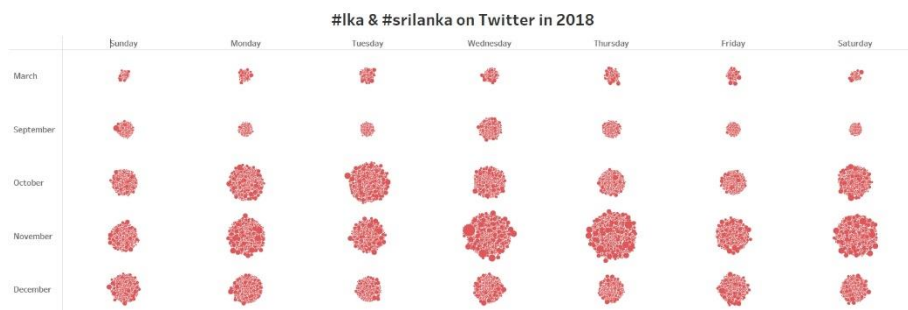
when looking at (social media) network topologies is an indicator of how tightly bound (or known) individual nodes are. A smaller figure suggests a more closely-knit network, where any one person or account is removed from any other account or person by just a few people in between. The network diameter represents the linear size of the social media network. In this case, a bigger number represents a larger, more diverse set of individuals in the network. The growth in both the average path length and the network diameter on Twitter are the clearest data-driven indications of what at the time was anecdotally flagged by many on the platform – that the constitutional coup, in a very short span of time, was able to dramatically increase the volume of content, the velocity of content production and the variety of producers.

This dramatic growth of network use and users is rendered more clearly in data visualisations<sup>81</sup> pegged to around 447,000 #lka or #srilanka tweets covering all of 2018.

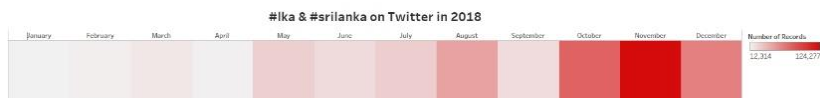
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<sup>81</sup> All visualisations, unless otherwise noted, rendered via Tableau (<https://www.tableau.com/>) and anchored to primary data collection by the author.

**Figure 1**



**Figure 2**



In Figure 1, we see the remarkable growth of Twitter content production during the coup, and with each dot representing a key producer of content. Content production each day of the week, over this period, by far exceeds March, which was the height of the communal riots and September, the time of a very large and popular political mobilisation for a rally. In Figure 2, all the tweets collected are plotted against the month of

production, again supporting the fact that most of the content was produced at the time of heightened political volatility. In fact, Figure 3 shows just how remarkable a concentration of content this is. 14th November, the day that the greatest number of tweets with #lka and #srilanka were published was also the day in which Wickremesinghe was reinstated as Prime Minister pursuant to a Supreme Court judgment.

Figure 3

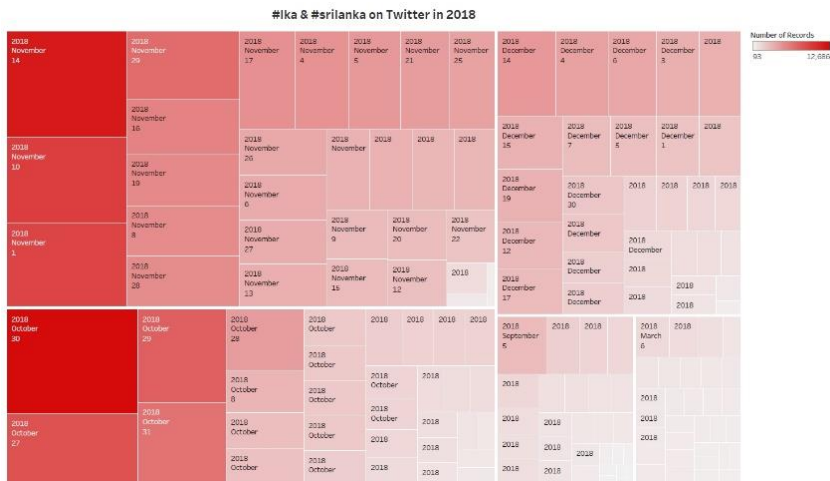
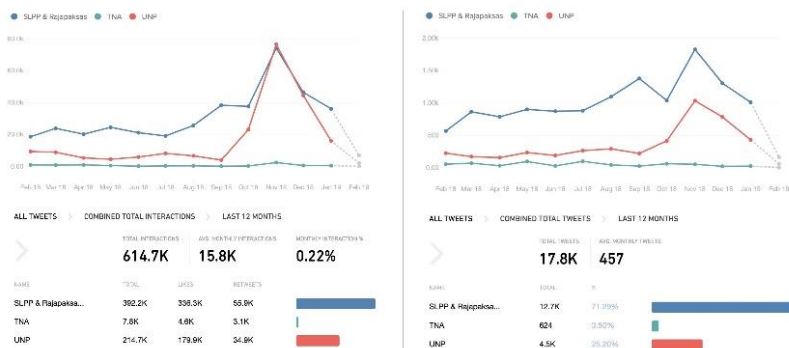


Figure 4



In Figure 4, analysing 22 UNP accounts, 4 Tamil National Alliance (TNA) accounts and 63 accounts belonging to the Rajapaksa and the SLPP – all official – reveals that during the constitutional coup, the content put out by the UNP resonated more with users of or citizens on the platform than any other time in the previous 12 months. The dramatic rise in engagement over November, and the equally revealing slide towards January 2019 can be interpreted in many ways – that the significant rise in interest around the UNP’s content over Twitter was a temporal phenomenon and opportunistic, powered by many, if not most, who weren’t partial to or card-carrying members of the party. The UNP’s own inability to or lack of interest in sustaining interest around post-coup dynamics through Twitter a much larger, organically developed, vociferous



community of activists who shared content produced by the UNP, but vehemently and publicly decried UNP leadership and the party.

Using Gephi to analyse the data, other graphical visualisations of key account indicate the existence of four interdependent ecosystems on Twitter,<sup>82</sup> embracing political actors, civil society activists, journalists and independent commentators. Though pegged to dependent variables of influence, these accounts are responsible for the generation or promotion of news, information or key frames that then went on to largely define the conversational context.

Interestingly, of just over 220,000 tweets captured pegged to the most used hashtags around the constitutional coup, around 37,000 tweets or 17% was produced by 23 leading journalists.<sup>83</sup> This has implications for misinformation flows and studies in the country, since known and tracked cyborg, bot and troll accounts on Twitter, over this period, did not generate traction or leave as much of an imprint on public discourse.<sup>84</sup> Finally, amongst the

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<sup>82</sup> <https://twitter.com/sanjanah/status/1080615045619277824>

<sup>83</sup> <https://twitter.com/sanjanah/status/1069555381213380608>

<sup>84</sup> <https://twitter.com/sanjanah/status/1065862345128177665> is a study of six cyborg accounts on Twitter very active at the time of the constitutional coup. A more in-depth reflection on the nature of misinformation on social media in Sri Lanka at the time this chapter was written can be accessed at

hashtags employed at the time to capture oppositional or supportive frames, the ones created by and signifying political party association (e.g. #fakepm or #illegalgovernment) were used much less than hashtags that captured public disquiet, concern and anger around the violation of the constitution (e.g. #couplk, #politicalcrisislk). This feeds into the broader observation that on Twitter, those supportive of the restoration of constitutional governance by far exceeded those who were (re)tweeting parochial, partisan positions. In other words, Twitter captured a surge in democratic interest and pushback against authoritarian creep, which wasn't tethered to the blind loyalty of politician or political party. Though beyond the scope of this chapter, more granular study of tweets – from the larger #lka and #srilanka capture and the relatively smaller constitutional coup-related hashtag collection – looking at qualitative nature, expression, frames, memes and foci, on both partisan and more democratic, egalitarian lines reveals a conversational sphere rich in

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<https://docs.google.com/presentation/d/1WxtHtRm0Lh52lCrc2SqIAGL5b7MEe7-5tjk1Cjeebr8/edit?usp=sharing>. Produced for and delivered as a lecture hosted by the Centre for Investigative Reporting (CIR) in Colombo, Sri Lanka, the presentation also looked at trolls, bots and cyborg accounts that produced content at a heightened speed during the time of the constitutional coup, with clear indications of coordination, if not collaboration.

interaction, collaboration and contestation, ranging from the engaged and civil to trolling and venomous.

### **Facebook during the constitutional coup**

Content production and engagement on Facebook form the warp and woof of political communications on social media in Sri Lanka. This was particularly evident during the time of the constitutional coup. Save for a handful of mainstream media outlets, critical, independent perspectives on the political imbroglio were not produced and promoted over state-owned or private mainstream media (over traditional print and broadcast as well as over the social media accounts pegged to these institutions). The burden of both the championing of and pushback against the political upheaval fell on the millions of updates on Facebook, each of which was a contact point that blossomed into many more interactions, within and beyond echo chambers.

**Figure 5**

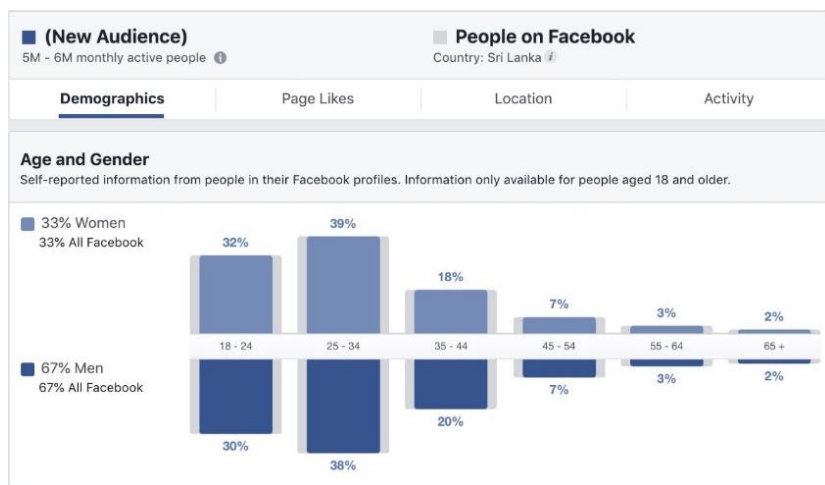
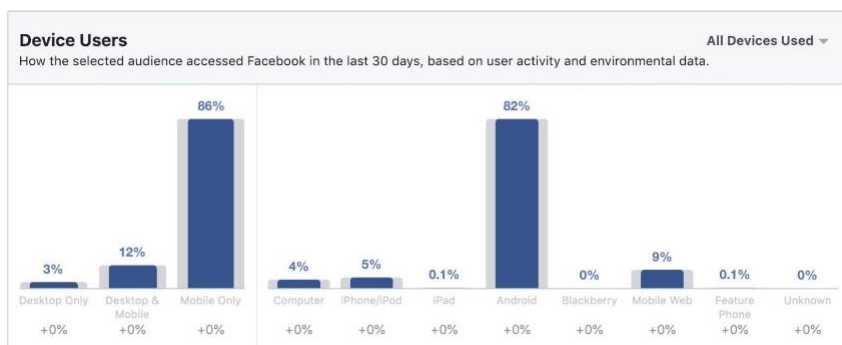


Figure 5 captures the general user base on Facebook over 2018. Driving the engagement at the time and more generally on Facebook is native video. During the coup, the long tail of live video feeds from rallies, events, press conferences, from within Parliament and elsewhere generated tens of millions of views, with live audiences often in the tens of thousands. The numbers are staggering.

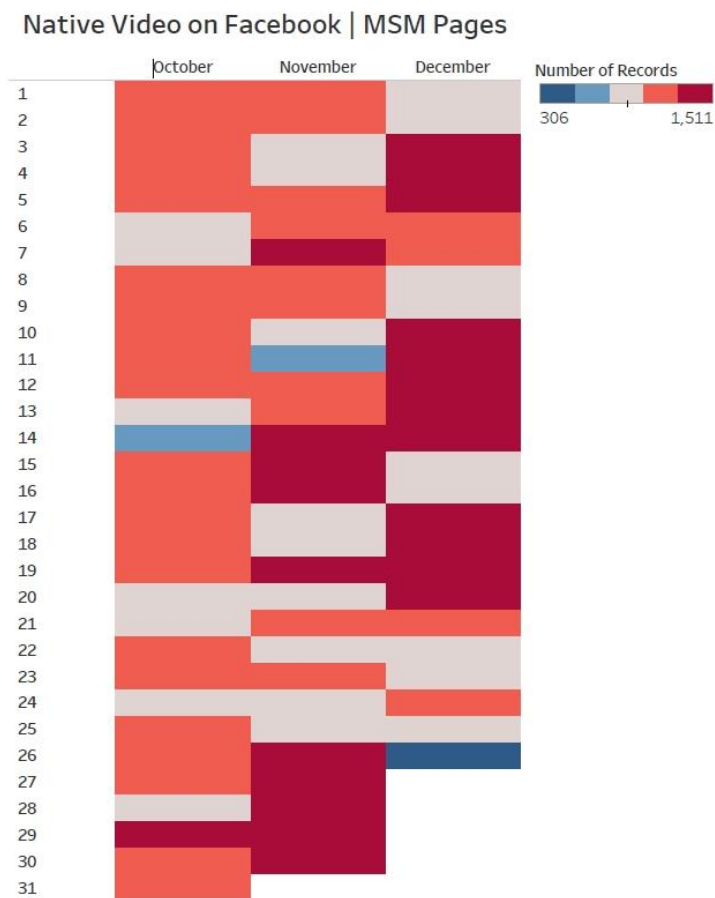
**Figure 6**



On every single day that featured a major political development (e.g. a gazette notification, appointment, court ruling or major press conference) videos published by just Sinhala and English mainstream media institutions on to Facebook exceeded 1,500. Cumulatively, the views for these videos on each day ran into the tens of millions. The organic sharing of videos showcasing ordinary acts of resistance (e.g. the refusal of two young dramatists to acknowledge or shake hands with politicians supportive of and associated with Rajapaksa at an awards ceremony) went viral across both Facebook and Twitter, showcasing that specific content had cross-platform, cross-domain appeal, puncturing echo chambers defined by language or political bias.

Following from this, a key dynamic of information flows on Facebook is both revealing and disturbing. Unlike on Twitter where much of the content under the hashtags collected is in English, content on Facebook captured is almost all in Sinhala, spoken much more widely the country and the mother-tongue of the Sinhalese, the largest community. Pegged to ethno-political, communal, racist and religious frames, as well as democratic, progressive, sardonic and civil, this commentary generated over two million comments in just several hundred key pages the author monitored belonging to politicians, political parties, media, civil society and other influencers. Tellingly, the most amount of commentary was on Fridays, which during the coup, was the day on which the President over six weeks, issued edicts or had extraordinary gazette notifications issued at midnight.

Figure 7



Further, the most incisive and insightful political critique featured on Facebook was through memes, which often went

viral no sooner than each was published, across nearly forty public pages. Extant data indicate that the posts, likes and shares on Facebook across key account clusters were married to days that featured major political developments, or with the maturing of the coup and the normalisation of the exception, with concern, anxiety or anticipation around a certain development (e.g. a court ruling).

As proxy indicators of public sentiment when dealing with in the aggregate, millions of reactions (e.g. love, angry, wow, sad) on Facebook indicate that days in which key decisions to restore constitutional governance through judicial intervention were also those that generated the most amount of pushback or anger, indicating that in general, many who are part of the account clusters monitored are politically partial to the former President and his political framing, independent of concerns around due process and constitutionalism. The further study of this alone holds important insights into electoral dynamics and political communications.

### **Snapshots of other political communications dynamics on Twitter and Facebook**

In Sri Lanka, Facebook pages anchored to the production and promotion of gossip are also the primary vector of political frames and communication. Graphing the content production of



and engagement with 225 gossip pages, 46 Sinhala news pages, 25 English news pages and 37 Sinhala meme pages on Facebook during the approximate timeframe of the constitutional coup (26 October to 31 December 2018) gives some interesting insights into the information ecosystems that frame and focus politics on the platform.

**Figure 8**

Comments on Sinhala, English, Meme & Gossip pages

	Sunday	Monday	Tuesday	Wednes..	Thursday	Friday	Saturday	Comments
October	87,895	120,859	122,260	85,238	55,568	178,202	91,815	
November	90,456	109,148	94,868	124,094	145,989	163,978	84,919	55,568 178,202
December	56,287	77,764	82,324	60,405	100,826	59,582	92,486	

Immediately evident is the defining role and reach of gossip sites. Though Sinhala news pages produce more content (by way of posts on Facebook), gossip pages generate far more reactions and shares (i.e. content on these pages is more appealing and viral, thus spreading faster and shared more often). In comparison to 46,100 posts across the gossip pages and 56,800 posts by Sinhala mainstream news pages on Facebook, meme pages (almost exclusively in Sinhala) put out just 3,700 posts. However, the interaction rate per post is much higher than any other category of news or information on Facebook studied by

the author. From production to engagement, mainstream news pages in English on Facebook fail to generate much traction.

Figure 9

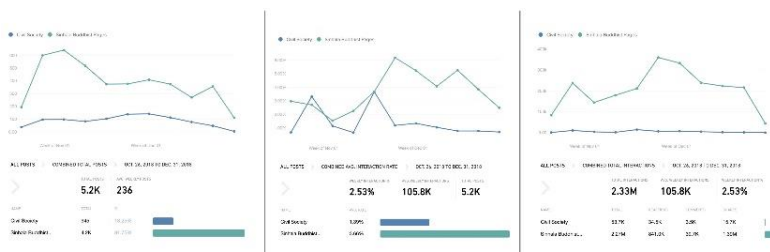


Comparing 30 official civil society pages (belonging to both institutions and key individuals) with 102 Sinhala Buddhist pages (identified and monitored based on ideological affiliation to or a proxy of the Bodu Bala Sena (BBS), and politically aligned to the Rajapaksa regime) offers another set of illuminating frames.

The Sinhala-Buddhist pages collectively produced, during the time of the coup, around four times more output than the civil society cluster combined. A closer look at interactions reveals that the Sinhala-Buddhist pages generated 1,390,000 shares, 39,700 comments and 841,000 reactions on Facebook. Civil society pages only managed 15,700 shares, 3,500 comments and 34,500 reactions.

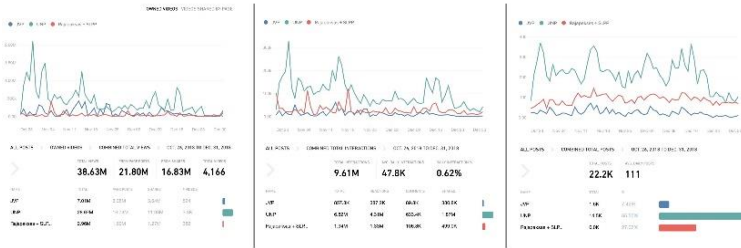
The significant and stark difference in quantitative frames aside, a qualitative assessment of the content shared across these two clusters also reveals major differences in political foci, framing and ideological, partisan support. Civil society pages stood staunchly opposed to the President's actions to appoint Mahinda Rajapaksa, with content ranging from activist and protest to research and advocacy material. The Sinhala-Buddhist pages were anchored to mono-ethnic frames, harking back to the war, fear-mongering, the conflation of Buddhism with political destiny, the promotion and projection of military figures as heroes, the overt support of Mahinda and Gotabaya Rajapaksa, the dismissal of Ranil Wickremesinghe as an enemy of the state, attacks on minority political parties, and opposition to the judicial review and institutional pushback against the coup.

Figure 10



The tracking of 10 JVP pages, 44 UNP pages and 67 pages on Facebook belonging to the Rajapaksas or the SLPP – all official – reveals that during the constitutional coup, content produced, published and promoted by the UNP generated more traction than the JVP, Rajapaksas and SLPP combined. With nearly 29 million views for around 3,300 videos posted during the constitutional coup, nearly 7 million reactions and 14,500 posts, the UNP cluster put out more content and generated more attention than the polished propaganda of the SLPP and Rajapaksas. Note that on Facebook, the UNP’s organic appeal on social media mirrors data around Twitter. The JVP’s gains, though small in comparison to the UNP and SLPP are nevertheless significant, with the most appealing content by way of videos (which at the time were from rallies, live TV interviews, or live broadcasts).

Figure 11



Given all this, the reader may assume that the higher or greater the volume of production on Facebook, the greater the engagement. Contesting this is a comparison between the official Facebook accounts of Mahinda Rajapaksa, Maithripala Sirisena and Ranil Wickremesinghe. During the period under study, the incumbent President posted content on Facebook 151 times, or nearly 3 times more than Ranil Wickremesinghe and Mahinda Rajapaksa respectively. However, Mahinda Rajapaksa generated nearly two times more shares and three times more reactions. When coupled with other data frames studied by the author anchored to politicians and political parties, it is evident that President Sirisena’s prolific content production during the time of the constitutional coup didn’t result in sustained engagement or interest in what he was officially flagging or framing. Linked to this is another important fact. The contest for visibility and traction through populist frames is not just across traditional

party-political divides and between political parties. It is also within political parties. Key individuals – related by blood and/or seeking to capture succession – have their own social media ecosystems. The study of the resulting data reveals significant splintering within political parties, anchored to personalities, blood relations, popular appeal, political lineage, language, polished propaganda pegged to personal frames and the cross-promotion of content featuring or produced by party leadership.

### **Mainstream media over social media**

Many, after mid-December 2018, noted in public fora that social media was why the putsch failed. It is unclear what the basis for this assertion is or what it precisely means. Dimming the prospects of a suddenly pro-democratic and liberal social media bloom, the author's data collection complicates neat yet simplistic definitional boundaries between mainstream and social media. A number of studies around network effects on propaganda<sup>85</sup> to Twitter during election campaigns<sup>86</sup> in addition to structural, representational and interactional dynamics on

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<sup>85</sup> Benkler, Y., Faris, R., & Roberts, H. (Harold). (n.d.). Network propaganda : manipulation, disinformation, and radicalization in American politics.

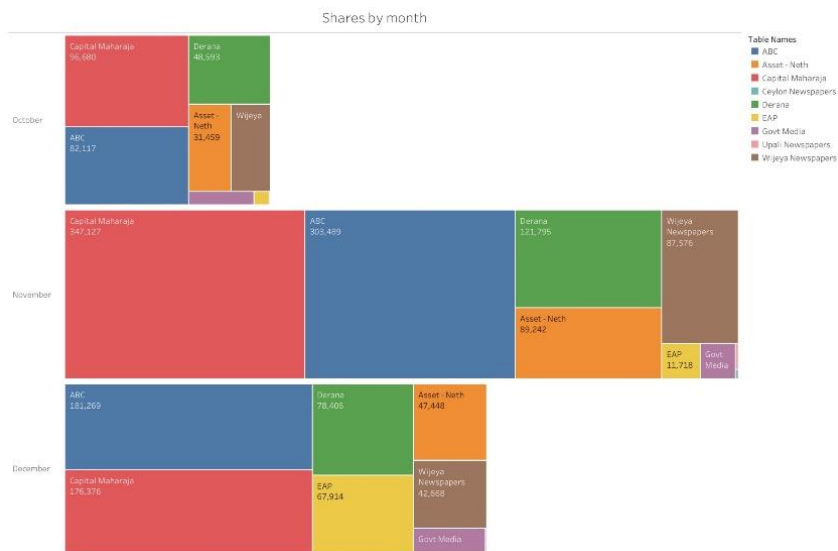
<sup>86</sup> (Jungheer, 2016)

Facebook<sup>87</sup> capture, globally, the entirely porous nature of social media in relation to mainstream media, most obviously brought about by popular pages and posts published on social media platform by established mainstream media institutions. The constitutional coup offered a unique perspective into just how much, in Sri Lanka today, what is consumed over social media is in fact generated by mainstream media. It is clearly the case, as noted earlier, that social media pegged to civic media, citizens, individual politicians, minority political parties and actors not partial to the constitutional coup offered critical perspectives and coverage mainstream print and broadcast media didn't run with or feature. However, social media also promoted mainstream media content - through hundreds of thousands of posts, tens of thousands of videos and tens of millions of reactions.

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<sup>87</sup> Batorski, D., & Grzywińska, I. (2018). Three dimensions of the public sphere on Facebook. *Information Communication and Society*, 21(3), 356-374.  
<https://doi.org/10.1080/1369118X.2017.1281329>

Figure 12



When looking at content shared during the coup on Facebook, disaggregated by media ownership, Capital Maharaja (20 pages), ABC (24 pages) and Derana (11 pages) clearly overwhelm the rest. Capital Maharaja’s cluster generates around 11,570 shares a day over November.



Figure 13

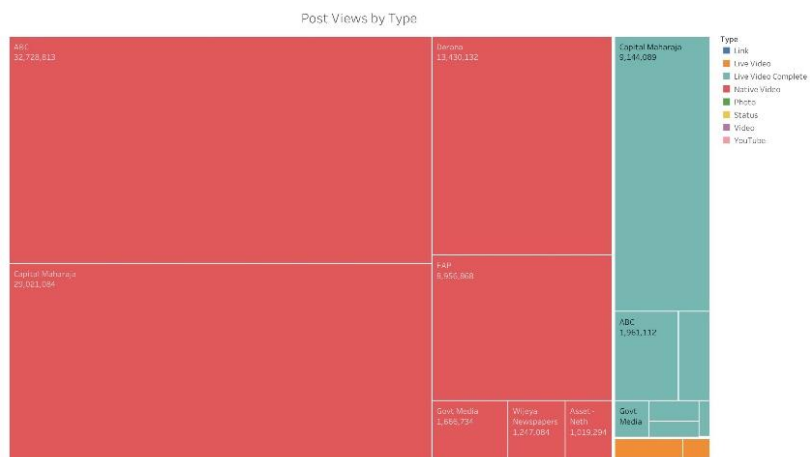


Figure 14

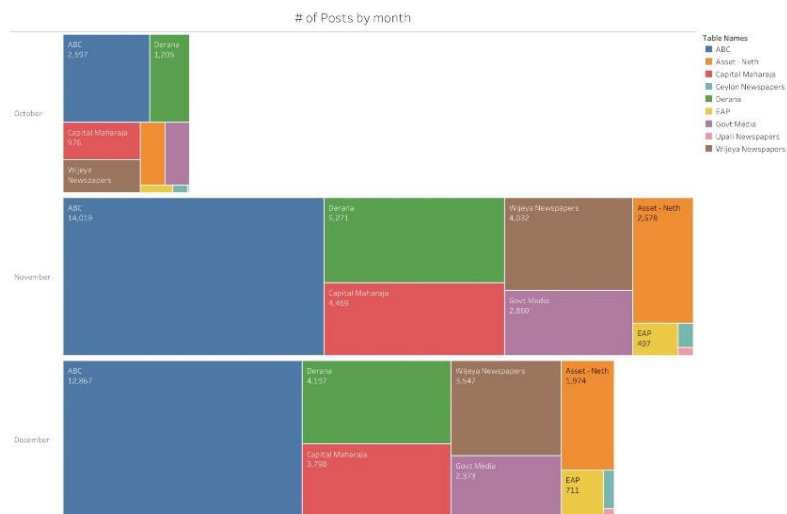


Figure 14 reveals the extent to which video content, produced by mainstream media, was viewed over Facebook (i.e. in addition to those who saw it on TV as a terrestrial broadcast). Here again, ABC, Capital Maharaja and Derana emerge as the top three most engaged with or viewed, cumulatively generating 75,180,029 views of the videos just posted by them, during the constitutional coup. This reveals the degree to which, more than any other content (and in addition to memes), video over Facebook captures the popular imagination. Figure 15 breaks down the number of posts by month. During November and December alone, ABC, Derana and Capital Maharaja – the top producers of posts on Facebook amongst the pages monitored by the author – generated a total of 44,612 posts, or around 731 a day.

The very high numbers around production and engagement need to be read in tandem with the political bias of ABC, Capital Maharaja and Derana in particular, and all mainstream media institutions in general.<sup>88</sup> The dominant thrust of the most produced, most shared and most engaged with content posted by mainstream media on social media was, in fact, supportive of the coup's entrenchment by overtly painting the President and Mahinda Rajapaksa in a positive light, framing Ranil

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<sup>88</sup> See Media Ownership Monitor, <https://sri-lanka.mom-rsf.org/>

Wickremesinghe and the UNP in a negative light, attacking civil society or by just not framing critical opinions, including citizen-led movements and rallies against the President's actions. Additionally, content produced by Capital Maharaja included blatant misinformation and misrepresentation, with complete impunity,<sup>89</sup> even though pushback on social media was quickly generated, widespread and sustained.

### **Discussion around data and dynamics**

Sri Lanka's tryst with its democratic potential is inextricably entwined with how social media is leveraged to inform and influence public perceptions. How social media is integral to the promotion of violence and hate is studied, reported on and known. How the same content, networks and dynamics informed democratic frames, progressive, peaceful activism, civil debate and peaceful advocacy offer a terrain rich in data and ripe for rigorous study. Beyond academic interest, extant evidence demonstrates the value of tuning into these dynamics for policymaking and public communications around key political developments including constitutional reform, elections and

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<sup>89</sup> <https://www.facebook.com/1577135869/posts/10215484447415805/> and <https://www.colombotelegraph.com/index.php/sumanthiran-debunks-maharajas-false-report-says-channel-deliberately-and-mischievously-misleading-public/>

referenda – all three of which Sri Lanka will face shortly. Four key points from the Toda Institute and Alliance for Peacebuilding social media policy brief on Sri Lanka bear mentioning:<sup>90</sup>

1. **Social media consumption and perceptions.** The Centre for Policy Alternatives (CPA) in 2016 researched perceptions around and consumption of media in the Western Province of Sri Lanka. This first of its kind survey provided key insights into the ways through which the 18-34 demographic in Sri Lanka's most wired Province connect to and consume content online. When breaking down the findings by age category, Facebook was the main source of news for the 18 - 24-year-old respondents. Upon receiving an interesting news article via email, 55.9% of respondents were likely to share it with others. 23.6% said that they would share it by forwarding it via email, 18.4% reported that would share it by posting the news article on social media site/s. 13.9% said that they would do both. Over 2015 alone, around 50% of the respondents of the survey said they had decided to learn more about a political or social

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<sup>90</sup> Ibid

issue because of something they read online or something they learnt through mainstream media.<sup>91</sup>

This is congruent with research that suggests ‘social media platforms such as Facebook and YouTube are not used purely for entertainment or interpersonal purposes, but for political discussion as well – and that users may benefit directly or indirectly from such participation<sup>92</sup> though the same authors and others<sup>93</sup> warn that exchanging thoughts over politics on social networking services may be superficial, not substantive in nature, which calls into question their role and relevance in animating the interlocutors to action beyond virtual interactions. The author’s own preliminary work looking at audience dynamics and dispersion patterns on social media indicate that the users

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<sup>91</sup> Centre for Policy Alternatives. (2016). *Consumption and Perceptions of Mainstream and Social Media in the Western Province*. January 26. (Accessed on October 20, 2018 at <http://www.cpalanka.org/full-report-consumption-and-perceptions-of-mainstream-and-social-media-in-the-western-province/> )

<sup>92</sup> Halpern, D., & Gibbs, J. (2012). Social media as a catalyst for online deliberation? Exploring the affordances of Facebook and YouTube for political expression. *Computers in Human Behavior*, 29(3), 1159–1168. <https://doi.org/10.1016/j.chb.2012.10.008>

<sup>93</sup> Hodgkinson, T. (2008). With friends like these ... Retrieved April 27, 2018, from <https://www.theguardian.com/technology/2008/jan/14/facebook>

on Twitter are not the same as those who use Facebook. Further, those who engage with content in Sinhala and Tamil on Facebook are also markedly different to those who access content in English. Instagram's audience, which is growing exponentially, is eating into what has traditionally been Facebook's market share, while comments and content on YouTube, freely accessible, go to a wider audience than just those with accounts on social media.

Twitter is in comparison to Facebook an elite domain, featuring content mostly in English, with heightened production during a crisis. Content produced in Sinhala on Twitter does not have the reach or influence as content on Facebook.

2. **Social media blends news, gossip and entertainment.**

Those on social media do not always (or can) discern and critically differentiate between gossip sites and more credible, mainstream media sites. Gossip *is* news.

3. **Sinhala and social media.** The production of and engagement with the social media ecosystem of Sinhala news, on Twitter and Facebook, eclipses the comparable ecosystem in English. What this means is that Sinhala language content constructs frames that are distinct from English (and Tamil), mirroring on social

media a deeply divided discursive landscape that for decades mainstream media has promoted. Preliminary research into the spheres of debate and content production on Instagram over 2018 alone reveals similar patterns. There are also similar trends observable on YouTube and its comments. Of concern to both researchers and policymakers is the migration of this content and commentary to instant messaging, making it impossible to ascertain the role, relevance and reach of content.

4. **Speed, scale and scope.** The root causes of ethno-political violence, discrimination, systemic racism, and the essential nature or architecture of the state that is discriminatory and partial to majoritarian rule, have found new vectors for self-promotion, expansion and divisive rhetoric through social media. This content seeding violence and hate is produced, promoted and engaged with unprecedented speed, scale and scope.

Anchored to these four central points are some other overarching considerations around the role, reach and relevance of social media writ large in Sri Lanka's democratic fabric, within and beyond crisis points.

1. **Volume and velocity:** Quantitatively, the 52 days of the constitutional coup saw the volume and velocity of content production on Facebook and Twitter increase significantly. Qualitatively, this content embraced both the normalisation of the coup and the pushback to it. Substantively, the content was pegged to personalities and published in anticipation of or immediately after and in response to events. There was much less content robustly looking at constitutional norms and nuance, even though on Twitter, several accounts of lawyers and legal scholars who provided critical frames were highly visible in the network analysis. This was not the case on Facebook, where the sheer volume of content produced and projected daily was overwhelming, and subsumed any one or single thrust, argument, account or idea.



looking<sup>94</sup> at trending dynamics on Twitter and<sup>95</sup> looking at how difficult it is, given the ephemeral and episodic nature of content on social media to study it, capture two important dimensions of what is a significant challenge in the study of Facebook or Twitter, especially as part of, responding or contributing to complex political emergencies (CPEs) or sudden onset political crises. Sri Lanka's peaks in social media production pegged to the communal violence in February and March, the political mobilisation by Namal Rajapaksa in September around the Jana Balaya campaign and at the time of the constitutional coup offer temporal moments that are fundamentally different to study social media's role, reach and relevance. Projecting from this, the only certainly around any similar or electoral process in the future will be heightened content production over Facebook and Twitter. Determining how content over social media impacts physical, political, kinetic processes, and reciprocally, how face-to-face, communal and partisan interactions shape social media

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<sup>94</sup> Asur, S., Huberman, B. A., Szabo, G., & Wang, C. (2011). Trends in Social Media: Persistence and Decay. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.1755748>

<sup>95</sup> Munger, K. (2018). Temporal Validity in Online Social Science When is Social Science Possible ?, 1-29.

is a symbiotic ecosystem in constant flux, that requires constant vigilance and study.

2. **Organic content generation and frames of authenticity:**

In the data collected by the author around the time of the coup, a low-quality video of an awards ceremony, where the recipients snubbed two leading SLPP politicians, an interview with the President, the video of which was inadvertently published on social media and the recording of a call where a UNP MP was offered a very large sum of money to cross-over were three key moments of virality that transcended in-group ties. The video from the 40th National Youth Awards ceremony,<sup>96</sup> where two award winners refused to even acknowledge the presence of two SLPP politicians on stage, even made it to mainstream print media, and spread virally over Twitter as well. On just one Facebook page, the video generated over 187,000 views, around 9,000 shares, over 3,800 reactions and over 300 comments in just one day.<sup>97</sup> Further, this one video at the time by far exceeded the combined interactions of

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<sup>96</sup> <http://www.dailymirror.lk/article/Award-winners-say-no-to-ministers-159127.html>

<sup>97</sup> <https://twitter.com/sanjanah/status/1068312023547572224>

nearly 60 official SLPP Twitter accounts.<sup>98</sup> The video featuring President Sirisena openly admitting that former President Mahinda Rajapaksa tried to bribe MPs with very large sums of money<sup>99</sup> spread very quickly across both Facebook and Twitter. Copies were also posted on YouTube. Each post or instance the video was shared generated very high engagement and views. The recording of a call by UNP MP Range Bandara, where he was offered US\$ 2.8 million to cross over, was first posted on the Facebook page and official Twitter account<sup>100</sup> of fellow UNP MP Harsha de Silva. Just the first post on Facebook<sup>101</sup> followed up with another one<sup>102</sup> around a press conference featuring MP Range Bandara generated tens of thousands of views and hundreds of shares.

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<sup>98</sup> <https://twitter.com/sanjanah/status/1068312035044126720>

<sup>99</sup> <http://www.ft.lk/news/Sirisena-admits-Rajapaksa-bribing-MPs-to-show-majority/56-668531>

<sup>100</sup>

<https://twitter.com/HarshadeSilvaMP/status/1058231329341366273>

<sup>101</sup>

<https://www.facebook.com/harshadesilvaunp/videos/331760880711238/>

<sup>102</sup>

<https://www.facebook.com/harshadesilvaunp/videos/vb.322161727913812/277923552850900/?type=2&theater>

The optics and politics of authenticity, including around the production of what's projected as authentic is increasingly conducted over social media<sup>103</sup>. As Dencik & Leistert<sup>104</sup>, "...[a] trend towards creating impressions of authenticity has become a central part of contemporary culture and social and political processes are embedded in this quest... The previously binary link between commercial and inauthentic and the non-commercial and authentic is therefore too simple for contemporary society. Rather, authenticity is itself now a brand and 'authentic' space have become branded. This also includes spaces of politics and political activism". What was very evident during the time of the constitutional coup was that instead of paid boosts (i.e. advertising on Facebook or Twitter aimed to increase the engagement with content), content that was perceived to be authentic was shared in a manner that overtook and overwhelmed more partisan narratives and propaganda that sought to normalise the coup. Further, official responses to all

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<sup>103</sup> Marwick, A. E., & Boyd, D. (2011). I tweet honestly, I tweet passionately: Twitter users, context collapse, and the imagined audience. *New Media and Society*, 13(1), 114-133. <https://doi.org/10.1177/1461444810365313>; Richardson, G. W. (2017). *Social media and politics : a new way to participate in the political process*. Santa Barbara, California : Praeger, An imprint of ABC-CLIO, LLC.

<sup>104</sup> Dencik, L., & Leistert, O. (2015). *Critical perspectives on social media and protest : between control and emancipation*. Rowman & Littlefield International,.

three videos were released by those framed, present or mentioned, but never came even close to generating the same virality as the original content over social media. This has an important bearing for how the production and perception of social media content, independently or acting in concert, serves to shape public opinion during political crises that rent asunder polity and society along partisan, communal and other fault lines.

3. **Contextual and temporal:** Facebook was flagged as an accelerant to the communal violence that gripped Sri Lanka in early 2018.<sup>105</sup> By the end of the same year, social media was hailed by some as what prevented a complete roll-back of democratic norms and constitutional governance. Social media writ large went from being demonised to idealised. The two narratives are at odds with each other. This chapter offers insights into how during a political crisis, social media helped as well as harmed democratic resistance. The difficulty of projecting how social media or even specific platforms like Facebook and Twitter will oppose or promote ideas in electoral campaigns, another sudden onset political

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<sup>105</sup> How Everyday Social Media Users Become Real-World Extremists, <https://www.nytimes.com/2018/04/25/world/asia/facebook-extremism.html>

crisis or during a referendum is pegged to challenges around dynamics that may only ever be present during a certain event or process. At its simplest, the rapid decline in engagement around the UNP and attendant accounts after mid-December indicates an opportunistic engagement that does not translate into partisan affiliation or support over the longer term.

4. **The personal is the populist:** Or in other words, the political is populism, generated through personal charisma and frames. The SLPP and UNP show network dynamics on social media, when studied at scale (i.e. across a long period time and with millions of data points), a lot of intra-party contestation over political messaging, policies, succession, participation, endorsement, leadership and political campaigning. The data capture how certain politicians use charisma captured on social media to sustain engagement, even if it is around a selfie or family photo. A qualitative assessment of the commentary generated because of this content clearly highlights that both contemporary problems as well as envisioning a better future for Sri Lanka is seen through very personal frames. Democratic institutions and policies don't factor or are

seen as in the service of and not independent from partisan, parochial interests or control. Across the board, the politician as the symbol of hope or primary provider of solutions and relief trumps an appreciation of the importance, nature and role of institutions, constitutional rule and democratic norms. Millions passionately agree or violently disagree with specific individuals with political authority and what they do or say. The cult of the individual is not new to Sri Lanka and predates the advent of social media. However, social media directly aids and abets the generation and promotion of populism<sup>106</sup> through algorithmic and other means. What's clear from the study of the Facebook and Twitter from during the constitutional coup is that millions will get their first and perhaps most trusted

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<sup>106</sup> Engesser, S., Fawzi, N., & Larsson, A. O. (2017). Populist online communication: introduction to the special issue. *Information, Communication & Society*, 20(9), 1279–1292. <https://doi.org/10.1080/1369118X.2017.1328525> ; Ernst, N., Engesser, S., Büchel, F., Blassnig, S., & Esser, F. (2017). Extreme parties and populism: an analysis of Facebook and Twitter across six countries. *Information Communication and Society*. <https://doi.org/10.1080/1369118X.2017.1329333> ; Groshek, J., & Koc-Michalska, K. (2017). Helping populism win? Social media use, filter bubbles, and support for populist presidential candidates in the 2016 US election campaign. *Information Communication and Society*, 20(9), 1389–1407. <https://doi.org/10.1080/1369118X.2017.1329334>

framing of contemporary events through very personal frames, entirely independent of any fidelity towards unbiased capture. The growing use of social media enables populism to seed and spread at scale, which will make it increasingly difficult for information policy debates to occur and capture the public imagination.

5. **What is politics:** If gossip, meme and Sinhala-Buddhist pages on Facebook pegged to religion are the primary purveyors of political communications in Sri Lanka and by far, government and civil society need to re-evaluate the effectiveness and efficiency of existing communications strategies and infrastructure. Seeding and cementing political or deeply partisan frames are done by pop stars, actors, singers and other popular figures. Before the coup, leading singer's partial to the Rajapaksa regime were openly supportive of extra-judicial killing and abductions.<sup>107</sup> During the coup, popular cricketers and their ignorance<sup>108</sup> was weaponised by the Rajapaksas, to use a path of least resistance to capture public appeal. Though disinformation dynamics on social media are beyond the scope of this

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<sup>107</sup> <https://twitter.com/thvagir/status/1068762094487695361?lang=en>

<sup>108</sup> <https://twitter.com/GotabayaR/status/1060497357370941440>



chapter, gossip and memes, by the sheer volume, overwhelm engagement with, visibility and discoverability of critical content. Low quality (e.g. spam or clickbait) generated at high volume over a specific period of time (could be around an event in the short-term, or around projected gains in an election and over the long-term) is an already well-established strategic communications ploy to erase, distract from, deny or decry the validity of competing frames<sup>109</sup>. The study of politics and political communication in Sri Lanka today requires the careful and critical study of content coming from thousands of Twitter accounts or Facebook pages with no overt political or partisan affiliation. These pages and accounts operate entirely independently or secretly, in collaboration, coordination and concert with the official pages or accounts of politicians and political parties. The popular imagination and public perceptions, because of the leading vectors and frames of political communication over social media, are shaped entertainment, religion, farce, humour, satire and gossip. This is happening at a scale and scope that is new and constitute complex new media ecologies

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<sup>109</sup> Marwick, A., & Lewis, R. (2017). *Media Manipulation and Disinformation Online*. Data & Society Research Institute, 1-104.

through which the substance and nature of politics is discussed.

6. **Partisan fluidity:** Opportunistic affiliation to party or politician is most evident in the sudden and unprecedented organic rise of the UNP's popularity during the constitutional coup on Twitter and Facebook. Many supportive of the constitutional restoration of Ranil Wickremesinghe as Prime Minister also openly expressed their disdain of the UNP and his leadership. Citizen-led rallies and protests in Colombo, coverage around which was shared over social media, featured posters and banners both supportive of constitutional rule and opposed to the Executive Presidency, and the culture of politics.<sup>110</sup> Over social media, groups active around and agitating for the normalisation of the coup and against it comprised of individuals who were not card-carrying SLPP or UNP members.<sup>111</sup> The highest engagement around the dynamics of the coup – whether for, against or

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<sup>110</sup> An excellent compilation by former colleague Iromi Perera of these posters is at

<https://www.flickr.com/photos/couplklibertyprotestposters/>

<sup>111</sup> <https://twitter.com/sanjanah/status/1077001923604037632>

indifferent – occurred outside official spaces, pages, accounts and places. C. Bennett<sup>112</sup> calls this partisan de-alignment, where “fewer people have fixed attachments to political parties; fewer are now members of political parties; and, fewer regard them as the main vehicle of political participation and engagement.” Dalton<sup>113</sup> calls this “parties without partisans” and notes that,

...political parties have needed to find newer methods to engage with the electorate to find donors, volunteers, members and supporters. They cannot rely on huge proportions of the voting public based on conventional class or religious affiliations. Voter surveillance techniques have arisen, therefore, partly to address this fundamental shift in partisan allegiances. Voters have become more distrustful of politics, but also more demanding. In rational choice terms, a greater proportion

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<sup>112</sup> Bennett, C. (2013). The politics of privacy and the privacy of politics: Parties, elections and voter surveillance in western democracies. *First Monday*, 18(8).

<https://doi.org/10.5210%2Ffm.v18i8.4789>

<sup>113</sup> Dalton, R. J. (2004). *Democratic challenges, democratic choices the erosion of political support in advanced industrial democracies*. Oxford : Oxford : Oxford University Press.

can be regarded as clients of the political system, whose allegiances float depending on the personalities and programs on offer. Unlike earlier generations, where family partisan attachments typically predicted voting behaviour, for the last thirty years higher proportions of voters in Western democracies can be susceptible to the correct marketing pitch. And that method of persuasion, it is contended, is likely to be more effective when the party knows more about the individual preferences and attitudes of the voting public.

In the context compression and conflation brought about by social media between geographically dispersed markets and electoral dynamics<sup>114</sup>, what is happening in the West is clearly in late-stage embryonic development in Sri Lanka, with the first indications of social media playing a role in the temporal, opportunistic, outcome-oriented exercise of franchise evident in the 2015

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<sup>114</sup> Science, P. (2009). Reconceptualising “Time” and “Space” in the Era of Electronic Media and Communications. **PLATFORM: Journal of Media and Communication**, 1, 11–32. Retrieved from [https://lra.le.ac.uk/bitstream/2381/31479/4/PlatformVol1\\_Tsatsou.pdf](https://lra.le.ac.uk/bitstream/2381/31479/4/PlatformVol1_Tsatsou.pdf)

presidential election<sup>115</sup> amongst a younger demographic including first time voters. This adds a new definition or dimension to the phrase ‘preferential vote’, because every vote cast in the future, at any election and for any candidate, amongst a younger demographic, could be increasingly determined in the same manner as they engage over social media. This is a profound revision of existing political structures, mirrored on social media today, to political structures and campaigning that reflects social media engagements. Though outside the scope of this chapter, and not evident during the constitutional coup, the Jana Balaya campaign of Namal Rajapaksa in September 2018 offers a counterpoint to the social and political mobilisation potential of social media.<sup>116</sup> In that instance, very high social media engagement leading up to the rally, led by one of the most popular politicians on social media, did not however result in anything close to the expected physical participation. This raises the question as to whether

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<sup>115</sup> *Was #PresPollSL 2015 Sri Lanka's first Cyber Election?*, <https://groundviews.org/2015/01/13/was-prespollsl-2015-sri-lankas-first-cyber-election/>

<sup>116</sup> *Doing the math: The Jana Balaya rally*, <https://www.facebook.com/notes/groundviews/doing-the-math-the-jana-balaya-rally/10160761731445641/>

popularity or high engagement on social media translates, simplistically, to physical participation in overtly partisan activities.<sup>117</sup> More precise answers will have to wait for Sri Lanka's next parliamentary or presidential elections, where the centripetal and centrifugal discursive dynamics of *Jana Balaya*, Digana and the constitutional coup will shape social media discourse, in turn impacting electoral results.

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<sup>117</sup> As noted in an article published on the civic media platform *Groundviews*, <https://sanjanah.wordpress.com/2018/09/09/jana-balaya>

The failure of *Jana Balaya* to live up to its hype is even more strange given the SLPP's electoral fortunes in February. One reading is that Namal Rajapaksa's digital footprint may only be that. The significant inability to get his fans and followers to come out and join a protest could be entirely independent of his enduring ability to influence or inform their political frames, in the lead up to an election or referendum. Another reading could be that the politics of rallies and protests have given way to a politics of digital dissent and witnessing, where the preferred mode of participation or engagement is primarily through smartphone or browser. This is concerning when juxtaposed with what Mahinda Deshapriya, the head of the Elections Commission, has already flagged as very low voter registration. Namal Rajapaksa must be commended for trying his best to get fans and followers out on to the streets. His inability to do so is something we should seriously reflect on more, beyond partisan frames.

## Conclusion

This chapter looked at the role, reach and relevance of Facebook and Twitter during a complex and sudden-onset political crisis in Sri Lanka. The constitutional coup provided a temporal moment, lasting around fifty days, within which time social media played an essential role in the political dynamics, both promoting and pushing back against the violation of the constitution. The volume and velocity of content production, around accounts on Facebook and Twitter that were monitored for the research, exceeded by far any other time throughout a year that also saw significant communal violence, a local government election and political mobilisation by a leading social media savvy politician. Out of all these events and processes, the constitutional coup generated the most interesting dynamics around the use of social media to promote, product and project narratives that highlighted, erased, marginalised, tried to drown out, amplified, focussed, framed, obliquely referenced, derided, championed or were entirely indifferent to rapidly changing partisan political dynamics. With all state media under the control of the government, and most private media partial to the Rajapaksas, social media featured content produced by civil society and citizens, as much as it functioned as a vector for the promotion of content produced by

mainstream media, politicians and political parties. The quantitative study of content allowed for certain key trends and patterns to be established, within and between political parties, as well as conversational dynamics on both Facebook and Twitter featuring citizen-generated content. The qualitative assessment of what was pushed out and promoted by accounts on both platforms captured intentionality, and how the framing of politics has moved from traditional loci anchored to political parties and politicians, to accounts that are not overtly partisan. The complex nature of Facebook and Twitter was highlighted, with attendant difficulties in the capture of content and even if carefully studied, the challenges of predicting behaviour, bias, impact and influence. Already inextricably entwined with Sri Lanka's socio-political fabric, Facebook and Twitter, as well as social media, will play a defining role in the country's electoral dynamics. The chapter recommends the close, sustained and robust study of these dynamics, which may bring closer or render ever distant, Sri Lanka's democratic potential.



## 6

### Reform and Crisis: Reflections on the Culture of Constitutional Democracy in Sri Lanka<sup>118</sup>

*Suri Ratnapala*

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<sup>118</sup> An earlier version of this essay, entitled ‘Sustaining Constitutional Government - Lessons from Sri Lanka’s Needless Political Crisis’, appears in the *Law and Society Trust Review* (2019).

Sri Lanka's constitutional crisis in late 2018 occurred in the backdrop of a reform process aimed at enacting a new constitution. The process had in turn been mandated by the people in the historic presidential and parliamentary elections of 2015. Both the change of government in 2015 as well as the mandate for a new constitution were unambiguously the result of the public's rejection of authoritarianism and corruption, and the expressed desire for a better culture of democratic politics and constitutional government.

Every country claims to have a constitution but not many have constitutional government. It takes more than a well-intentioned and skilfully crafted statement to achieve and maintain constitutional government. The constitution needs to be grounded in a culture of reverence for the rule of law and the forms and traditions of liberal democracy. Where such a culture exists, constitutional government is possible even without a supreme statute as the United Kingdom and New Zealand have shown the world.<sup>119</sup> If Sri Lanka's constitutional crisis

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<sup>119</sup> Exceptions to the universality of countries with a single written constitution also include Israel. However, in 1995, the Israeli Supreme Court under President Aharon Barak ruled in an historic judgment that the Basic Laws have superior constitutional force with the consequence that other laws which offend them may be judicially invalidated. *United Mizrahi Bank v. Migdal Cooperative Village* (CA 6821/93, 1908/94, 3363/94), p 352.

precipitated by the President on October 26, 2018 has a positive outcome, it is the demonstration that a constitution will not be saved by its text without the social forces that sustain it. This is the principal theme of this essay.

A culture of legality and moral propriety critically determines all the conditions needed for a system of liberal democracy, such as judicial independence, public service integrity, media objectivity, regard for facts and evidence, informed debate, toleration of dissent, respect for basic rights and freedoms of citizens (majorities and minorities alike) and civility in politics. This must be obvious to all thinking persons whether of the left, the right or the centre who desire this form of government. Unfortunately, in the heat and passion of partisan politics, people forget that the aim of constitutional government is to make civilised, prosperous and harmonious living possible among persons who do not agree on everything.

## **Events**

Sri Lanka's President, elected on the promise of abolishing the office of executive president now wishes to preserve it, critics say, to remain in that office. He attempted to replace the Prime Minister Mr Wickremesinghe whose government enjoys the confidence of Parliament, with Mr Rajapaksa who did not. When faced with parliamentary resistance, he sought to dissolve

Parliament against its will and in violation of the Nineteenth Amendment of which he is co-author. The Supreme Court on 13 December 2018 annulled the proclamation and affirmed the continuance of the current Parliament. The Court of Appeal restrained the usurping ministry from functioning until *Quo Warranto* proceedings against them were concluded. On appeal, the Supreme Court refused to vacate that injunction. The state was effectively without a government, the lawful one evicted from its offices and the usurpers unable to function lawfully. On 15 December 2018, Mr Rajapaksa ‘resigned’ as PM, an office that he did not hold legally. The President ‘appointed’ Mr Wickremesinghe as PM although, constitutionally, he never vacated the office. This, despite the President’s earlier declaration, in defiance of the Constitution, that he will never reappoint Mr Wickremesinghe as PM even if that was Parliament’s wish.<sup>120</sup>

That this political tragicomedy ended with constitutional order restored meant that the constitutional reforms of the Nineteenth Amendment enacted in 2015 passed its first acid test. The saga will stand as a vindication of the people’s faith in constitutional

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<sup>120</sup> President Maithripala Sirisena 2018, Speech to Foreign Correspondents Association, 25 November 2018, *Daily News* 27 November 2018, <http://dailynews.lk/2018/11/27/local/169540/will-never-reappoint-ranil-pm-president> accessed 16.12.2018.

government and a demonstration of the living constitution. It could serve as a worthy example to other liberal democracies of the world, both new and old.

The judges of the Supreme Court and the Court of Appeal are justly applauded for their courage and integrity in upholding the Constitution against the President's actions. It is a little sad when we must commend a court for courage and integrity. In a stable liberal democracy, these judicial attributes are taken for granted. They gain attention only when courts are under duress or inducement which, unfortunately, has been the case in Sri Lanka's recent history.

It was not long ago that the previous Parliament of Sri Lanka impeached the serving Chief Justice Shirani Bandaranayake by a seriously flawed process in disregard of judgments of the Supreme Court and the Court of Appeal. The International Bar Association's Human Rights Institute reported:

Sri Lanka is facing a constitutional crisis. Its 43rd Chief Justice, a woman who had been on the Supreme Court for 14 years, has been removed by the country's parliament and president, in contravention of an unequivocal ruling by Sri Lanka's Court of Appeal. President Mahinda Rajapaksa has chosen as Chief Justice Bandaranayake's replacement a lawyer who has

spent several years serving the Government of Sri Lanka, most recently as Attorney-General and legal advisor to the cabinet. Meanwhile, people opposed to her removal have suffered harassment, intimidation and threats of death from persons unknown. This follows years of executive encroachment into the judicial sphere and a series of assaults, abductions and murders committed against critics of the government that have been rarely investigated and never prosecuted.<sup>121</sup>

### **Constitution and Constitutional Government**

There are different understandings of the idea of a constitution, just as there are of the notions of constitutional government, the rule of law and democracy. Some regard a constitution as any supreme law that determines the repository of absolute and unchallengeable political power. It is in this sense that the People's Republic of China, or the Democratic People's Republic of Korea (North Korea) or the Republic of Cuba or the Kingdom of Saudi Arabia can be said to have a constitution.

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<sup>121</sup> International Bar Association (2014) *A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka* (IBA): 5.

There is another, philosophical, meaning of constitution that the Greeks called *politeia* known also as nomocracy. A constitution in this sense is one that limits the powers of rulers by subordinating them to enduring laws which they cannot unilaterally abrogate. Such a constitution is inextricably associated with the ideal of the rule of law which seeks to ensure that people are not at the mercy of the momentary will of a ruler but enjoy a degree of stable freedom with respect to life, liberty and property. Aristotle wrote in the *Politics* that ‘The law ought to be Supreme over all, and the magistracies and the government should judge only of particulars so that if democracy be a real form of government the sort of Constitution in which all things are regulated by decree is clearly not a democracy in the true sense of the word, for decrees relate only to particulars’.<sup>122</sup> Aristotle’s ideal of a government of laws is hard to attain in a complex technologically advanced welfare state. Nevertheless, it is the standard to which liberal democratic states aspire through the institutions of representative democracy, checks and balances, and the guarantees of basic rights and freedoms. The core principles of constitutional government include the following.

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<sup>122</sup> Aristotle (1916 [330 BC]) *The Politics* (Tr. B Jowett) (Clarendon Press).

1. A constitutional arrangement that cannot be changed at will by transient holders of legislative power without public consent.
2. Supremacy of just laws over rulers and citizens alike.
3. Law's object is to advance the public interest (*res publica*) and suppress the private designs of rulers.
4. Representative democracy is the best available, though imperfect, means of aligning the law with the public interest.
5. Representative democracy must accommodate the principle of subsidiarity according to which public choice decisions should, as far as practicable, be devolved on those who are most affected by them.
6. Courts have authority to ensure the legality of legislative and executive actions.
7. Basic rights and freedoms should be protected by means including independent, impartial and competent courts.

The first requirement of constitutional government, then, is a constitution that is designed to implement these principles. Sri Lanka's Constitution, especially after the Nineteenth Amendment subscribes to these principles, though imperfectly. However, there is a second condition which is much harder to attain. This is the existence of a matrix of supporting institutions grounded in a nation's culture. The absence or weakness of such



a culture explains the failure of constitutionalism in many emerging democracies. The current constitutional crisis in Sri Lanka throws this dimension into sharp relief.

### **The Living Constitution**

A constitution is only as good as its implementation. Take a look at the Constitution of the Republic of Zimbabwe, or of Venezuela. Zimbabwe's basic law guarantees judicial independence, free multi-party elections, equality before the law and the whole panoply of universal human rights and remedies. Venezuela's constitutional bill of rights is longer than the entire Constitution of Australia. However, in the experience of the people of these countries the constitutions are empty promises. Zimbabwe was ruled as a dictatorship by Robert Mugabe who accumulated immense wealth at the people's expense. The rulers of Venezuela, a country of vast natural resources have impoverished its people and driven millions out of the country as political and economic refugees. Similar tales of increasing constitutional dysfunction and public distress are heard from other emerging economies. Sri Lanka, despite periods of dangerous authoritarianism, has so far avoided an irreversible descent to despotism. The country has survived many threats to its fundamentally liberal constitutional order including, it seems, the latest crisis.

A constitution faces its gravest threats from those upon whom it confers power. History is a constant reminder of Lord Acton's aphorism about the corrupting nature of power. Checks and balances depend on the behaviour of constitutional functionaries. A corrupted or intimidated court will not stand in the way of a powerful executive. The military, the police and the public services can be made to serve political aims of the government unless they have a strong culture of independence and integrity. Elections can be defrauded. The media, even those that are in private hands, can be censored or silenced. We must remember that not every judge is a modern superhero or a Dworkinian Hercules.<sup>123</sup> What gives the non-heroic human judge the sense of security and confidence to resist the threats and overtures of their political masters? Surely not the pious words of a constitution. Besides the institutional separation of powers, it must be the strength they draw from the culture and attitudes of the people. Courts are weakened when the community is indifferent to the fate of the constitution and the rule of law or, are cowed to the point of silence.

Sociological jurists were perhaps the first to recognise that the structure of society is determined by more constraints than the

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<sup>123</sup> Hercules, the ideal judge, is first introduced by legal philosopher Ronald Dworkin in his essay 'Hard Cases' (1975) *Harvard Law Review* 88: 1057.

lawyer's law. Georges Gurvitch explained that social reality consists of different layers. There is an outer layer that we can grasp by our senses such as the demography, geography and technology of the society. Beneath this lie the organisational layer (governments, laws, courts, etc.), the layer of unorganised social patterns (traditions, fashions etc.) and several more. Gurvitch identified eight such layers, with the lowermost representing the spiritual values of people.<sup>124</sup> Institutional economics takes a similar approach to understanding the structure of society. The concept of an 'institution' has been likened to the constraints that make up the rules of the game, as opposed to the players who engage in the game who are individuals and organisations.<sup>125</sup> The term institution is elastic enough to include constraints of all kinds that influence human behaviour, including legal and moral rules, etiquette, cultural constraints, superstition, other more-personal and less understood values that guide action such as parental and filial affection and compassion toward fellow beings.<sup>126</sup>

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<sup>124</sup> George Gurvitch (1947) *Sociology of Law* (Kegan Paul, Trench, Trubner & Co): 25-37.

<sup>125</sup> Douglass North (1990) *Institutions, Institutional Change and Economic Performance* (Cambridge University Press): 3.

<sup>126</sup> *Ibid*: 4-5.

It is important to remember that laws like all other norms are incorporeal things. They manifest in the form of human behaviour. A norm also can exist only as a part of an extended matrix of norms. The social order of a free people is maintained not by an omnipotent and ubiquitous police force but by the fact that most people, most of the time, voluntarily observe the law and moral norms of society. The ancient legal norm *pacta sunt servanda* (contracts should be observed) is supported by many other norms, such as those concerning respect for person and property, truthfulness, the impartiality of third-party arbiters (in case of breach), and the integrity of law enforcement officials. The cardinal constitutional norm of independence and impartiality of the judiciary, so essential to the rule of law, depends critically not only on judicial ethics but also on the acceptance of judicial decisions by officials and citizens adversely effected by them. Such acceptance is the outcome of numerous other norms that create the overall culture of ‘playing by the rules.’

### **Threats to Constitutional Government from Above and Below**

Constitutions can be destroyed from above and below. We observe the rising phenomenon of populist revolts against liberal values and constitutional government. ‘Populism’ is an undefined term that has been appropriated by parties of the left

and the right who oppose what they call ‘the establishment’, another imprecise label which usually means the status quo with respect to the norms and practices of governance. Populism can be good or bad for liberal democracy. Likewise, so can the ‘establishment’. An ‘establishment’ which is unresponsive and uncaring and serves special interests at the expense of the general interest of society is bad. Populism that seeks to reform such an establishment is good.

The dangerous sort of populism is founded on nativism that identifies a race or religion with the nation, the nation with the state and the state with a charismatic saviour. Populist leaders usually arise in times of discontent with promises of restoring the nation to greatness. No society can wholly eliminate discontent and those that tried it, like the communist states, fared the worst. Dissatisfaction is part of being human and is a driver of change and growth. But, as Steven Pinker warns: ‘When we fail to acknowledge our hard-won progress, we may come to believe that every problem is an outrage that calls for blaming evildoers, wrecking institutions, and empowering a leader who will restore the country to its rightful greatness’.<sup>127</sup> Among these villains are invariably foreigners and minorities, international traders,

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<sup>127</sup> Steven Pinker (2018) *Enlightenment Now: The Case for Reason, Science, Humanism and Progress* (Viking): 452.

mainstream politicians, bureaucrats and experts who Donald Trump calls the swamp that needs to be drained. Trump perhaps did not know that ‘Drenare la palude’ or ‘drain the swamp’ was an early slogan of fascist dictator Benito Mussolini in his surge to power. Surely his advisor Steve Bannon knew.

Sri Lanka has tragic experience of this kind of populism in the form of Sinhala supremacism that first brought to power Mr Solomon Dias Bandaranaike and remains a major factor in every general election including the next. The Tamil community has suffered even more from the violent separatist movement led by the charismatic and dictatorial Velupillai Prabhakaran that almost eliminated a generation of liberal minded Tamil leaders. I like to think, perhaps wishfully, that the electorate has matured beyond nativism of this kind. The country needs strong leaders but not of the kind who draw strength by dismantling the Constitution and displacing the rule of law.

Historically, however, the greater threat to constitutional government has been from the top – by military commanders or elected leaders who gain power by feeding on discontent and by extravagant promises of national glory. Hitler and Mussolini rose to power by elections. Putin of Russia, Mugabe of Zimbabwe, Chavez of Venezuela, Ortega of Nicaragua, Erdogan of Turkey, and the theocracy of Iran used or are using democratic pathways

to consolidate one party rule. The democratically elected Prime Minister of Hungary Viktor Orbán thinks that democracy need not be liberal. He believes, wrongly, that a democracy organised on liberal principles is unsustainable.<sup>128</sup> Many fear that Orbán is treading a familiar path to authoritarian rule.

The classic fascist regime as epitomised by the Mussolini and Hitler dictatorships consists of authoritarian government dominated by one party led by a charismatic leader. In the fascist state the party and government are difficult to separate. The nation is identified with race and the state in the form of the Great Leader becomes the ultimate good. Individualism is suppressed for the communal good, knowledge is censored, and civil liberties are extinguished. The fascist state favours mercantilism against free trade, rejects both liberalism and socialism, adopts capitalist means of production under state control and displaces the rule of law with the will of the regime. Few states today display all these features but unfortunately, many are trending towards the archetype. The Sri Lankan electorate has thus far resisted this trend by turning out governments that ventured too far down the road to despotism.

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<sup>128</sup> Speech at the XXV Bálványos Free Summer University and Youth Camp on 26 July 2014, *The Budapest Beacon*, <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>

Unfortunately, the superior courts have not always helped the cause of constitutionalism. The International Crisis Group, in its report *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*, came to the following conclusion after its lengthy investigation of the judicial performance in the era of Chief Justice Sarath Silva.

Sri Lanka's judiciary is failing to protect constitutional and human rights. Rather than assuaging conflict, the courts have corroded the rule of law and worsened ethnic tensions. Rather than constraining militarisation and protecting minority rights, a politicised bench under the just-retired chief justice has entrenched favoured allies, punished foes and blocked compromises with the Tamil minority. Its intermittent interventions on important political questions have limited settlement options for the ethnic conflict. Extensive reform of the judicial system – beginning with a change in approach from the newly appointed chief justice – and an overhaul of counterproductive emergency laws are essential if the military defeat of the LTTE is to lead to



a lasting peace that has the support of all ethnic communities.<sup>129</sup>

The more recent Chief Justices Kanagasabapathy Sripavan and Priyasath Dep have shown dignity, humility and competence in their efforts to restore the stature of the Supreme Court.

### **Unrestrained Majoritarian Democracy is an Impossibility**

Unconstrained majoritarian government desired by populist leaders inevitably becomes minority rule. There is a critical difference between majority rule and liberal democracy. Liberal democracy is a form of majority rule in which the powers of the elected government are limited by constitutional checks and balances and the fundamental rights and liberties of citizens. This enables democratic correction of misrule and the prevention of the accumulation of power. This is the reason that Mr Orbán wants democracy without liberalism.

Elected leaders often wish to perpetuate their power. They do so by weakening opposition to their rule through time tested strategies of dismantling the key institutions of democracy and the rule of law. The judiciary, the media and the electoral system are early targets for intimidation and corruption by popularly

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<sup>129</sup> International Crisis Group (2009) *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*, Asia Report N°172, 30 June 2009.

elected governments with authoritarian ambitions – as the world has seen in Russia, Turkey, Venezuela, Nicaragua and is now distressingly witnessing in Poland and Hungary. Sri Lankans are familiar with this kind of conduct by their elected governments.

### **Seeds of the Current Crisis**

In 1978, the United National Party government led by Mr J.R. Jayewardene won the General Election with a majority sufficient to amend or replace the Constitution. Out of the main democratic models, the US system of tripartite separation, the Westminster parliamentary government and the French Gaullist presidential-parliamentary system, the government chose to adopt a corrupted version of the latter. The French President has limited executive powers but has competence to dissolve the National Assembly in the event of fundamental disagreement. There are important safeguards concerning the appointment of judges, ministers and high officials, and crucially, European Union law and the European Convention of Human Rights add a further layer of constitutional oversight. The 1978 Constitution of Sri Lanka granted greater executive powers to the President including untrammelled power to change the ministry, to appoint superior court judges and high officials and to dissolve

Parliament at will after the first year of its term.<sup>130</sup> The enormous patronage at the President's command allows them to corrupt public offices and secure defections in Parliament.

Shorn of its important safeguards and taken out of its cultural context, the Gaullist system can be a dangerous launch pad to the seizure of oppressive power by ambitious strong men as Putin of Russia, Chavez and Maduro of Venezuela and Mugabe of Zimbabwe have shown. Turkey's President Erdogan has changed the Constitution to convert the titular presidency to a powerful executive office. Sri Lanka's own leaders have not been immune to the temptations of the supreme office. President Jayewardene, the principal architect of the 1978 Constitution used his party's extraordinary parliamentary majority to extend the life of the Parliament and to give himself the freedom to choose the timing of his re-election. President Rajapaksa using his super-majority in Parliament and backed by a sympathetic Supreme Court, enacted the Eighteenth Amendment to remove the two-term limit on the presidency and expand his powers of

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<sup>130</sup> For a comparative analysis of the Gaullist and the 1978 Sri Lankan Constitutions, see Suri Ratnapala, 'Failure of Quasi-Gaullist Presidentialism in Sri Lanka' in Asanga Welikala (Ed.) (2015) *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Centre for Policy Alternatives): Ch.18.

appointment to the superior courts and other critical constitutional offices.

After the defeat of Rajapaksa in 2015, the Parliament enacted the Nineteenth Amendment, among other aims, to re-impose the two terms limit, remove the power of the President to dissolve Parliament except in the last six months of its term and to create a Constitutional Council and auxiliary Commissions as independent bodies to guard against the politicisation of the judiciary, the public service, the police, the military and key constitutional offices. Maithripala Sirisena who defected from Rajapaksa's party at the eleventh hour to become the victorious common opposition candidate led the campaign to curtail presidential powers. On the one hundredth day of his term, in a statement to the nation Sirisena said:

In order to build a democratic and civilized society, it is necessary to prevent the emergence of dictatorship and taking control of state power, state assets, the judiciary, parliament and all of this to one's own control that comes from the Executive Presidential system.

This should be immediately changed. I have worked towards this in the past three months. I am not aware of any leader in the world who had obtained an office with all these powers but has been as flexible in trying to get

rid of those powers that had been bestowed on such a leader.<sup>131</sup>

Unfortunately, it appears that Sirisena also succumbed to the seductive embrace of power. He recanted his pledge not to seek a second term and adopted a strategy for re-election in alliance with the opponent he defeated to gain office, precipitating the crisis.

### **Test of the Living Constitution**

When the President's strategy was impeded by the constitutional fetters on his power (that he helped to enact), he and his advisors chose to disregard them, perhaps in the belief that the judges would defer to the executive's interpretation of its own powers as they had in the recent past. However, the social context had changed, and the Nineteenth Amendment proved to be firmly grounded in the new expectations of people who prioritised constitutional propriety over expedience. I do not wish to belittle the role of the judges in resolving this crisis. Their learned and lucid judgments saved the Nineteenth Amendment from the scrapheap and delineated the province of presidential power with clarity and the authority of unanimity.

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<sup>131</sup> Presidential Secretariat: <http://www.president.gov.lk/president-maithripala-sirisenas-statement/> accessed 9 December 2018.

The point I wish to make is about the relevance of the social forces to the cause of constitutional government. In every era there are brave, upright and erudite judges who are unmoved by political pressure. However, a climate hospitable to judicial independence will exist only if undue political pressure is neutralised by counter-pressure from civil society. To survive the inevitable political and private machinations, the constitution as written must derive strength from a supporting institutional fabric rooted in popular attitudes.

There have been times in the recent past when the lawful opposition, the trade unions, the media and civil society had been brutally silenced.<sup>132</sup> It was not surprising that during these periods, the conduct of judges at the highest levels of the hierarchy came under international criticism. As a distant expatriate, I am not the best judge of the pulse of Sri Lankan society. Yet, I observe that since the 2015 elections, there has been a palpable lifting of the pall of intimidation in the country. Superior court judges have been appointed on seniority and the

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<sup>132</sup> Jason D Stone, 'Sri Lanka's Post-war Descent' (2014) *Journal of Democracy* 25(2): 146-157; International Bar Association (2013) *A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka* (IBA); Radhika Coomaraswamy and Charmaine de los Reyes, 'Rule by Emergency: Sri Lanka's Postcolonial Constitutional Experience' (2004) *International Journal of Constitutional Law* 2(2): 272-295.

rulers have kept a respectful distance from the courts' business. Opposition parties, trade unions and media are emboldened. The most strident criticisms of the government, fair and unfair, are aired with impunity on print and online platforms. Spontaneous civil society protests are reported to have occurred peacefully in defence of the rule of law.

It is notable that many intellectuals and groups who led the civil resistance to the President's moves did so not out of love for the United National Party leader or his government, but to defend the Constitution, the rule of law and democracy. They gave leadership and definition to the social force without which the pious words of a constitution are valueless. The judgments of the superior courts should not be regarded as a political win for one side but as a vindication of the Constitution for the benefit of all sides, but above all the people of this nation. Friends of liberal democracy around the world should salute them.

An important battle is won but it must not be thought for a moment that the work is done. The defence of constitutional democracy is an endless project, the eternal burden of those who cherish freedom under just law.

# 7

**The Sri Lankan Culture of Constitutional Law  
And Politics:**

**The Lessons of The Constitutional Reform  
Exercise 2014-19 And The Constitutional  
Crisis Of 2018**

*Asanga Welikala*



It is now clear, even though there is no formal acknowledgement of the fact, that the Sri Lankan constitutional reform moment which began in 2015 has ended. In both its rise and especially its fall, the latest attempt at democratic reform followed the trajectory of past attempts with depressing path dependency. It began as a civic movement against corruption and authoritarianism in 2014, gained political momentum as the broadest coalition of political parties and civil society groups ever arrayed against a serving President at an election, inspired the country to unite around a civic ideal rather than divide along ethnic identities, and achieved a stunning success in peacefully ousting a well-entrenched populist regime in January 2015. In the first flush of victory, the new government succeeded in enacting some reforms of the executive branch, embodied in the Nineteenth Amendment to the Constitution. The impact of this was not inconsiderable. The Nineteenth Amendment was stress-tested in the crisis of late 2018, when the figurehead of the reform movement in 2015, President Maithripala Sirisena, attempted an executive coup against Prime Minister Ranil Wickremesinghe. Such a usurpation of executive authority by a Head of State was unprecedented. The closest precedent is perhaps the effective takeover of the government by Governor General Sir Oliver Goonetilleke during the ethnic riots of 1958,

but the parallels are limited<sup>133</sup>. Even when stretching the constitutional limits of his powers, Sir Oliver in 1958 was responding to a violent crisis that the government of the day proved incapable of taking in hand, whereas President Sirisena in 2018 initiated the attempt at an unconstitutional transfer of power and thereby precipitated the crisis. While the institutional resilience of constitutional democracy emerged well enough against the attempted backsliding, both the reforms process and the crisis revealed a plethora of factors about the culture of constitutional politics that cause concern for the prospects of Sri Lanka's further democratic development.

In the failing to fulfil the full extent of the reform promise of 2015, registered spectacularly by the 2018 crisis, Sri Lanka has returned to the dystopian form and culture of politics that have denuded it from achieving its full political, social, and economic potential since independence. In what follows, I attempt an account of both the constitutional reforms process and the constitutional crisis in the years between 2015 and 2019. This leads me to a central question that constitutional lawyers are often confronted with but are often ill-equipped to address: what is the role of political culture in constitutional law? Further

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<sup>133</sup> A.J. Wilson, 'The Governor General and the State of Emergency, May 1958 - March 1959' (1959) *Ceylon Journal of Historical and Social Studies* 2(2): 160-181

unpacked, how does the culture of politics influence the law of the constitution, and in particular, determine the scope and nature of constitutional reform? This discussion pursues an exploration of the relationship between Sri Lanka's Legal Constitution (the Big 'C' Constitution) and the Political Constitution (the small 'c' constitution) that I have argued elsewhere is critical to understanding both Sri Lankan constitutional practice as well as potential for reform<sup>134</sup>. Part I of the paper discusses the constitutional reforms process set in motion by the regime changing elections of 2015. Part II analyses the 51-day constitutional crisis of October to December 2018. Part III reflects on what the failure of reform and the crisis tell us about culture.

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<sup>134</sup> A. Welikala, 'The Interim Report on Reforming the Sri Lankan Constitution', ConstitutionNet, 30th October 2017a: <http://www.constitutionnet.org/news/interim-report-reforming-sri-lankan-constitution>; C. Bell, 'Constitutional Transitions: The Peculiarities of the British Constitution and the Politics of Comparison' (2014) *Public Law*: 446-471; A. King (2007) *The British Constitution* (Oxford University Press): Chs.1, 3; A. Welikala, 'Sri Lanka' in D. Law, A. Schwartz et al (Eds.) (forthcoming) *The Oxford Handbook of Asian Constitutional Law* (Oxford University Press).

## PART I

### **The Creation of the Constitutional Moment: The Regime Change Strategy**

The Rajapaksa regime was rejected by the electorate in the January 2015 presidential election on the grounds of its corruption and authoritarianism, when it elected Maithripala Sirisena as the new President<sup>135</sup>. The mandate of the winning coalition was unambiguously in favour of constitutional and governance reform, although it was nothing if not ambiguous in regard to both the substantive detail of the proposed reforms as well as the process by which to achieve them. The regime change strategy they used was known as the ‘Single Issue Common Candidate Road Map’, first mooted by the academic and commentator Kumar David, although critical elements of David’s plan which were meant to ensure the accountability of political actors to the roadmap were not followed<sup>136</sup>. This idea

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<sup>135</sup> A. Welikala, ‘The Rajapaksa Regime and the Constitutionalisation of Populist Authoritarianism in Sri Lanka’, South Asia @ LSE Blog, 28th January 2015: <http://blogs.lse.ac.uk/southasia/2015/01/28/the-rajapaksa-regime-and-the-constitutionalisation-of-populist-authoritarianism-in-sri-lanka/>

<sup>136</sup> K. David, ‘UNP’s Knotty Bond with Executive Presidency: Tortuous Progress on SI-CC Pathways’, The Island, 12th July 2014: <https://www.scribd.com/document/233717674/UNP-s-Knotty-Bond-With-Executive-Presidency-Tortuous-Progress-on-SI-CC-Pathways>; K. David, ‘Revisiting the Single-Issue Common-Candidate Strategy:

was underpinned by two arguments. The first was that the regime could only be defeated by the unification of the opposition to include the main opposition and all ethnic minority and minor parties as well as civil society, so as to construct a state-wide democratic majority at a presidential election around a single challenger supported by all except the regime. Secondly, that the common candidate should concentrate all strands of social discontent with the regime into a focus on systemic change, and specifically, on the executive presidential system as the fountainhead of the ills of corruption and authoritarianism. Unless this institution was abolished, and the political system as a whole liberated of its corrupting influence, the consequential benefits of democratic government such as economic development and social prosperity could not be achieved.

In short, the strategy called for transforming an ordinary presidential election (albeit a high-stakes one given the implications for regime survival) into effectively a constitutional referendum on the presidential state. It was given a strong impetus with the formation of a broad civil society coalition around the National Movement for Social Justice (NMSJ), led by a senior and charismatic monk, the Ven. Maduluwawe

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Successes and Failures', CPA-ECCL Workshop on Constitutional Reform and Crisis in Sri Lanka: Navigating Democratic Backsliding and Institutional Resilience, 2015-2020, Negombo, 2-3 March 2019

Sobhitha. When Sirisena won on the back of this strategy, the mandate of the reform government was underpinned by a potent normative charge, sharply signified by how its campaign slogan ‘*yaha paalanaya*’ (or ‘good governance’ in Sinhala) quickly became a moniker for the new government used by supporters and critics alike. Nevertheless, the conceptual and policy content of both *yaha paalanaya* and the extent of reform of the executive presidency remained ill-defined and vague<sup>137</sup>. That those elected to give effect to this broad aspiration made no effort to flesh out its substance pointed not only to the lack of interest in, or inability to engage with, normative ideas, but also the aspect of political culture in which the imprecision of policies and promises is seen as something of a strength, giving maximum space for manoeuvre and representing different things to different constituencies, rather than accountability for the implementation of a defined programme.

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<sup>137</sup> A. Welikala, ‘Ethnocracy or Republic? Paradigms and Choices for Constitutional Reform and Renewal in Sri Lanka’ (2015a) *The South Asianist* 4(1):1-24:  
<http://www.southasianist.ed.ac.uk/article/view/1268/1833>

## **The First Phase: The Nineteenth Amendment to the Constitution**

Sirisena's manifesto offered a 100-day programme of various measures which would have been difficult to achieve within such a short timeframe. Even though the presidency had changed hands in January 2015, the Parliament elected in 2010 continued with a majority of Rajapaksa loyalists within the new President's own Sri Lanka Freedom Party (SLFP). When President Sirisena appointed the Leader of the Opposition Ranil Wickremesinghe as the new Prime Minister, it was at the head of a minority government made up mainly of the latter's United National Party (UNP) and with some SLFP members and minority Muslim and Indian Tamil parties. While the main Tamil grouping, the Tamil National Alliance (TNA), and the left-wing Janatha Vimukthi Peramuna (JVP), were supportive of reform and had backed the common candidacy of Sirisena, they remained outside government. This configuration of the legislature might have been expected to impeded reform, but the momentum of the presidential election and the unusual expectancy of reform it created were sufficient to ensure the two-thirds majority needed for the first constitutional amendment proposed by the new

government, with certain concessions, to be enacted in April 2015<sup>138</sup>.

The Nineteenth Amendment, mainly concerned with limiting presidential powers and re-establishing a de-politicisation framework enfeebled by Rajapaksa's Eighteenth Amendment in 2010, was initially meant to fully abolish presidentialism by establishing the requirement that the President must always act on the advice of the Prime Minister (even though limited exceptions to this when the President can act on his own volition were envisaged)<sup>139</sup>. However, this met with opposition not only from the Rajapaksa loyalists but also from parties and individuals within the new governing coalition<sup>140</sup>. In an early sign of things to come, it appeared Sirisena had made ambiguous and

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<sup>138</sup> A. Welikala (Ed.) (2016) *The Nineteenth Amendment to the Constitution: Content and Context* (Centre for Policy Alternatives): <http://constitutionalreforms.org/2016/05/11/table-of-contents/>

<sup>139</sup> A. Jayakody, 'The Process of Constitutional Reform: January-May 2015' in Welikala (2016): Ch.1: <http://constitutionalreforms.org/2016/05/10/chapter-1-the-process-of-constitutional-reform-january-to-may-2015/>

<sup>140</sup> K. Senaratne, 'Constitutional Reform in a Multi-Polar Setting: The Negotiation of Competing Party Political Interests in the Promulgation of the Nineteenth and Twentieth Amendments' in Welikala (2016): Ch.2: <http://constitutionalreforms.org/2016/05/10/chapter-2-the-politics-of-negotiating-competing-interests-in-promulgating-the-nineteenth-and-twentieth-amendments/>



inconsistent promises in negotiating supporters for his candidacy, and this was exemplified in his manifesto, the English version of which promised to ‘abolish’ the executive presidency whereas the Sinhala version amorphously proposed merely to ‘change’ it. The watered-down version of the Nineteenth Amendment however was still a substantial change which transformed the 1978 Constitution into a premier-presidential design of executive power<sup>141</sup>.

### **The Consolidation of the Mandate**

In August 2015, the United National Front for Good Governance (UNFGG), led by Prime Minister Wickremesinghe, won a majority in the parliamentary elections. His manifesto promised a new constitution that would, subject to the consensus of all, devolve power to the maximum extent within the unitary state; strengthen the bill of rights; introduce a mixed electoral system; a new constitutional court; an appointed advisory council representing social, economic and civil society sectors with the power to recommend reconsideration of bills by

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<sup>141</sup> A. Galyan, ‘The Nineteenth Amendment in Comparative Context: Classifying the New Regime Type’ in Welikala (2016): Ch.12;; A. Welikala, ‘The Fall of the No-Confidence Motion against the Prime Minister’, *Groundviews*, 19<sup>th</sup> April 2018: <https://groundviews.org/2018/04/05/the-fall-of-the-no-confidence-motion-against-the-prime-minister/>

Parliament; to protect the supremacy of Parliament by requiring the President to act on the advice of a Prime Minister and Cabinet responsible and answerable to Parliament (with a special saving for powers exercised by Sirisena); and various other measures designed to improve transparency, accountability, and good governance. This second mandate of 2015 therefore consolidated and added some detail to the reform agenda and better outlined the contours of a new constitution. Pro-reform parties outside government also did well in this election, including crucially in Tamil areas where there was a strong nationalist challenge to the accommodationist stance of the TNA<sup>142</sup>. It is important to underscore the significance of the parliamentary election, as in Sri Lankan debates, the mandate for reform is often questioned on the basis of the presidential election and Sirisena's equivocations, whereas the country in fact voted twice in favour of reform within the space of seven months in 2015.

The *voces populi* in favour of reform therefore cannot have been clearer, but it is necessary to briefly reflect on the nature of

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<sup>142</sup> E. Hoole, 'Splintering Tamil Vote: A Post-Mortem Report', *The Sunday Observer*, 4<sup>th</sup> March 2018: <http://www.sundayobserver.lk/2018/03/04/features/splintering-tamil-vote-post-mortem-report>

the democratic majority because of its implications both for interpreting the substantive parameters of the popular mandate and the design of the process for delivering it, and indeed the role of political leadership and culture in ultimately frustrating it.

### **The Nature of the Democratic Majority**

In the presidential election, Sirisena won 51.28% (6,217,162 votes) of the state-wide popular vote to Rajapaksa's 47.58% (5,768,090 votes). Sirisena won 12 out of the 22 electoral districts but the only majority Sinhala-Buddhist district he won was his home district of Polonnaruwa. All the others were ethnically and religiously mixed and mostly urban (Colombo, Gampaha, Puttalam, Kandy, and Badulla), or Tamil and Muslim majority (Jaffna, Vanni, Batticaloa, Trincomalee, and Ampara). Rajapaksa won the Sinhala-Buddhist heartland in the southern and central districts of Moneragala, Hambantota, Matara, Galle, Kalutara, Ratnapura, Kegalle, Kurunegala, and Anuradhapura.

In the parliamentary election, Wickremesinghe's UNFGG won 11 of the 22 electoral districts and 45.66% of the state-wide vote, which included Matale and Kegalle which had voted for Rajapaksa in the presidential election. The United People's Freedom Front (UPFA) led by the SLFP, the notional leader of which was Sirisena but in reality, Rajapaksa, won 8 districts and 42.38%. The Tamil-majority Jaffna and Vanni districts in the

Northern Province and Batticaloa in the Eastern Province were won by the TNA with 4.62% of the national vote. The pro-reform JVP also won 4.87% of the national vote. If therefore the UNFGG, TNA, and JVP percentages are aggregated, then fully 55.15% of the electorate arguably voted in favour of reform in the parliamentary election, which was an enlargement and consolidation of Sirisena's presidential mandate, and giving Wickremesinghe a comfortable governing majority. Not all of the UPFA MPs were also Rajapaksa loyalists, and when this group was added to the UNFGG, TNA and JVP seats, the government enjoyed a majority well above the two-thirds required for constitutional amendments.

With an electorate with ethnic divisions momentarily stifled and enthusiastically united by its central message of *yaha paalanaya*, two successive election wins, and control of both the presidency and a two-thirds legislative majority, this was a commanding position for a reforming government to be in at the start of the process. The frittering away of this substantial political capital by its beneficiaries and their retreat into the more dysfunctional but familiar mode of politics, rather than any special aptitude or strategic skill of reform opponents, explains how yet again the reform of the Sri Lankan state was stymied from within.

While Rajapaksa did not resort to any illegal means to stay in power in January 2015, and indeed his loyalists did vote for the Nineteenth Amendment, his supporters never fully accepted the reformist mood of the country and therefore the legitimacy of the new government's mandates for reform. Entirely consistently with their style of governing and ideology of Sinhala-Buddhist ethnocracy, they pointed out that Rajapaksa had in fact won overwhelmingly in Sinhala areas of the country, and that Sirisena would not have won the election without the overwhelming support of the minorities<sup>143</sup>. The powerful implication was that Sirisena, in thrall to the ethnic minorities and the deracinated and pro-western UNP, could not be trusted to look after the Sinhala-Buddhist interest and their primacy in the Sri Lankan state. Parochial, jaundiced, and irresponsible as this argument might be, the only surprise would have been had Rajapaksa not resorted to it. And since it is also based on an analysis of the 2015 results that is not by any means unsustainable, it was a clear demarcation of where the battle lines would be drawn in the ideological and electoral mobilisation of opposition to reform.

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<sup>143</sup> A. Welikala, 'Ethnocracy or Republic? Paradigms and Choices for Constitutional Reform and Renewal in Sri Lanka' (2015a) *The South Asianist* 4(1):1-24:  
<http://www.southasianist.ed.ac.uk/article/view/1268/1833>

This is the challenge which required a bold articulation of the substantive vision of the plural but united society that was to underpin the new constitution from Sirisena, Wickremesinghe, and their government. While protecting their vulnerable flank among the Sinhala-Buddhists with meaningful reassurances to the majority community, such a vision was essential for sustaining momentum in the process before opposition to reform could congeal into obstruction. Even though it does entail departure from the accustomed forms of political mobilisation, and a politics of ideas rather than of patronage, conceptualising the plural ethnic and religious foundations of the government's electoral majority into a coherent constitutional vision did not require any especially imaginative thinking. It is, after all, the most conventional means of post-colonial nation-building by which ethnically plural societies are woven into modern, civic, democratic, polities<sup>144</sup>. The reform majorities of 2015 captured not only the public desire for a change in leadership style and personnel, but also for constitutional change that could permanently counteract institutional and cultural incentives for authoritarianism, corruption, clientelism, and

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<sup>144</sup> A.D. Smith (1998) *Nationalism and Modernism: A Critical Survey of Recent Theories of Nations and Nationalism* (Routledge): Ch.1 ; L. E. Weinrib, 'The Postwar Paradigm and American Exceptionalism' in S. Choudhry (Ed.) (2006) *The Migration of Constitutional Ideas* (Cambridge University Press): Ch.4

ethno-religious inequality that had become the dominant motifs of Sri Lanka's political culture since independence<sup>145</sup>. Sirisena and Wickremesinghe were very careful to exclude any hint of radical change, especially on the question of power-sharing with Tamils, and the TNA for its part not only adopted a reconciliatory stance but fought off a strong Tamil nationalist challenge in committing to the reforms process. In other words, these were the near-ideal conditions for the articulation of a very centrist vision of a Sri Lankan nation-state founded on a civic sense of shared belonging based on equal rights and dignity while protecting societal diversity, albeit one that never took root in post-colonial Sri Lanka<sup>146</sup>.

Apart from very basic and intermittent attempts in manifestos and speeches in the early days of optimism<sup>147</sup>, the government's

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<sup>145</sup> J. Uyangoda, 'Losing the Reform Moment, Once Again', *The Island*, 20<sup>th</sup> March 2015: [http://island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=121712](http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=121712)

<sup>146</sup> A. Welikala, 'Constitutional Form and Reform in Postwar Sri Lanka: Towards a Plurinational Understanding' in M. Tushnet & M. Khosla (Eds.) (2015b) *Unstable Constitutionalism: Law and Politics in South Asia* (Cambridge University Press): Ch.11

<sup>147</sup> R. Wickremesinghe, The Sujata Jayawardena Memorial Oration by the Hon. Prime Minister, 11<sup>th</sup> December 2015, Bandaranaike Memorial International Convention Hall, Colombo; M. Sirisena, Speech by the President of the Republic in the parliamentary debate on the Resolution of Parliament to establish a Constitutional Assembly, *Parliamentary Debates (Hansard) Official Report* 242(1), 9<sup>th</sup> January 2016: Cols.14-21

inability or unwillingness to do this effectively and consistently from the beginning was one of its earliest missteps in sustaining the process towards a new constitution, which was later compounded when, with the high idealism of the 2015 constitutional moment fading from public memory, extraneous factors such as economic underperformance and the failure to ensure successful corruption prosecutions began to affect the government's popularity.

### **The Design of the Constitutional Reform Process**

In December 2015, the government set up the Public Representations Committee on Constitutional Reform (PRC). Made up of political party nominees and independent academics and lawyers, the PRC held sittings in every district and took oral and written submissions from the public. 3655 submissions were made to the committee from all sections of society and from every ethnic and religious community. The PRC published its report in May 2016, containing an analysis of the submissions as well as its recommendations on the whole gamut of constitutional issues ranging from the preamble, symbols, and the nature of the state, through fundamental rights and the structure of government, to devolution and power-sharing. The majority views of the committee reflected a fairly liberal consensus about the direction of constitutional reform. At



the same time, however, the areas in which the PRC was unable to make unanimous recommendations are historically some of the most contentious in Sri Lankan constitutional reform debates such as the constitutional recognition of a foremost place for Buddhism and on whether or not to retain the express self-classification of unitary state in the constitution<sup>148</sup>.

In March 2016, Parliament by a unanimous resolution established the Constitutional Assembly (CA) to consider constitutional reforms<sup>149</sup>. The CA, which has not been formally terminated, comprises all the Members of Parliament but sits as a separate body. The rationale for this mechanism was both inclusivity – so that all MPs of all parties have a role – and flexibility – avoiding the rigidity of parliamentary procedure and

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<sup>148</sup> B. Schonthal & A. Welikala, 'Buddhism and the Regulation of Religion in the New Constitution: Past Debates, Present Challenges, and Future Options', CPA Papers on Constitutional Reform No.3, July 2016: <http://constitutionalreforms.org/wp-content/uploads/2016/06/Buddhism-and-the-regulation-of-religion-in-the-new-constitution-Working-Paper-3.pdf>

; A. Welikala, 'The Sri Lankan Conception of the Unitary State: Theory, Practice and History', *CPA Working Papers on Constitutional Reform* No.3, July 2016a:

<http://constitutionalreforms.org/wp-content/uploads/2016/06/CPA-Working-Paper-1.pdf>

; N. Anketell, 'The Unitary State, Parliamentary Sovereignty, and the Sovereignty of the People: A Reappraisal', *Bar Association Law Journal*, December 2017: 2

<sup>149</sup> Constitutional Assembly, Framework Resolution, January 2016: <https://english.constitutionalassembly.lk/images/pdf/motion-en.pdf>

standing orders. The CA is led by a Steering Committee chaired by the Prime Minister and includes all parliamentary party leaders and other senior MPs. The CA was also divided into subcommittees chaired by senior MPs, to report on fundamental rights, the judiciary, public finance, the public service, law and order, and centre-periphery relations. These reports were submitted to the Steering Committee in July 2016<sup>150</sup>. The areas of electoral reform, devolution, and the central executive were to be dealt with directly by the Steering Committee.

In terms of the original resolution, the Steering Committee was to then consolidate its own and the subcommittee reports into one (which would also take into account the PRC report), and present that together with a draft constitution bill to the CA. The CA would debate the bill and is empowered to approve amendments, before passing it with a simple majority. The provisions of the existing constitution would then come into operation: the bill would have to be passed by a two-thirds majority in Parliament, and if this stage was successful, the

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<sup>150</sup> Constitutional Assembly, Sub-Committee Reports, July 2016a: <https://english.constitutionalassembly.lk/sub-committees>

President would submit the bill to referendum, which requires public approval by a simple majority<sup>151</sup>.

This was therefore a reasonably well-designed process, which correctly preserved the formalities of legal continuity by adhering to the amendment procedure laid down in the 1978 Constitution, but adding (with parliamentary approval) a framework of greater participation by the public and parliamentary parties through the innovations of the PRC and the CA. Even if discrete criticisms might be made, the first steps of the process – such as the PRC’s work and the reports of the subcommittees – were also implemented reasonably well and within timelines in 2015-16. But thereafter, the focus on constitutional reform was lost even though the deliberations within the Steering Committee continued apace. Delays and opacity were exacerbated by a complete absence of information and communication from the government, let alone a sustained campaign to maintain public support for the process. To the extent anything was said on constitutional reform, it was by well-calculated and sometimes orchestrated interventions by Rajapaksa and his allies, including reactionary members of the Buddhist hierarchy, who capitalised on the lack of information

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<sup>151</sup> Parliament Secretariat, ‘The Constitution of the Democratic Socialist Republic of Sri Lanka’ (as amended up to 15th May 2015) arts 82-83

and the government's disengagement to resurrect old canards about plots to introduce federalism through the backdoor or destroy Buddhist primacy by stealth. By the time the Steering Committee's much-delayed Interim Report was published in September 2017, not only had public interest in reform waned and moved on to other matters like the economy, but its incoherence and lack of explanatory detail invited further distortions and misconceptions to thrive<sup>152</sup>. This was even more so the case, with the high drama of the constitutional coup intervening in between, when the Discussion Paper of the Panel of Experts was published in January 2019<sup>153</sup>.

### **The Unravelling of the Coalition Consensus**

It was, however, not out of a disagreement over constitutional reform proposals that the relationship between President and Prime Minister began to unravel in late 2017, but over one of

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<sup>152</sup> A. Welikala, 'The Interim Report on Reforming the Sri Lankan Constitution', *ConstitutionNet*, 30<sup>th</sup> October 2017a: <http://www.constitutionnet.org/news/interim-report-reforming-sri-lankan-constitution>

<sup>153</sup> Constitutional Assembly, Discussion Paper of the Panel of Experts, January 2019: <https://english.constitutionalassembly.lk/images/pdf/2019/01C-Report-English-AA.pdf> ; A. Welikala, 'Sri Lanka's (Un)ending Road to a New Constitution: Technical Progress, Political Collapse', *ConstitutionNet*, 29<sup>th</sup> January 2019: <http://constitutionnet.org/news/sri-lankas-unending-road-new-constitution-technical-progress-political-collapse>

the oldest weaknesses in the Sri Lankan structure of party politics which it had been the purpose of the *yaha paalanaya* coalition to overcome: the inability to transcend the intense pressure of party competition in co-managing a constitutional project in the national interest<sup>154</sup>.

Local government elections had been repeatedly postponed until the law disallowed any further, and these were eventually scheduled for February 2018. The postponements were largely to give Sirisena time to resolve the schism within his party, by either a rapprochement with the Rajapaksa loyalists or by their expulsion. None of these outcomes were achieved by the time the local government elections were forced upon the government, which were the first elections since 2015 it had now to face without much tangible delivery on the economy, corruption prosecutions, or constitutional reform. For Rajapaksa, this was both the first as well as the best opportunity to make the election a referendum on the government's performance and popularity. Sirisena, rather than closing ranks

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<sup>154</sup> R. Philips, 'The Government's Consummate Crisis', *The Island*, 17<sup>th</sup> February 2018: [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=180052](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=180052); K. Senaratne, 'Sri Lanka's Gradual Return to 'Normalcy'', *Groundviews*, 18<sup>th</sup> February 2018: <http://groundviews.org/2018/02/18/sri-lankas-gradual-return-to-normalcy/>

with his 2015 allies to defend the record of the coalition government (such as it was), and attempting to recreate the winning formula of 2015 in the face of this threat, instead chose to campaign alone for the SLFP, thus isolating the UNP, dividing the reformist constituency, and giving Rajapaksa an open field. Given the coalition's poor performance and dismal communications, dividing the UNP and SLFP at this moment was the worst possible strategy, but the President was adamant. He was emboldened by a treasury bond scandal which tainted the Prime Minister, and he chose to aggressively attack his coalition partner on this count during the campaign. The result was what seemed like a humiliation for the UNP and SLFP and a major victory for Rajapaksa's new Sri Lanka Podujana Peramuna (SLPP).

While it goes without saying that the electorate punished a divided government, the notion of a Rajapaksa landslide was also almost entirely a chimera. Between them, the SLFP and UNP obtained 5,093,915 votes or 46.01% of the national vote, while the SLPP obtained only 4,941,952 votes or 44.65%<sup>155</sup>. This was certainly a stiff rebuke for the government, but in Rajapaksa not

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<sup>155</sup> T. Gunasekara, 'From an Electoral Drubbing to a Manufactured Crisis', *Groundviews*, 18<sup>th</sup> February 2018: <http://groundviews.org/2018/02/18/from-an-electoral-drubbing-to-amanufactured-crisis/>

exceeding the combined vote-share of the coalition parties and indeed garnering less than he did in the 2015 presidential election, it can at least be argued that the pro-reform majority in the country still held despite the government's dilatory delivery. But in the period after the election, Rajapaksa exploited the government's divisions and total inability to communicate to construct the aura of a victorious comeback. He successfully communicated the perception that the government was fatally wounded and its defeat in the 2019-20 national elections would now be only a matter of time. Rather than learning the obvious lessons, moreover, the SLFP and UNP saw their self-interest in separating rather than reuniting on the basis of the 2015 consensus. The SLFP also further splintered and the President's political authority, never strong, began to evaporate. His moral authority, his stronger suit, also vanished after he coolly renounced his central promise of abolishing the executive presidency and standing only for one term<sup>156</sup>. This was a weak position to be in for someone who had decided to renege on his principal platform, and it explains the pattern of increasingly

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<sup>156</sup> Colombo Telegraph, 'Sirisena To Submit Special Cabinet Paper To Abolish Executive Presidency After His Term', 17<sup>th</sup> November 2015: <https://www.colombotelegraph.com/index.php/sirisena-to-submit-special-cabinet-paper-to-abolish-executive-presidency-after-his-term/>

desperate behaviour that the President would engage in during the coming months in the lead up to the coup in October 2018.

The Prime Minister was also facing pressures within for internal party reform, even greater pressure to deliver on the economy, and the prospect of the next elections. While the casualty of this unfortunate confluence of factors was the constitutional reform process, the more immediate concern was the breakdown of the relationship between President and Prime Minister with at least two years still remaining in the government's term.

In retrospect, the first major sign that the relationship had irretrievably broken down came in April 2018, when the opposition attempted to pass a vote of no-confidence in Prime Minister Wickremesinghe. Even though fronted by SLPP MPs, it was widely known that President Sirisena provided at least tacit encouragement to this initiative, if he had not actively engineered it. The legal enforceability of the vote was questionable even if it had carried, given that the dismissal of the Prime Minister by Parliament requires a vote of no-confidence in the whole government as opposed to one against the Prime Minister personally, but in the event, the Prime Minister won the vote with a comfortable majority<sup>157</sup>. In the light of what was to come,

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<sup>157</sup> A. Welikala, 'The Fall of the No-Confidence Motion against the Prime Minister', *Groundviews*, 19<sup>th</sup> April 2018:



it is clear that President Sirisena did not regard this as a demonstration of the new limits on presidential power to abide by, but rather was goaded into new heights of virulence in machinations to stay in power.

## **PART II**

### **The Constitutional Crisis of 2018: A Timeline**

While in the context of the continuing deterioration of relations within the governing coalition there had been speculation about the formation of new alliances between President Sirisena and former President Rajapaksa, the country was nonetheless taken by complete surprise when on the night of 26 October 2018, the Presidential Secretariat made three announcements in quick succession. The first was that the President's party had withdrawn from the National Government, second, that the President had appointed Mahinda Rajapaksa MP as Prime Minister (together with a video clip of the swearing-in that quickly went viral), and third, that the President had removed Ranil Wickremesinghe from the office of Prime Minister. The sudden, secretive, and abrupt nature of these nocturnal acts

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<https://groundviews.org/2018/04/05/the-fall-of-the-no-confidence-motion-against-the-prime-minister/>

pointed not to a legitimate transfer of power but to a constitutional coup<sup>158</sup>. Wickremesinghe, who had been travelling back from outstation and was taken unawares by these developments, however, quickly responded that he remained the Prime Minister as he continued to enjoy the confidence of Parliament, and had not therefore been lawfully dismissed. On 27 October, the President also prorogued Parliament with the twin aims of preventing Wickremesinghe from demonstrating his majority in the House and to buy time for assembling a new majority for Rajapaksa.

While no doubt the President's unexpected actions had thrown the public into confusion over the weekend, it appeared that most expected Sirisena and especially Rajapaksa to be able to demonstrate a majority in the House in short order. The element of total surprise, Rajapaksa's strongman reputation, the practice of corrupt crossovers of MPs, the general tendency of state institutions to follow presidential directions, and the listlessness of the National Government all pointed to this eventuality. Thus, even if the technical illegalities or procedural improprieties of the presidential actions on 26 October might be

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<sup>158</sup> A. Welikala, 'Paradise Lost? Preliminary Notes on a Constitutional Coup', *Groundviews*, 27<sup>th</sup> October 2018b: <https://groundviews.org/2018/10/27/paradise-lost-preliminary-notes-on-a-constitutional-coup/>

debated, the general expectation was that these questions would soon be overtaken by the political fact of a Rajapaksa parliamentary majority, and thus a Sirisena-Rajapaksa government. On Monday 29 October, Sirisena and Rajapaksa started making appointments to the new Cabinet, while continuing strenuous attempts to induce crossovers from Wickremesinghe's coalition. While a small number of MPs did crossover, this was insufficient for a majority and on 9 November, with still no majority in place, the President gazetted the dissolution of Parliament for an early election in January<sup>159</sup>.

The dissolution order was swiftly challenged on 12 November by way of fundamental rights petitions before the Supreme Court by political parties and a civil society group, the Centre for Policy Alternatives (CPA). After hearing preliminary arguments in support of the applications, the Supreme Court on the same day issued an interim stay on the dissolution order until the court could determine the legality of the action after a full hearing. In the wake of the Supreme Court's interim order that Parliament had not been legally dissolved, Parliament reconvened on 13 November and passed a vote of no-confidence in Rajapaksa's

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<sup>159</sup> A. Welikala, 'The Dissolution of Parliament in the Constitution of Sri Lanka', *Groundviews*, 11<sup>th</sup> November 2018c: <https://groundviews.org/2018/11/12/the-dissolution-of-parliament-in-the-constitution-of-sri-lanka/>

purported government. Although pro-Rajapaksa MPs tried to disrupt the proceedings through violence and intimidation within the chamber, the vote was carried. The validity of the no-confidence motion was not accepted by the Sirisena-Rajapaksa group, and thus on 16 November, Parliament again passed a second vote of no-confidence in the purported Rajapaksa government, boycotted by pro-Rajapaksa MPs.

On 3 December, the 122 MPs constituting the parliamentary majority against the purported Rajapaksa government, i.e., MPs from Wickremesinghe's UNF, the TNA, and the JVP, filed a petition in the Court of Appeal seeking a writ of *quo warranto* against Rajapaksa and his ministers. The purpose of the writ application was to determine the legal authority by which Rajapaksa and his ministers claim to act as a government. As with the Supreme Court, the Court of Appeal also granted the petitioners an interim order restraining Rajapaksa from functioning as Prime Minister until it had heard and determined the case. This not only deprived Rajapaksa of any plausible veneer of legality to continue occupying office, but coming in the wake of two defeats in Parliament on no-confidence motions and the Supreme Court's own interim order staying the dissolution, it showed conclusively that neither Parliament nor the courts

were willing to accept the purported transfer of power on 26 November at face value.

Piling on the pressure, Parliament passed a vote of confidence in Ranil Wickremesinghe as the lawful Prime Minister on 12 December 2018, and on the following day, the Supreme Court delivered its judgment on the fundamental rights applications against the purported dissolution of Parliament by the President on 9 November<sup>160</sup>. The Court found the presidential action to be illegal and unconstitutional. Moreover, on 14 November, the Supreme Court refused to vacate the Court of Appeal's interim order in the *quo warranto* application. On 15 December Mahinda Rajapaksa stepped down as Prime Minister, and on 16 December Ranil Wickremesinghe was reinstated by being sworn in before the President as Prime Minister.

While this brought the immediate crisis to an end, the whole calamitous episode exposed a number of serious questions about Sri Lanka's constitutional culture and practices that demand the attention of scholars and policy-makers. If these issues are not properly understood, the crisis will not lead to lessons being learnt about what measures are needed to prevent or combat future authoritarian threats to democracy and

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<sup>160</sup> *Rajavarothingam Sampanthan & others v. Attorney General & others* SC FR 351/2018, SC Minutes, 13th December 2018

constitutional development. Despite encouraging signs of democratic resilience in terms of both innovative institutional safeguards as well as citizen expectations, there appears to remain inherent in Sri Lankan political culture a disturbing set of catalysts for democratic backsliding.

### **The Constitutional Crisis of 2018: Backsliding and Resilience**

According to Burcher and Bisarya, “Countries that experience backsliding share three factors: (a) a party or leader coming to power through elections broadly considered to be free and fair; (b) manipulation of the institutions and procedures designed to provide checks on executive power; and (c) use of the law to reduce civic space and political freedom to crush dissent and disable political opposition, and diminish the role of civil society<sup>161</sup>.” The third factor concerns processes of slower paced backsliding such as that occurred during the Rajapaksa regime, rather than a sudden intervention as on 26 October. However, the first and second factors were obviously very much present in the 2018 crisis.

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<sup>161</sup> C.U. Burcher and S. Bisarya, ‘Threats from Within: Democracy’s Resilience to Backsliding’ in International IDEA (2017) *The Global State of Democracy: Exploring Democracy’s Resilience* (1<sup>st</sup> Ed.) (International IDEA): Ch.3

In her seminal article on the phenomenon, Bermeo identifies six different types of backsliding: (a) classic *coup d'états*; (b) executive coups; (c) election day fraud; (d) promissory coups; (e) executive aggrandisement; and (f) strategic manipulation of elections<sup>162</sup>. The Sri Lankan crisis cannot be neatly pigeonholed into any one of these categories, but the actions that created it, the justifications proffered by its instigators – and of seminal importance – the recent record of Rajapaksa's governing style and what could therefore be expected from his return to government, display aspects of (b), and (d) and (e). In Bermeo's scheme, executive coups are ““self-coups” or *autogolpes* [which] involve a freely elected chief executive suspending the constitution outright in order to amass power in one swift sweep<sup>163</sup>.” Promissory coups “frame the ouster of an elected government as a defense of democratic legality and make a public promise to hold elections and restore democracy as soon as possible. Whereas Cold War coupmakers usually cast their seizures of power as open-ended, most coupmakers today emphasize the temporary nature of their intervention and frame

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<sup>162</sup> N. Bermeo, ‘On Democratic Backsliding’ (2016) *Journal of Democracy* 27(1): 5-19

<sup>163</sup> *ibid*: 7

it as a necessary step toward a new and improved democratic order<sup>164</sup>.” According to Bermeo,

“Executive aggrandizement contrasts with all forms of coupmaking in that it takes place without executive replacement and at a slower pace. This more common form of backsliding occurs when elected executives weaken checks on executive power one by one, undertaking a series of institutional changes that hamper the power of opposition forces to challenge executive preferences. The disassembling of institutions that might challenge the executive is done through legal channels, often using newly elected constitutional assemblies or referenda. Existing courts or legislatures may also be used, in cases where supporters of the executive gain majority control of such bodies. Indeed, the defining feature of executive aggrandizement is that institutional change is either put to some sort of vote or legally decreed by a freely elected official—meaning that

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<sup>164</sup> *ibid*: 8-9



the change can be framed as having resulted from a democratic mandate<sup>165</sup>.”

We can draw the following insights by applying these conceptual criteria to the circumstances of the Sri Lankan crisis. What happened was a partial executive coup with promissory overtones in support of a constitutional self-understanding that preferred monarchical presidentialism – which permits greater scope for executive aggrandisement – over constitutional democracy and limited government. Note that we are concerned here with accounting for what the attempt at backsliding aimed to achieve, rather than explaining why it occurred (e.g., motives based on the personal ambitions of Sirisena and Rajapaksa). A freely elected chief executive did not suspend the constitution but he chose to act in violation of it in attempting to remove the Prime Minister enjoying the confidence of Parliament. There was a prominent promissory aspect to this self-coup in that unconstitutional action was sought to be justified in part by the promise of early parliamentary elections<sup>166</sup>. In acting against the

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<sup>165</sup> *ibid*: 10-11

<sup>166</sup> M. Rajapaksa, ‘Election is the Only Answer – Prime Minister’, *Daily Mirror*, 2<sup>nd</sup> December 2018: <http://www.dailymirror.lk/article/Election-is-the-only-answer-Prime-Minister-159222.html>

constitutional limits of presidential power, the self-coup was an instance of executive aggrandisement, which moreover is the established governing style of the person chosen to replace the lawful Prime Minister.

On the other side of the equation, in Sisk's formulation, democratic "Resilience is defined as a political system's ability to cope with, survive and recover from complex challenges and crises that present stress or pressure that can lead to systemic failure. Resilient social systems are flexible (able to absorb stress or pressure), can recover from challenges or crises, adaptable (can change in response to a stress to the system), and innovate (able to change in order to more efficiently or effectively address the challenge or crisis)<sup>167</sup>." It would seem that the Sri Lankan constitutional system shows capacities for flexibility and recovery, but could be weaker in regard to post-coup adaptability and innovation. These questions are best explored in the Sri Lankan context by looking at the relationship between backsliding and resilience within the design of political institutions and the political culture that animates them.

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<sup>167</sup> T.D. Sisk, 'Democracy's Resilience in a Changing World' in International IDEA (2017) *The Global State of Democracy: Exploring Democracy's Resilience* (1<sup>st</sup> Ed.) (International IDEA): Ch.2

The institutional framework of Sri Lanka's democracy has both incentives for as well as safeguards against backsliding. The latter include the separation of powers, effective public law remedies including justiciable fundamental rights and prerogative writs, the independence of the judiciary, proportional representation, relatively independent fourth pillar institutions, (intermittently effective) parliamentary oversight, and the bicephalous executive under a premier-presidential model of semi-presidentialism (most effective under conditions coalition government, but also most risk-prone). By far the most effective and prominent institutional incentive to backsliding, state capture, and soft authoritarianism is the executive presidency. The direct mandate, relative autonomy (even in reduced form after the Nineteenth Amendment), and possibly the ceremonial trappings of the office appear to encourage its occupiers to executive aggrandisement as conceptualised by Bermeo. The scope for unilateral action – often determined solely by the advice of a close ring of personal, uncritical, and unaccountable advisors – inherent in the 'republican monarchical' dimension of semi-presidentialism seems to dominate the thinking and behaviour

of Sri Lankan Presidents against considerations of constitutional democracy, prudence, and restraint<sup>168</sup>.

The paradoxical coexistence of simultaneous incentives for both backsliding and resilience is perhaps even more present in political culture, even though it is very difficult to pin down precisely the concatenation of factors that constitutes culture, and what in turn that culture constitutes in terms of the practices of constitutional politics. The 2015 regime change was remarkable as a democratising mandate when considered against the reality that prevailed only five years before in the previous electoral cycle. In the post-war elections of 2010, the political *zeitgeist* was defined by populist authoritarianism, ethnic nationalism, and a divisive triumphalism, whereas in 2015 an ethnically unified electorate mandated constitutional reform, democratic renewal, and ethnic reconciliation. That President Maithripala Sirisena, the figurehead of reform in 2015, could within three years of his election engage in one of the direst attacks on constitutional democracy since the introduction of presidentialism illustrates the paradoxes of this culture with alarmingly clarity.

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<sup>168</sup> M. Duverger (1974) *La Monarchie Républicaine* (Paris: Robert Laffont)

When he took the decisions that led to crisis, the President had neither clear legal authority nor even the benefit of reasonable legal uncertainty to justify his actions. His actions were quite plainly unconstitutional on the face of the text, and moreover, unconstitutional after a constitutional amendment he himself had championed barely four years ago. Why did he feel able to act in this way? What is it about Sri Lankan political culture that permits or even encourages this behaviour at the highest level? On the other hand, how did the checking mechanisms perform their role so well in this case? Why did Wickremesinghe's parliamentary majority hold against the various pressures and inducements? How did the Speaker feel able to assert the rights and privileges of Parliament against the depredations of the executive? Why did the courts step in so boldly in a political controversy they might normally have chosen to avoid? Other important factors revealed by the coup crisis included the contrasting roles of mainstream and social media, the spontaneous civic protests by ordinary citizens (and the remobilisation of the middle class), and the role of the international community in validating domestic political choices. In what follows, the institutional and cultural dimensions of backsliding and resilience will be examined in more detail.

The impugned presidential acts that precipitated the crisis were all previously unilateral presidential powers that were limited (i.e., the appointment and dismissal of the Prime Minister) or removed (i.e., the dissolution of Parliament) by the Nineteenth Amendment. The Nineteenth Amendment appeared to successfully pass the stress-test of the crisis to the extent that the improvements made by it to the checks and balances framework on presidential power had a direct effect on resolving the crisis in favour of constitutional government rather than presidential authoritarianism. But it would be useful to explore this proposition further by more closely examining the role of Parliament and the courts during the crisis in the light of the improved institutional framework for the greater autonomy of Parliament and the independence of the judiciary established by the Nineteenth Amendment.

### **Parliament's New Institutional Significance after the Nineteenth Amendment**

Presidential dominance of the institutional structure of the state had always been the hallmark of the 1978 Constitution, but this was aggravated by the Eighteenth Amendment which decisively shifted the constitutional character of the state towards a control model that would be driven by populist politics. The regime changing elections of 2015 and the Nineteenth Amendment that

resulted from it was a direct corrective response to this tilt to authoritarianism, the objective of which was to rebalance the relationship between Parliament and the presidency. The suite of changes introduced by the Nineteenth Amendment which had the effect of strengthening Parliament *vis-à-vis* the Executive might be boiled down into three major principles, as follows:

1. *The Fixed Term Principle*

Before the Nineteenth Amendment, the President could dissolve Parliament at will after the first year of its six-year term, whereas after the Nineteenth Amendment, the President cannot dissolve Parliament during the first four and a half years of its five-year term, unless Parliament itself requests a dissolution by a resolution passed by a two-thirds majority. This is a major transfer of power from executive to legislature<sup>169</sup>.

2. *The Confidence Principle*

Before the Nineteenth Amendment, the President appointed as Prime Minister the Member of Parliament who in his opinion enjoyed the confidence of the House, and the President dismissed and replaced Prime Ministers at any time. After the

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<sup>169</sup> A. Welikala, 'The Dissolution of Parliament in the Constitution of Sri Lanka', *Groundviews*, 11<sup>th</sup> November 2018c: <https://groundviews.org/2018/11/12/the-dissolution-of-parliament-in-the-constitution-of-sri-lanka/>

Nineteenth Amendment, however, while the President still appoints as Prime Minister the Member of Parliament who in his opinion who enjoys the confidence of the House, the key change is that the Prime Minister cannot be dismissed by the President<sup>170</sup>. The Prime Minister loses office only by death, resignation, by ceasing to be a Member of Parliament, or when Parliament withdraws confidence from the government as a whole. By strengthening the position of the Prime Minister *vis-à-vis* the President within the semi-presidential executive, and removing the power of dismissal of the Prime Minister from the President to Parliament, the Nineteenth Amendment transformed what was a hyper-presidential constitution into a ‘premier-presidential’ model<sup>171</sup>.

### 3. *The Consent Principle*

Before the Nineteenth Amendment, in making appointments to high posts and independent oversight commissions, the President merely consulted the Parliamentary Council. After the Nineteenth Amendment, in making appointments to high posts and independent oversight commissions, the President has to

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<sup>170</sup> A. Welikala, ‘Nailing Canards: Why President Sirisena’s Actions Remain Illegal, Unconstitutional and Illegitimate’, *Groundviews*, 31<sup>st</sup> October 2018d: <https://groundviews.org/2018/11/01/nailing-canards-why-president-sirisenas-actions-remain-illegal-unconstitutional-and-illegitimate/>

<sup>171</sup> *ibid*



either seek the approval, or act on the recommendations, of the relatively much more efficacious Constitutional Council. Although it has civil society representation, the Constitutional Council is primarily a parliamentary body whose independence is ensured by its inclusive multiparty composition. Its intercession in a critical range of decisions over key appointments has strongly attenuated presidential discretion, and shifted power from executive to legislature.

The first two of these new constitutional principles were at the heart of the crisis (while the third has more recently come to the fore for the first time since the Nineteenth Amendment, with the President's pushback against the Constitutional Council on the appointment of a new President of the Court of Appeal<sup>172</sup>). President Sirisena's purported acts on 26 October (dismissing the Prime Minister) and 9 November (dissolving Parliament) were contrary to the clear provisions of the constitution, as upheld by the courts. But Parliament was the first line of defence against the two presidential actions that constituted the attempted usurpation of constitutional power, and in this regard Parliament fully discharged its function of legislative checking

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<sup>172</sup> J.C. Weliamuna, 'The Cure for the Constitutional Council', *The Sunday Observer*, 17<sup>th</sup> February 2019: <http://www.sundayobserver.lk/2019/02/17/opinion/cure-constitutional-council>

under crisis conditions consistently: in the first vote of no-confidence in the purported Rajapaksa government on 12 November; in the second vote of no-confidence on 16 November; in the motions to withhold funds for the Prime Minister's Office and for Cabinet and other Ministries, respectively on 29 and 30 November; and finally in the affirmative vote of confidence in Prime Minister Ranil Wickremesinghe on 12 December. The Speaker too has been praised for his role in upholding the rights and privileges of the House, especially during the violence-marred sitting on 12 November when SLPP MPs physically threatened him, assaulted police officers and damaged public property within the chamber. Together with the reforms to the committee-system undertaken since 2015<sup>173</sup>, it is to be hoped that the precedents created during the crisis will portend a new era of parliamentary assertiveness against executive overreach.

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<sup>173</sup> See P. Jayasinghe and A. Welikala, 'Review of the Internal Reforms within Parliament since 2015', CPA-ECCL Workshop on Constitutional Reform and Crisis in Sri Lanka: Navigating Democratic Backsliding and Institutional Resilience, 2015-2020, Negombo, 2-3 March 2019

## **The Role of the Courts**

The dispute that led to crisis arose because the personal and political relationship between President Sirisena and Prime Minister Wickremesinghe had broken down. The dispute between President and Prime Minister became, by extension, a standoff between Executive and Legislature, given the semi-presidential structure, and a confrontation of the President's direct electoral mandate versus Parliament's confidence in the Prime Minister. While in this case Prime Minister Wickremesinghe and Parliament had the *prima facie* advantage of the law being in their favour, purported Prime Minister Rajapaksa and the President were relying on raw political force (including financial inducements and other threats) and the element of surprise to change the political facts of the situation.

In this conflict between Executive and Legislature – or put another way, of legal authority clothed in the constitution versus naked political power – neither appeared to be able to score a decisive win. Although in the early hours and days after 26 October, most had expected Sirisena and Rajapaksa's move to politically prevail despite its undoubted unconstitutionality, an impasse developed when Wickremesinghe's majority held up in Parliament. As the days went by, the President moved deeper into unconstitutional territory but without any decisive political

advantage: not only did Parliament continue to resist him, but also Wickremesinghe's demonstration of uncharacteristic resolve, the spontaneous rejection of the President's actions by the public, strong opposition in civil society and social media, and lack of international recognition, all served to undermine any political legitimacy that the President might have hoped to gain *ex post facto*. On the other hand, despite winning vote after vote in Parliament, and massive demonstrations of public support, Wickremesinghe too was unable to prevail against the President and oust Rajapaksa from his illegally held position.

Given this deadlock within the *de jure* and *de facto* Executive, and between Executive and Legislature, it was now only the courts that could resolve the crisis. It is important to note that both sides explicitly and implicitly accepted the authority and legitimacy of the courts to resolve the issue from the beginning, and actively participated in the legal proceedings when they commenced. If Sirisena or Rajapaksa had refused to do so, the constitutional coup might have become an actual *coup d'état*, with serious consequences for Sri Lanka's democratic fabric. As noted, the judicial intervention came via two cases: the fundamental rights application in the Supreme Court challenging the purported dissolution of Parliament by the President, and the application for a writ of *quo warranto* to the

Court of Appeal requiring Rajapaksa to demonstrate the source of legal authority for occupying the office of, and exercising the powers of, Prime Minister.

In the Supreme Court, the basic legal issue for resolution was whether the purported dissolution of Parliament on 9 November was constitutional or not. The Court decided the purported dissolution was unconstitutional, because the Nineteenth Amendment had taken away the power of the President to dissolve Parliament at will. After the Nineteenth Amendment, the only way Parliament could be dissolved in the first four and a half years of its five-year term was if Parliament itself requested a dissolution by a resolution passed with a two-thirds majority. This condition had not been fulfilled<sup>174</sup>. Although the Supreme Court's final judgment in this case on 13 December effectively brought the crisis to an end, its decision to grant interim relief to the petitioners with a stay of the dissolution on 12 November was the first indication that the Court viewed the

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<sup>174</sup> *Rajavaroatham Sampanthan & others v. Attorney General & others* SC FR 351/2018, SC Minutes, 13th December 2018. “*For the reasons set out above, I hold that the Petitioners’ rights guaranteed under Article 12 (1) of the Constitution have been violated by the issue of the Proclamation filed with the petition in SC FR 351/2018 marked —P1 and make order quashing the said Proclamation and declaring the said Proclamation marked —P1 null, void ab initio and without force or effect in law.*”

presidential actions with disfavour. Nevertheless, the Court afforded a full hearing to all sides over three days in early December before delivering an extensive and conclusive judgment.

The application before the Court of Appeal was for a writ of *quo warranto* to determine the legal authority of Rajapaksa to hold the office of Prime Minister, given that he did not enjoy the confidence of Parliament. All 122 MPs (the majority) opposed to Rajapaksa were petitioners. Most importantly in the context of ongoing events, the petitioners asked for interim relief by way of restraining Rajapaksa from continuing in office. In granting interim relief, the Court of Appeal observed:

“...it is the view of this Court that the damage that may be caused by temporarily restraining a lawful Cabinet of Ministers from functioning would in all probabilities be outweighed by the damage that would be caused by allowing a set of persons who are not entitled in law to function as the Prime Minister or the Cabinet of Ministers or any other Minister of the Government. The magnitude of the latter damage would be very high. Such damage would be an irreparable or irremediable one. Such damage would also have far reaching consequences to the whole country. In such a situation

a final order could be rendered nugatory even if the petitioners are successful<sup>175</sup>.”

The conclusion that the purported Rajapaksa ministry was without legal authority in the interim was fatal, and that fate was sealed when the Supreme Court refused to vacate the interim orders of the Court of Appeal.

In this way, the decisions of the two superior courts of record were decisive in bringing an end to the attempt at unconstitutional usurpation of power. What explains the courts’ willingness to intervene in a political drama of such high stakes? They had no choice but to exercise their jurisdiction when they were petitioned by such large numbers, with the national and international spotlight fixed on them to resolve the crisis in the context of the deadlock between the other two branches. The Nineteenth Amendment had improved the security of tenure and independence of superior court judges, who therefore no longer feared political reprisals. The surrounding political and social environment also no doubt had a bearing on the judges to step up to the mark: the crisis was unique and unprecedented in

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<sup>175</sup> The Daily News, ‘Writ of Quo Warranto against Mahinda and Others: Appeal Court Issues Interim Order’, 4<sup>th</sup> December 2018: <http://www.dailynews.lk/2018/12/04/law-order/170231/appeal-court-issues-interim-order>

the Sri Lankan experience, the presidential actions so egregiously in violation of the constitution, and the outrage in the country was palpable. Since 2015, judicial attitudes in the superior courts had been taking a liberal turn: a consistent series of judgments had been signalling this change<sup>176</sup>.

Last but not least, Chief Justice Nalin Perera, who presided over the Supreme Court proceedings, turned out to be an individual of exceptionally strong moral character. In the ceremonial sitting of the Supreme Court to welcome him in office on 22 October, just four days before the coup, he had made the following observations:

“I am painfully aware that we live in a society that is increasingly losing confidence in the ability to uphold justice. The increasing depravity of human values and practices has had its impact on the trust that people in a country may place on the judicial system itself ... We live in a world where people almost by default expect those in power to misuse the same. We are taken by surprise if those in power actually make true their promises. The

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<sup>176</sup> A. Welikala and L. Ganesathasan, ‘Sri Lanka: The State of Liberal Democracy’ in R. Albert et al (Eds.) (2018d) *I-CONnect-Clough Center 2017 Global Review of Constitutional Law* (I-CONnect): 275-279



public often assumes that speeches such as this are merely sugar coated and loaded with empty words outside of real commitment. In a society like this we are almost programmed to look at each other with mistrust and much more at those who hold power in positions. As such I am aware that all of this makes it difficult for the general public to look to the judiciary in trust, expecting an independent and just solution ... And to this reality I speak today. I understand some may find it hard to believe that 'I' stand here without a political bias or favouritism or a secret strategic personal agenda that brought me here ... Nevertheless I truly hope that my tenure in this position will disapprove the same to you, if it has not been sufficiently gathered from my journey of 38 years through the judicial service. I hope that I could be a beacon of hope to those who have been silently and honestly persevering in administering justice."

These words turned out to be prophetic when the Chief Justice was presented with the greatest challenge of his career only days into his appointment.

The Sri Lankan Supreme Court is not and has never been the equivalent in judicial activism of its Indian counterpart. While it has generally maintained its independence throughout its long history since its establishment in 1801, the period of the Rajapaksa regime was an exceptionally challenging time for the judiciary. During this time, Chief Justice Shirani Bandaranayake was impeached through a questionable process for holding against the government, and replaced by a Rajapaksa legal advisor patently lacking in independence or even competence<sup>177</sup>. After the regime change in 2015, and the reformation of the institutional framework of judicial independence, it seems clear the judiciary both senior and junior were determined to recover their reputation and prestige. They had been doing so through a series of good judgments and other demonstrations of independence. But the coup presented an unprecedented test of character, competence, and integrity for Sri Lankan judges. Led by Chief Justice Perera, and President of the Court of Appeal Surasena, they passed that test well.

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<sup>177</sup> N. Anketell and A. Welikala (2013) *A Systemic Crisis in Context: The Impeachment of the Chief Justice, the Independence of the Judiciary and the Rule of Law in Sri Lanka* (Centre for Policy Alternatives)

### **PART III**

#### **Accounting for Reform Failure: The Culture of Constitutional Law and Politics**

The crisis vividly demonstrated both the weaknesses and the strengths of Sri Lanka's constitutional democracy. Even in established democracies, or indeed under normal circumstances in Sri Lanka, the Executive often transgresses the boundaries of *vires*, and these are dealt with by the normal checks and balances and the procedures and remedies of public law. However, what was remarkable about the 2018 crisis was that a President felt able to act so egregiously contrary to the constitution, and it is this that revealed the potential for democratic backsliding that remains inherent in the political culture. Yet the firm resistance against unconstitutional behaviour shown by Parliament, political parties, the courts, civil society, and social media activism, also demonstrated the constitutional resilience of Sri Lanka's political system. One of the most obvious lessons from this experience seems to be that constitutional reform can improve and strengthen institutional frameworks, as in the Nineteenth Amendment, and while this is often difficult to achieve, it is not impossible. However, the prevailing political culture animated by unarticulated authoritarian assumptions, tendencies, habits, understandings, attitudes, and practices,

customs and traditions of long-standing is not immediately transformed as a result of institutional reform. The more difficult challenge seems to lie therefore in reforming political culture away from these characteristics and towards those that can support the flourishing of democracy and constitutionalism.

With regard to the meandering constitutional reforms process since 2015, it is easy to identify the many shortcomings of process management that led to a lingering death of the high hopes of 2015. The process, as noted, was relatively thoughtfully designed at the beginning. But while the PRC represented more of an effort at public participation than at any previous exercise in post-independence constitution-making in 1972 or 1978, it is doubtful whether it had any meaningful impact as an exercise in engaging the public in a national endeavour of reconstituting the polity. Even allowing for necessary confidentiality, the deliberations in the Steering Committee were unknown to the public or if such a process was even taking place. The initial assessment that the process of constitutional negotiation and drafting should be completed with reasonable despatch, and to conduct the referendum no later than 2017 so as to benefit from the public sentiment of 2015, was thoughtlessly abandoned as Steering Committee deliberations got mired in the detail. Fluid deadlines denoted not a healthy process but an ill-disciplined

one, which moreover created an impression of disorganisation and crisis. When it did eventually emerge, the uninspiring style and substantive incoherence of the Steering Committee's Interim Report did nothing to revitalise the process let alone reignite public interest in constitutional reform. By the time the Discussion Paper of the Panel of Experts was published post-coup in 2019, no one was the least interested in constitutional reform. From the start, the government lacked anything remotely like the strategic campaign of political communication that it needed to support a transformative process. The official process was simply absent in the increasingly important arena of social media<sup>178</sup>.

The close nexus between reformist civil society groups and political parties that had characterised the democratic movement against the Rajapaksa regime in the run up to the 2015 presidential election was not replicated as effectively after the elections. The autonomy of politics from civil society reasserted itself quickly once the latter's electoral utility was exhausted,

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<sup>178</sup> S. Hattotuwa, 'Between Scylla and Charybdis: Social Media in Sri Lanka's Constitutional Referendum', *The Round Table*, forthcoming; S. Hattotuwa, 'Framing a Putsch: Twitter and Facebook in Sri Lanka's Constitutional Crisis', CPA-ECCL Workshop on Constitutional Reform and Crisis in Sri Lanka: Navigating Democratic Backsliding and Institutional Resilience, 2015-2020, Negombo, 2-3 March 2019

partly out of defensiveness against opposition charges of excessive association with liberal viewpoints, and partly because key actors including the President belong to a political tradition that is inherently distrustful and even hostile to civil society agendas of reform. Critical counter-reform forces such as the Buddhist clerical hierarchy were never engaged with a view to constructively channelling their enormous potential as social capital in favour of reform. With the sad death of the Ven. Maduluwawe Sobhitha in November 2015, the reform movement lost its icon and the only individual with the cachet and eminence to keep straying politicians in line.

Politicians in the governing coalition fundamentally misunderstood the character of their mandate as a responsibility to systemically change government and the culture of politics, and not simply a change of personnel. Very few even at ministerial level seemed to know anything about, let alone understand or be invested in, the government's commitment to constitutional reform. A coherent substantive consensus about the coalition's policy programme defined by the normative expectations of *yaha paalanaya* never developed. This not only made coalition government seem even more fractious and pointless than it actually was, but it contrasted badly with the ideological clarity of the ethnonationalist opposition, and in this

way lent unnecessary respectability to this atavistic form of reactionary anti-reformism as the sole political alternative to the sham-bolic reality of reformist governance. Such an elite consensus was also crucial in maintaining the political relationship between the President and Prime Minister in both day-to-day governing and co-managing a constitutional transition, and was even more so after the Nineteenth Amendment had institutionalised a duumvirate in the executive branch<sup>179</sup>. Aside from the personal attributes of leadership, competence, and the role of the advisors of its two leaders – all of which can be heavily criticised from the perspective of the requirements of a constitutional transition – an early investment in developing a more detailed substantive consensus about their programme in government would have moored the coalition more securely against the inevitable pressures of inter-party competition, and certainly averted the breakdown in relations that led to a constitutional coup. But such an approach seemed of little interest to either Sirisena or Wickremesinghe, both senior politicians steeped in the traditional political culture, who saw the advantages of riding the popular anti-Rajapaksa mood in 2014, but were less committed to carrying out its more normative

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<sup>179</sup> A. Welikala, 'Sri Lanka' in D. Law, A. Schwartz et al (Eds.) (forthcoming) *The Oxford Handbook of Asian Constitutional Law* (Oxford University Press)

implications of a cultural change in politics once ensconced in government.

Seen against this miserable litany of shortcomings, it is not too difficult to see how the process proved incapable of delivering on the reform mandate. But there is a deeper conundrum about the politics of constitutional reform that arises from this latest example of failure which echoes previous attempts in 1994 and 2001. In what is often described as an ethnically deeply divided society, it is remarkable that the electorate unites cyclically and fairly frequently across sectional divides to demand reforms towards constitutional democracy<sup>180</sup>. Analytically, this cautions against too easily adopting deterministic or essentialist categories in understanding the nature of the Sri Lankan polity. Liberalism may not provide the dominant source of normative values in Sri Lankan society, and the threshold of acceptance for authoritarian leadership combined with majoritarian nationalism may be high, but the long tradition of unbroken procedural democracy has deeply entrenched certain essential expectations of accountability in the collective psyche that, as Rajapaksa and then Sirisena found out, any regime ignores at its peril. However, in 1994, 2001, and now 2015, such reform mandates are

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<sup>180</sup> S. Choudhry, 'Constitutional Politics and Crisis in Sri Lanka' in J. Bertrand & A. Laliberte (Eds.) (2012) *Multination States in Asia: Accommodation or Resistance* (Cambridge University Press): Ch.5



squandered by those elected to implement them in trajectories of mismanagement that are strikingly similar. While issues of institutional capacity and individual competence do no doubt have a role in the interpretation and implementation of civic mandates, the deeper structural question can be put like this: what is it about the culture of politics that disincentivises political leaders with a mandate for reform against constitutional democracy, and within only a short period of regime changing elections, incentivises them towards the old culture of clientelism, personalisation, and ethnic populism? What or what combination of factors explains the autonomy of politics from civil society between elections that severs the accountability relationship between the rulers and the ruled?

The key to breaking the cycle of reform failure in Sri Lanka seems to point, not so much to institutional solutions as have been the preoccupation of reformists in the past (although of course institutional reform is also indispensable), but to the need for a more defined and nuanced apprehension of the internal dynamics of political culture as it operates at both elite and mass levels<sup>181</sup>. This in turn calls for a sophisticated understanding of

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<sup>181</sup> L. Diamond, 'Introduction: Political Culture and Democracy' in L. Diamond (Ed.) (1994) *Political Culture and Democracy in Developing Societies* (Lynne Rienner): Ch.1; D. Kavanagh (1972) *Political Culture* (Macmillan)

the relationship between the universal notions of constitutional democracy to which the electorate clearly shows a commitment, and the subjective values, norms, practices, and expectations constituting political culture through which they are mediated in the interaction between politicians and voters. Without properly and precisely understanding the terms of this relationship and the political culture that envelops it – and it is wise to remember that politicians know their voters far better than any constitutional theorist – prescriptive reformism is unlikely to break its path dependency of failure.

Perplexed and disappointed reformists are tempted too often to decry the triumph of tradition over modernity in post-colonial societies like Sri Lanka<sup>182</sup>. But as Almond and Verba's classic work argued, civic culture even in Western liberal democracies is 'neither traditional nor modern but a partaking of both'<sup>183</sup>. With these observations in mind, it is possible to identify some

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<sup>182</sup> L. Pye (1985) *Asian Power and Politics: The Cultural Dimensions of Authority* (Harvard University Press)

; Cf. A. Welikala, 'Nation, State, Sovereignty and Kingship: The Pre-Modern Antecedents of the Presidential State' in A. Welikala (Ed.) (2015c) *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Centre for Policy Alternatives): Ch.13 at 499-503: <http://srilankanpresidentialism.org/wp-content/uploads/2015/01/21-Welikala.pdf>

<sup>183</sup> G. Almond & S. Verba (1963) *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Princeton University Press): 7-8.

of the elements of political culture that have been absent in the recent Sri Lankan experience of reform and crisis, but which are essential for both the maintenance of constitutional democracy as well as to its deeper development.

### 1. *Political Leadership*

There are many forms and styles of democratic political leadership<sup>184</sup>, but all good models have in common the requirements of accommodation, restraint, prudence, and public service. Sri Lankan models of political leadership are characterised by more-or-less authoritarian, paternalist, and hierarchical conceptions that drive a clientelist and ethnicised practice of politics.

### 2. *Core Mainstream Consensus on the Fundamental Rules of the Political Game*

While the essence of democracy is competitive multiparty politics, fruitful electoral competition is not possible where the rules of the game are uncertain, unpredictable, unequal and of restrictive or differentiated application. Constitutional democracy is also not possible where one or more parties do not respect the fundamental constitutional rules which are the basis

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<sup>184</sup> A. Brown (2014) *The Myth of the Strong Leader: Political Leadership in the Modern Age* (Basic Books)

of a well-ordered society, and where partisan advantage or personal ambitions license the departure from an adherence to these rules when self-interest demands it.

3. *Accommodation of Pluralism: Decentralisation and De-concentration*

Sri Lanka's post-colonial constitutional development has been about the consolidation of hegemonic ethnocracy, not plural democracy. When the accommodation of societal pluralism ought to have been the basis of state-building consistent with the aims of peace, order, and good government, exclusion and domination have instead been the central motif of statecraft, and this has been pursued through constitutional as well as informal strategies of centralising and concentrating political power and legal authority. The unitary state and presidentialism are expressions of this deeper constitutional preference of dominant elites. A pluralist conception of constitutional democracy requires a shift from domination to accommodation, and this in turn requires fundamental reforms to the constitutional order. Those reforms must not only reorder the institutional architecture of the state in favour of decentralisation and de-concentration but also embed them as normative values of the constitutional order.

#### 4. *Deliberative Decision-making*

Deliberative as opposed to authoritarian decision-making engages both the procedural and substantive dimensions of political decisions. Procedurally it means the making of decisions in the public interest legally, fairly, rationally, reasonably and proportionately. Substantively it means the making of decisions on objective grounds defined by the values of individual liberty that the constitutional order enshrines, including equality before the law, non-discrimination, choice, and autonomy, as well as efficiency and economy (value for money). Making procedurally and substantively deliberative decisions therefore demands transparency as well as a general commitment to reason-giving and justification based on objective grounds. Sri Lankan public decision-making from *graamasevakas* to Presidents are too often characterised not by these features but by opacity, arbitrariness, capriciousness, a lack of a sense of accountability, and sometimes by gross insensitivity and even cruelty.

#### 5. *Responsiveness to Public Opinion*

The central problem here is the lack of political reflexivity on the part of elected governments to the changing views of voters between elections. While procedural democracy is well entrenched, the notion that elections are the primary form of

political accountability is obsolete. Much before the information revolution of the late twentieth century, liberal democracies acknowledged the importance of responsiveness to public opinion through representative institutions. There is now a much higher and broader expectation of responsiveness given the uses and applications of information technology. That the *yaha paalanaya* government has been one of the worst in communication and responsiveness is a telling illustration of the challenge.

6. *Representative Democracy balanced by Citizen Participation*

Representative democracy is the norm, direct democracy the exception, in a liberal constitutional order. It ensures the representation, mediation, and negotiation of individual and group interests and the peaceful resolution of political disputes in a diverse society. But today the classical ideal of representative democracy is offset by the requirements of citizen participation in governance – through social media, freedom of information regimes, and other mechanisms of participation. Sri Lanka has made strides in some respects in this regard, but the old culture of secrecy and hierarchy remains very much the hallmark of government.

### 7. *Effectiveness of Government*<sup>[17]</sup>

Effectiveness means efficient, transparent, economical, corruption-free governance. The post-2015 institutional reforms are important, but have hardly made a dent in the control of bribery and corruption.

### 8. *Quotidian Political and Legal Accountability of Government*

In a society governed by the Rule of Law, government is held legally accountable through the courts. For this, laws must be general, publicly promulgated, prospective, clear and intelligible, free of contradictions, constant, possible to obey, and administered in a way that does not unreasonably depart from legislative intent<sup>185</sup>. And the independence of the judiciary must be both an entrenched structural feature as well as a normative value of the constitutional order. All these are uncontroversial as normative propositions in the Sri Lankan context, even though implementation leaves the ideal far behind. But it is the notion of political accountability that is really underappreciated, and which presidentialism has served to undermine for four decades. The institutionalisation of political accountability demands a

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<sup>185</sup> L.L. Fuller (1969) *The Morality of Law* (Rev. Ed.) (Yale University Press): 33-38

parliamentary executive, because that principle is the defining feature of that government.

The principle is so central to the ideal of parliamentary government that it is not only in the exceptional situations of a loss of parliamentary confidence when a government as a whole must resign that its operation is seen in practice. The government has to obtain parliamentary support, on a daily basis, for every one of its legislative and budgetary proposals and of its administration of the country in general, and every minister from the Prime Minister down must enjoy Parliament's support. Without that support, individual ministers have to resign, the government's proposals may be defeated, and if the Prime Minister loses confidence or if the government's annual budget is defeated, then the whole government stands dismissed. Thus, rituals like Prime Minister's Questions are not merely a piece of amusing political theatre, but a striking demonstration of the chief executive's regular political accountability in action, in a way that is nowhere seen in a presidential system. In this way, the parliamentary state has as its central idea the notion that the government must be constantly accountable to the elected representatives of the people. The constitutional rationale of this form of political accountability is deeply democratic. It is the means by which, in between the elections in which the people



have their direct say, that the people through their elected representatives ensure that the government not merely carries out the programme for which it was elected, but which ensures that the government acts *constitutionally*, i.e., *accountably*<sup>186</sup>.

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<sup>186</sup> A. Tomkins (2005) *Our Republican Constitution* (Hart)

## Bibliography

G. Almond & S. Verba (1963) *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Princeton University Press)

H. Amarasuriya, 'Elite Politics and Dissent in Sri Lanka,' [2015] *The South Asianist* 4

N. Anketell, 'The Unitary State, Parliamentary Sovereignty, and the Sovereignty of the People: A Reappraisal', [2017] *Bar Association Law Journal* December: 2

N. Anketell & A. Welikala (2013) *A Systemic Crisis in Context: The Impeachment of the Chief Justice, the Independence of the Judiciary and the Rule of Law in Sri Lanka* (Colombo: Centre for Policy Alternatives)

Aristotle 1916 (330 BC) *The Politics* tr. B Jowett (Oxford: Clarendon Press)

S. Asur et al. 'Trends in Social Media: Persistence and Decay' [2011] *SSRN Electronic Journal*  
<https://doi.org/10.2139/ssrn.1755748>

S. Bastian, '*The Political Economy of Electoral Reform: Proportional Representation in Sri Lanka*', in S. Bastian & R. Luckham (Eds.) (2003) *Can Democracy be Designed?* (London: Zed Books)

S. Bastian, '*Understanding the Current Regime*', *Sri Lanka Brief*, 2<sup>nd</sup> January 2019,  
<http://srilankabrief.org/2017/01/understanding-the-current-regime-sunil-bastian/>

D. Batorski & I. Grzywińska, '*Three dimensions of the public sphere on Facebook*' [2018] *Information Communication and Society*, 21:3 <https://doi.org/10.1080/1369118X.2017.1281329>

C. Bell, '*Constitutional Transitions: The Peculiarities of the British Constitution and the Politics of Comparison*' [2014] *Public Law*

Y. Benkler et al. (2018) *Network propaganda: manipulation, disinformation, and radicalization in American politics* (Oxford: Oxford University Press)

C. Bennett, '*The politics of privacy and the privacy of politics: Parties, elections and voter surveillance in western*

*democracies*' [2013] ***First Monday***, 18:8  
<https://doi.org/10.5210%2Ffm.v18i8.4789>

W.L. Bennett, et al. 'The Strength of Peripheral Networks: Negotiating Attention and Meaning in Complex Media Ecologies' [2018] ***Journal of Communication***, 68:4 659–684.  
<https://doi.org/10.1093/joc/jqy032>

N. Bermeo, 'On Democratic Backsliding' [2016] ***Journal of Democracy*** 27:1

A. Brown (2014) ***The Myth of the Strong Leader: Political Leadership in the Modern Age*** (Basic Books)

C.U. Burcher & S. Bisarya, 'Threats from Within: Democracy's Resilience to Backsliding' in International IDEA (1<sup>st</sup> Ed.) (2017) ***The Global State of Democracy: Exploring Democracy's Resilience*** (International IDEA)

T. Camber Warren, 'Explosive connections? Mass media, social media, and the geography of collective violence in African states.' [2015] ***Journal of Peace Research***  
<https://doi.org/10.1177/0022343314558102>

S. Choudhry, '*Constitutional Politics and Crisis in Sri Lanka*' in J. Bertrand & A. Laliberte (Eds.) (2012) *Multination States in Asia: Accommodation or Resistance* (Cambridge University Press)

**ColomboPage**, 2<sup>nd</sup> January 2019,

[http://www.colombopage.com/archive\\_19A/Jan02\\_1546453729CH.php](http://www.colombopage.com/archive_19A/Jan02_1546453729CH.php)

**Colombo Telegraph**, 17<sup>th</sup> November 2015,

<https://www.colombotelegraph.com/index.php/sirisena-to-submit-special-cabinet-paper-to-abolish-executive-presidency-after-his-term/>

Constitutional Assembly, Framework Resolution, January 2016,

<https://english.constitutionalassembly.lk/images/pdf/motion-en.pdf>

Constitutional Assembly, Sub-Committee Reports, July 2016,

<https://english.constitutionalassembly.lk/sub-committees>

Constitutional Assembly, Discussion Paper of the Panel of Experts, January 2019,

<https://english.constitutionalassembly.lk/images/pdf/2019/01C-Report-English-AA.pdf>

R. Coomaraswamy & C. de los Reyes, ‘*Rule by emergency: Sri Lanka’s postcolonial constitutional experience*’ [2004] *International Journal of Constitutional Law* 2:2 272–295

N. Couldry, ‘*The myth of ‘us’: digital networks, political change and the production of collectivity*’ [2015] *Information Communication and Society* 18:6  
<https://doi.org/10.1080/1369118X.2014.979216>

**Daily News**, 4<sup>th</sup> December 2018  
<http://www.dailynews.lk/2018/12/04/law-order/170231/appeal-court-issues-interim-order>

R.J. Dalton (2004) *Democratic challenges, democratic choices the erosion of political support in advanced industrial democracies* (Oxford: Oxford University Press)

K. David, ‘*Sobitha Hamuduruvo: A voice of sanity*’ **Sunday Island**, 12<sup>th</sup> April 2013,  
[http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=77208](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=77208)

K. David, '*Sobitha Hamuduruvo takes a stand*' **Sunday Island**,  
9<sup>th</sup> February 2014,  
[http://www.island.lk/index.php?page\\_cat=article-  
details&page=article-details&code\\_title=97526](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=97526)

K. David, '*UNP's Knotty Bond with Executive Presidency: Tortuous Progress on SI-CC Pathways*', **The Island**, 12<sup>th</sup> July 2014, <https://www.scribd.com/document/233717674/UNP-s-Knotty-Bond-With-Executive-Presidency-Tortuous-Progress-on-SI-CC-Pathways>

K. David, '*Revisiting the Single-Issue Common-Candidate Strategy: Successes and Failures*', CPA-ECCL Workshop on Constitutional Reform and Crisis in Sri Lanka: Navigating Democratic Backsliding and Institutional Resilience, 2015-2020, Negombo, 2-3 March 2019  
**DBSJeyraj.com**, 14<sup>th</sup> July 2018,  
<http://dbsjeyraj.com/dbsj/archives/59984>

L. Dencik & O. Leistert (2015) *Critical perspectives on social media and protest: between control and emancipation* (Rowman & Littlefield International)



L. Diamond, '*Introduction: Political Culture and Democracy*'  
in L. Diamond (Ed.) (1994) *Political Culture and Democracy  
in Developing Societies* (Lynne Rienner)

M. Duverger (1974) *La Monarchie Républicaine* (Paris: Robert  
Laffont)

R. Dworkin, '*Hard Cases*', [1975] *Harvard Law Review*  
88:1057

**Economynext**, 16<sup>th</sup> July 2018,  
[https://economynext.com/China\\_related\\_investigation\\_underw  
ay\\_\\_Sri\\_Lanka\\_PM-3-11239.html](https://economynext.com/China_related_investigation_underway__Sri_Lanka_PM-3-11239.html)

S. Engesser et al. '*Populist online communication: introduction  
to the special issue*' [2017] *Information, Communication &  
Society*, 20:9 <https://doi.org/10.1080/1369118X.2017.1328525>

N. Ernst et al. '*Extreme parties and populism: an analysis of  
Facebook and Twitter across six countries*' [2017] *Information  
Communication and Society*.  
<https://doi.org/10.1080/1369118X.2017.1329333>

T. Fernando, 'Elite Politics in the New States: The Case of Post-Independence Sri Lanka,' [1973] *Pacific Affairs* 46:3

L.L. Fuller (1969) *The Morality of Law* (Rev. Ed.) (Yale University Press)

A. Galyan, 'The Nineteenth Amendment in Comparative Context: Classifying the New Regime Type' in A. Welikala (Ed.) (2016) *The Nineteenth Amendment to the Constitution: Content and Context* (Colombo: Centre for Policy Alternatives)

H. Gil de Zúñiga, 'Social Media Use for News and Individuals' Social Capital, Civic Engagement and Political Participation' [2012] *Journal of Computer-Mediated Communication*, 17:3  
<https://doi.org/10.1111/j.1083-6101.2012.01574.x>

J. Groshek & K. Koc-Michalska 'Helping populism win? Social media use, filter bubbles, and support for populist presidential candidates in the 2016 US election campaign' [2017] *Information Communication and Society*, 20:9  
<https://doi.org/10.1080/1369118X.2017.1329334>

T. Gunasekara, *'From an Electoral Drubbing to a Manufactured Crisis'*, **Groundviews**, 18<sup>th</sup> February 2018, <http://groundviews.org/2018/02/18/from-an-electoral-drubbing-to-a-manufactured-crisis/>

G. Gurvitch, (1947) ***Sociology of Law*** (London: Kegan Paul, Trench, Trubner & Co)

D. Halpern & J. Gibbs, *'Social media as a catalyst for online deliberation? Exploring the affordances of Facebook and YouTube for political expression'* [2012] ***Computers in Human Behavior***, 29:3  
<https://doi.org/10.1016/j.chb.2012.10.008>

S. Hattotuwa, *'Between Scylla and Charybdis: Social Media in Sri Lanka's Constitutional Referendum'*, ***The Round Table***, forthcoming

S. Hattotuwa, *'Framing a Putsch: Twitter and Facebook in Sri Lanka's Constitutional Crisis'*, CPA-ECCL Workshop on Constitutional Reform and Crisis in Sri Lanka: Navigating Democratic Backsliding and Institutional Resilience, 2015-2020, Negombo, 2-3 March 2019

T. Hodgkinson, ‘*With friends like these ...*’, *theguardian*, 14<sup>th</sup> January 2008,  
<https://www.theguardian.com/technology/2008/jan/14/facebook>

E. Hoole, ‘*Splintering Tamil Vote: A Post-Mortem Report*’,  
*The Sunday Observer*, 4<sup>th</sup> March 2018:  
<http://www.sundayobserver.lk/2018/03/04/features/splintering-tamil-vote-post-mortem-report>

International Bar Association (2014) *A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka* (London: IBA)

International Crisis Group (2009) ‘*Sri Lanka’s Judiciary: Politicised Courts, Compromised Rights*’ *Asia Report N°172* (Colombo/Brussels: ICG)

A. Jayakody, ‘*The Process of Constitutional Reform: January-May 2015*’ in A. Welikala (Ed.) (2016) *The Nineteenth Amendment to the Constitution: Content and Context* (Colombo: Centre for Policy Alternatives)

P. Jayasinghe and A. Welikala, ‘Review of the Internal Reforms within Parliament since 2015’, CPA-ECCL Workshop on

Constitutional Reform and Crisis in Sri Lanka: Navigating Democratic Backsliding and Institutional Resilience, 2015-2020, Negombo, 2-3 March 2019

D.B.S Jeyaraj, 'Abolishing *J.R. Jayawardene's Executive Presidency*', *Daily Mirror*, 14<sup>th</sup> October 2019,  
<http://www.dailymirror.lk/article/Abolishing-J-R-Jayewardene-s-Executive-Presidency-138460.html>

A. Jungherr, 'Twitter use in election campaigns: A systematic literature review' [2016] *Journal of Information Technology and Politics* 13:1  
<https://doi.org/10.1080/19331681.2015.1132401>

B. Kapferer (2011) *Legends of People, Myths of State: Violence, Intolerance, and Political Culture in Sri Lanka and Australia* (New York: Berghahn Books)

D. Kavanagh (1972) *Political Culture* (Macmillan)

R. Kearney (1973) *Politics of Ceylon (Sri Lanka)* (Ithaca: Cornell University Press)

A. King (2007) *The British Constitution* (Oxford University Press)

W. Lance Bennett & A. Segerberg, ‘*THE LOGIC OF CONNECTIVE ACTION: Digital Media and the Personalization of Contentious Politics*’ [2012] *Information, Communication & Society* 15:5  
<https://doi.org/10.1080/1369118X.2012.670661>

A.E. Marwick & D. Boyd, ‘*I tweet honestly, I tweet passionately: Twitter users, context collapse, and the imagined audience*’ [2011] *New Media and Society* 13:1  
<https://doi.org/10.1177/1461444810365313>

A. Marwick & R. Lewis, ‘*Media Manipulation and Disinformation Online*’ [2017] *Data & Society Research Institute* 1:104

K. Munger, ‘*Knowledge Decays: Temporal Validity in Online Social Science*’ [2018] *Open Society Foundations* 1:29

D. North (1990) *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press)

V. Orbán, ‘*Full text of Viktor Orbán’s speech at Băile Tuşnad (Tusnádfürdő) of 26 July 2014*’ ***The Budapest Beacon*** 26<sup>th</sup> July 2014, <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>

A. Pabst, ‘*What the left can learn from Australian Labour*’ ***Newstatesman***, 16<sup>th</sup> January 2019, <https://www.newstatesman.com/world/2019/01/what-left-can-learn-australian-labor>

P. Peiris, ‘*Changing Dynamics of the Party-Voter Nexus*’, in A. Shatri & J. Uyangoda, (Eds.), (2018) ***Political Parties in Sri Lanka, Change and Continuity*** (New Delhi: Oxford University Press)

R. Philips, ‘*The Government’s Consummate Crisis*’, ***The Island***, 17<sup>th</sup> February 2018, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=180052](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=180052)

S. Pinker (2018) ***Enlightenment Now: The Case for Reason, Science, Humanism and Progress*** (New York: Viking)

T. Poell & J. van Dijck, '*Social Media and New Protest Movements*' [2017] *SSRN Papers*

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3091639](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3091639)

L. Pye (1985) *Asian Power and Politics: The Cultural Dimensions of Authority* (Harvard University Press)

M. Rajapaksa, '*Election is the Only Answer - Prime Minister*', *Daily Mirror*, 2<sup>nd</sup> December 2018,

<http://www.dailymirror.lk/article/Election-is-the-only-answer-Prime-Minister-159222.html>

*Rajavarothiam Sampanthan & others v. Attorney General & others* SC FR 351/2018, SC Minutes, 13<sup>th</sup> December 2018

P. Reilly, '*Tweeting for peace? Twitter and the Ardoyne parade dispute in Belfast, July 2014*' [2016] *First Monday* 21:11

<https://doi.org/10.5210/fm.v21i11.6996>

Report of the Public Representative on Constitutional Reform (May 2016)

[https://english.constitutionalassembly.lk/images/pdf/PRC\\_1.pdf](https://english.constitutionalassembly.lk/images/pdf/PRC_1.pdf)



G.W. Richardson (2017) *Social media and politics : a new way to participate in the political process* (California: Praeger)

S. Richey, et al. (2018). ‘*Tweeting Alone? An Analysis of Bridging and Bonding Social Capital in Online Networks - Javier Sajuria, Jennifer vanHeerde-Hudson, David Hudson, Niheer Dasandi, Yannis Theocharis,*’ [2015] *American Politics Research* 43:4 <https://doi.org/10.1177/1532673X14557942>

B. Schonthal & A. Welikala, ‘*Buddhism and the Regulation of Religion in the New Constitution: Past Debates, Present Challenges, and Future Options*’, CPA Papers on Constitutional Reform No.3, July 2016, <http://constitutionalreforms.org/wp-content/uploads/2016/06/Buddhism-and-the-regulation-of-religion-in-the-new-constitution-Working-Paper-3.pdf>

P. Science, ‘*Reconceptualising “Time” and “Space” in the Era of Electronic Media and Communications*’ [2009] *PLATFORM: Journal of Media and Communication* 1 [https://ira.le.ac.uk/bitstream/2381/31479/4/PlatformVol1\\_Tsatsou.pdf](https://ira.le.ac.uk/bitstream/2381/31479/4/PlatformVol1_Tsatsou.pdf)

K. Senaratne, '*Constitutional Reform in a Multi-Polar Setting: The Negotiation of Competing Party Political Interests in the Promulgation of the Nineteenth and Twentieth Amendments*' in A. Welikala (Ed.) (2016) ***The Nineteenth Amendment to the Constitution: Content and Context*** (Colombo: Centre for Policy Alternatives)

K. Senaratne, '*Sri Lanka's Gradual Return to 'Normalcy'*', ***Groundviews***, 18<sup>th</sup> February 2018,  
<http://groundviews.org/2018/02/18/sri-lankas-gradual-return-to-normalcy/>

A. Shastri '*United national Party: From Dominance to Opposition and Back*' in A. Shastri & J. Uyangoda, (Eds.) (2018) ***Political Parties in Sri Lanka, Change and Continuity*** (New Delhi: Oxford University Press)

M.R. Singer (1964) ***The Emerging Elite: Study of Political Leadership in Ceylon*** (Cambridge: M. I. T. Press.)

M. Singh, '*Sri Lanka: How unconstitutional coup is becoming an unprecedented threat to Asia's oldest democracy*', ***Daily Financial Times***, 14<sup>th</sup> December 2019,  
<http://www.ft.lk/opinion/Sri-Lanka--How-unconstitutional-coup->

[is-becoming-unprecedented-threat-to-Asia-s-oldest-democracy/14-668821](http://www.president.gov.lk/president-maithripala-sirisenas-statement)

M. Sirisena, Statement of the President, *The Official Website of the President of Sri Lanka*, 18<sup>th</sup> April 2015,  
<http://www.president.gov.lk/president-maithripala-sirisenas-statement>

M. Sirisena, Speech by the President of the Republic in the parliamentary debate on the Resolution of Parliament to establish a Constitutional Assembly, *Parliamentary Debates (Hansard) Official Report* 242:1 (9<sup>th</sup> January 2016)

M. Sirisena, Speech to Foreign Correspondents Association, *Daily News*, 25<sup>th</sup> November 2018,  
<http://dailynews.lk/2018/11/27/local/169540/will-never-reappoint-ranil-pm-president>

C. Sirisena (2018) *Janadhipathi Thaththa* (Colombo: Sarasavi Publishers)

T.D. Sisk, ‘*Democracy’s Resilience in a Changing World*’ in International IDEA (2017) *The Global State of Democracy*:

*Exploring Democracy's Resilience* (1<sup>st</sup> Ed.) (International IDEA)

A.D. Smith (1998) *Nationalism and Modernism: A Critical Survey of Recent Theories of Nations and Nationalism* (Routledge)

J. D. Stone, 'Sri Lanka's Post-war Descent' [2014] *Journal of Democracy* 25:2

M.A. Sumanthiran 'Meaningful power sharing only path to lasting peace' **Sunday Observer**, March 31<sup>st</sup> 2019,  
<http://www.sundayobserver.lk/2018/05/20/opinion/meaningful-power-sharing-only-path-lasting-peace-%E2%80%93-ma-sumanthiran-mp>

Y. Theocharis, et al. 'Civil Society in Times of Crisis: Understanding Collective Action Dynamics in Digitally-Enabled Volunteer Networks' [2017] *Journal of Computer-Mediated Communication* 22:5  
<https://doi.org/10.1111/jcc4.12194>

K. Thorson, 'Facing an uncertain reception: Young citizens and political interaction on Facebook' [2014] *Information*

*Communication and Society* 17:2

<https://doi.org/10.1080/1369118X.2013.862563>

A. Tomkins (2005) *Our Republican Constitution* (Hart)

*United Mizrahi Bank v. Migdal Cooperative Village* (CA  
6821/93, 1908/94, 3363/94)

J. Uyangoda, 'Losing the Reform Moment, Once Again', *The Island*, 20<sup>th</sup> March 2015,

[http://island.lk/index.php?page\\_cat=article-  
details&page=article-details&code\\_title=121712](http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=121712)

J. Uyangoda & K. Ariyadasa, 'Sri Lanka Freedom Party: Continuity through Ideological and Policy Shifts,' in A. Shatri & J. Uyangoda, (Eds.) (2018) *Political Parties in Sri Lanka, Change and Continuity* (New Delhi: Oxford University Press)

R. Venugopal, 'The Second coming of Sri Lanka's Mahinda Rajapaksa' *The Wire* 9<sup>th</sup> November 2018a  
<https://thewire.in/south-asia/sri-lanka-mahinda-rajapaksa>

R. Venugopal (2018b) *Nationalism, Development and Ethnic Conflict in Sri Lanka* (Cambridge: Cambridge University Press.)

L. E. Weinrib, '*The Postwar Paradigm and American Exceptionalism*' in S. Choudhry (Ed.) (2006) *The Migration of Constitutional Ideas* (Cambridge University Press)

J.C. Weliamuna, '*The Cure for the Constitutional Council*', *The Sunday Observer*, 17<sup>th</sup> February 2019,  
<http://www.sundayobserver.lk/2019/02/17/opinion/cure-constitutional-council>

A. Welikala, '*The Rajapaksa Regime and the Constitutionalisation of Populist Authoritarianism in Sri Lanka*', South Asia @ LSE Blog, 28<sup>th</sup> January 2015,  
<http://blogs.lse.ac.uk/southasia/2015/01/28/the-rajapaksa-regime-and-the-constitutionalisation-of-populist-authoritarianism-in-sri-lanka/>

A. Welikala, '*Ethnocracy or Republic? Paradigms and Choices for Constitutional Reform and Renewal in Sri Lanka*' [2015a] *The South Asianist* 4:1  
<http://www.southasianist.ed.ac.uk/article/view/1268/1833>

A. Welikala, '*Constitutional Form and Reform in Postwar Sri Lanka: Towards a Plurinational Understanding*' in M. Tushnet

& M. Khosla (Eds.) (2015b) *Unstable Constitutionalism: Law and Politics in South Asia* (Cambridge University Press)

A. Welikala, 'Nation, State, Sovereignty and Kingship: The Pre-Modern Antecedents of the Presidential State' in A. Welikala (Ed.) (2015c) *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Colombo: Centre for Policy Alternatives)

A. Welikala (Ed.) (2016) *The Nineteenth Amendment to the Constitution: Content and Context* (Colombo: Centre for Policy Alternatives)

A. Welikala, 'The Sri Lankan Conception of the Unitary State: Theory, Practice and History', CPA Working Papers on Constitutional Reform No.3, July 2016a, <http://constitutionalreforms.org/wp-content/uploads/2016/06/CPA-Working-Paper-1.pdf>

A. Welikala, 'The Idea of Constitutional Incrementalism', CPA Working Papers on Constitutional Reform No.14, January 2017, <https://www.cpalanka.org/wp-content/uploads/2017/01/Working-Paper-14.pdf>

A. Welikala, *'The Interim Report on Reforming the Sri Lankan Constitution'*, **ConstitutionNet**, 30<sup>th</sup> October 2017a, <http://www.constitutionnet.org/news/interim-report-reforming-sri-lankan-constitution>

A. Welikala, *'The Fall of the No-Confidence Motion against the Prime Minister'*, **Groundviews**, 19<sup>th</sup> April 2018, <https://groundviews.org/2018/04/05/the-fall-of-the-no-confidence-motion-against-the-prime-minister/>

A. Welikala, *'The Perils of Semi-Presidentialism? The Collapse of Cohabitation and the Design of Executive Power in Sri Lanka'*, IACL-AIDC Blog, 18<sup>th</sup> April 2018a, <https://blog-iacl-aidc.org/blog/2018/5/13/the-perils-of-semi-presidentialism-the-collapse-of-cohabitation-and-the-design-of-executive-power-in-sri-lanka>

A. Welikala, *'Paradise Lost? Preliminary Notes on a Constitutional Coup'*, **Groundviews**, 27<sup>th</sup> October 2018b, <https://groundviews.org/2018/10/27/paradise-lost-preliminary-notes-on-a-constitutional-coup/>

A. Welikala, *'Nailing Canards: Why President Sirisena's Actions Remain Illegal, Unconstitutional and Illegitimate'*,



**Groundviews**, 31<sup>st</sup> October 2018d,  
<https://groundviews.org/2018/11/01/nailing-canards-why-president-sirisenas-actions-remain-illegal-unconstitutional-and-illegitimate/>

A. Welikala, *'The Dissolution of Parliament in the Constitution of Sri Lanka'*, **Groundviews**, 11<sup>th</sup> November 2018c, <https://groundviews.org/2018/11/12/the-dissolution-of-parliament-in-the-constitution-of-sri-lanka/>

A. Welikala, *'The Coup d'grace on the Coup d'etat'* **Groundviews** 14<sup>th</sup> November 2018d  
<https://groundviews.org/2018/11/14/the-coup-de-grace-on-the-coup-detat/>

A. Welikala and L. Ganesathasan, *'Sri Lanka: The State of Liberal Democracy'* in R. Albert et al. (Eds.) (2018e) **I-CONnect-Clough Center 2017 Global Review of Constitutional Law** (I-CONnect)

A. Welikala, *'The Executive Presidency and the Sri Lankan State: Myths and Realities'*, **Groundviews**, 20<sup>th</sup> January 2019,  
<https://groundviews.org/2015/01/20/the-executive-presidency-and-the-sri-lankan-state-myths-and-realities/>

A. Welikala, '*Sri Lanka's (Un)ending Road to a New Constitution: Technical Progress, Political Collapse*', *ConstitutionNet*, 29<sup>th</sup> January 2019,  
<http://constitutionnet.org/news/sri-lankas-unending-road-new-constitution-technical-progress-political-collapse>

A. Welikala, '*Sri Lanka*' in D. Law, A. Schwartz et al (Eds.) (forthcoming) *The Oxford Handbook of Asian Constitutional Law* (Oxford University Press)

R. Wickremesinghe, The Sujata Jayawardena Memorial Oration by the Hon. Prime Minister, 11<sup>th</sup> December 2015, Bandaranaike Memorial International Convention Hall, Colombo

A.J. Wilson, '*The Governor General and the State of Emergency, May 1958 - March 1959*' [1959] *Ceylon Journal of Historical and Social Studies* 2:2

H. Wriggins (1963) *Ceylon: Dilemmas of a New Nation* (New Jersey: Princeton University Press)