

A New Political Regime Post-2010 in Sri Lanka: A Hybrid Regime

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Introduction

The 2010 Sri Lankan Presidential and Parliamentary elections that took place shortly after the end of a debilitating 25 year-old civil war in 2009 constitutes a watershed in Sri Lanka's politics. Despite the unsettled conditions over the last two decades emanating from this turbulent environment created by the civil war and the seemingly intractable obstacles encountered, Sri Lanka was able to maintain some semblance of the principles and practices of a liberal democracy (Clarence 2008). However, the dramatic events more recently surrounding the end of the civil war and the emergence of a 'culture of violence, anomie and impunity' (Devotta 2009) have cast a heavy cloud over the future of Sri Lanka's democratic polity.

The political order that emerged in 2005 with the Mahinda Rajapaksa-led Sri Lanka Freedom Party (SLFP) government has served to consolidate the illiberal political culture and institutions that evolved with the radical social and political transformation of the country since 1978 (Devotta 2002; Jayasuriya 2012). Notwithstanding the termination of a state of emergency after the end of the civil war (CPA 2011) the continued use of 'Emergency Laws' such as the *Prevention of Terrorism Act* (PTA) after the end of the civil war, bears witness to the growing militarisation of civil society and hostility to political and social pluralism (Jayasuriya 2010). The fabric of the emergency laws and institution has become normalised and continue to shape the polity.

Since the 2010 national election the government has given priority to national security considerations alongside issues of sovereignty and created new centres of power whose influence on civil society has expanded extensively. This has raised serious questions as to why the military continues to be afforded police powers and are able to override normal constitutional and legal processes (Pinto-Jayawardena 2010). Although the political climate in Sri Lanka since the 1980s was engulfed in political violence associated with armed conflicts in 'fault line wars' (Huntington 1996), it has not eventuated in the wholesale

dismantling of democratic institutions. However, more recently key features of the well-entrenched liberal political culture of several decades, such as transparency, accountability and the rule of law have been severely eroded (Pinto-Jayawardena 2009).

It was against this background that the Presidential and Parliamentary national elections of 2010 were conducted after the end of the civil war in 2009.¹ The success of the Mahinda Rajapaksa-led SLFP government at the Presidential and Parliamentary elections of 2010 has resulted in a *One Party State* where the dominant party with a large parliamentary majority, the SLFP, surpasses the opposition led by the United National Party (UNP). The weakened opposition gives the government of the day complete access to and control of key state institutions and resources which are used to entrench the dominant party.

Emergence of a Hybrid Regime and Militarised State

Following the 2010 national elections we witness the inauguration of a new political regime – best described as a *hybrid regime* – similar to those prevailing in south-east Asian countries such as Malaysia and Singapore (Wigell 2008; Rodan and Jayasuriya 2009), which were also, like Sri Lanka, previously British colonies. These regimes, built around a dominant party, consist of a mixture of authoritarian and democratic elements where formal democratic processes such as periodic elections combine with a strong incumbent party to limit the organisational capacity of the political opposition.

A distinctive feature of this new political culture is the organisational cohesiveness of party and state institutions that provides significant informal advantages to the dominant political party (Levitsky and Way 2010: 321), enabling it to reach deep into both the civil society and the political economy. It is now clear that the end of the civil war actually accelerated a fundamental process of state transformation leading to the emergence of a hybrid regime in what amounts to a *One Party state* which constitutes a significant departure from the earlier political ethos and has grave implications for Sri Lanka's historical engagement with democratic institutions and practices.

It is in this sense that contemporary Sri Lanka like Mahathir's Malaysia represents a 'hybrid regime', that is, a mix of authoritarian and democratic elements where formal democratic processes combined with a strong incumbent party that seeks to limit the organisational capacity of the political opposition (Stark 2013). Thus, we note that although normal democratic institutions such as the legal system and the electoral process are functional and

1. See Jayasuriya (2012) for a detailed analysis of the 2010 national elections.

operative, they can be skilfully manipulated to maintain regime dominance. As with Mahathir in Malaysia, the Rajapaksa led SLFP government has been adroit in using state resources to weaken the opposition but more importantly, through a system of patronage politics and cronyism, to cater to the various constituencies within the dominant party. The extent and reach of the dominant party in seeking to limit the opposition has reinforced the Executive system of government installed in 1978 by effectively marginalising parliamentary politics.

Furthermore, in addition to the formal advantages the government enjoys there is often a tendency for the government to rely increasingly on the 'informalisation of power'; that is, the advantages of informal power gained through personal alliances and systems of patronage. These informal powers are reinforced by a Presidential system of governance that allows the Executive Head of Government, the President, to directly or indirectly delegate executive powers to key members of the government and personalised networks. The delegation of power has been to members of the government, most of who happen to be personally related to the President, such the Defence Secretary, the powerful head of the defence establishment and national security. Indeed, one of the key features of the current political situation is the creation of a 'deep state', that is, a web of interpersonal networks, informal links, relationships and alliances, that has often trumped the operation of the 'normal state'

The personalisation of power which is characteristic of the new regime, evident in the 'personalised hegemony' of President Mahinda Rajapaksa, is highly reminiscent of the Malaysian authoritarian politics (1981-2003) under the leadership of Mahathir of the UMNO, 1981-2003 (KhooBooTeik 2003; Guan and Nesadurai 2009). Furthermore, as in Mahathir's Malaysia, Mahinda Rajapaksa has embraced and vigorously promoted the nationalist sentiments and ideology of Sri Lanka's 'bhumiputras'(sons of the soil), the Sinhalese-Buddhists, elevating the notion of the '*jathikachintanaya*' to near sacral status. This was made quite explicit at the 2005 Presidential Elections (Department of National Planning 2005), with the reference to the 'Mahinda Cintanaya', the Vision for the Nation's Future. This was not just an electoral slogan, but a basic tenet of Mahinda Rajapaksa's policy agenda which was incorporated as a guiding principle of public policy. Accordingly, Ministers of State are required to act in accordance with the 'Mahinda Cintanaya'(Wijewardene 2013) and bring key state institutions and regulatory agencies, including the police and the judiciary, within the ambit of the philosophy of the dominant party.

These distinctive features of the current regime draws pointed attention to the 'personalistic' character of Presidential legitimacy (Scheurmann 2011) which allows the Executive to cultivate a seemingly direct and immediate relationship with the electorate via all forms of the media. As a consequence, we find that these forms of presidential governance are associated with a consolidation of – to use Weberian terminology – a 'charismatic leadership' which often represents a quest to find a secular replacement for the magical or divine powers once attributed to monarchs (Scheurmann 2011). The consolidation of Executive power is best revealed in the current centralisation of power such that 42 Ministers with control over 94 state institutions are directly under the control of the President or one of his close family members (Wijewardene 2013).

What this also points to is the inauguration of a 'dynastic regime' reminiscent of the Banadaranaike's in the 60s and 70s (Jayasuriya 2005), but characteristically different given informalisation of power being a distinctive feature of the present regime. This has greatly facilitated the virtual collapse of the systemic separation of powers between the executive, legislature and the judiciary; a characteristic feature of the earlier Westminster style of government. This new illiberal political order is perhaps most evident in the manner in which the state controls the media and more generally restricts civil society participation in open public debate. Furthermore, 'violent repression of dissent and the consolidation of power go hand in hand in Sri Lanka' (Amnesty International 2013), and this, above all, exemplifies the manner in which the constitutional authoritarianism of the new regime has eroded all constitutional checks and balances in the system of government (Coomaraswamy 1984).

Importantly, a *One Party state* with a highly centralised and personalised Executive Presidential form of government built around informal relationships functions against the backdrop of 'militarisation' (Jayasuriya 2010) such that the military has an inordinate influence on the conduct of political institutions. This militarization characteristic of the Rajapaksa regime which conferred an inordinate influence on the conduct of political institutions originates from crushing of the 1980s armed Sinhalese youth revolt and gained momentum during the civil war of the 1990s. However, it was the strengthening of the military and defence forces in the final years of the civil war that led to the 'militarism' under President Rajapaksa (Jayasuriya 2010). This militarisation of Sri Lanka is clearly evident in the heightened defence and military expenditure of roughly between 3% and 5% of GDP (Kelegama 2006; SIPRI 2013). This extent of military expenditure, the largest in the

region except for Pakistan, has enabled a powerful military establishment to resort to the use of 'Emergency Laws' to subvert democratic processes on the grounds of 'legal exceptionalism' (Loveman 1993; Jayasuriya 2010).

In this regard, there are two main areas of concern. The first and perhaps the most serious relate to human rights abuse (Zanzi 2002) by virtue of the immunity granted to public officials in the security forces to act outside their professional jurisdiction. The repeal of the *Emergency Regulations* post-2010 however, as previously noted, has done little to alleviate human rights violations as the authorities continued use of Emergency Laws such as the PTA (CPA 2011). The other area of concern is that this militarization has in the post-civil war era witnessed a blurring of civil-military roles leading to the transformation of civil military relations. The recent military takeover of land in the North is indicative of why the military-civilian relationship is problematic' (Perera 2013b). This shows the extent to which the military has been given a free hand in many areas of national life such as fixing roads and re-modelling cities (*Economist* 2013); so much so that the 'public space is now military space' (Lawrence 2008).

There is no doubt that the military establishment has taken centre stage as the new power elite and sought to exploit civilian interests with whom the military have entered into coalition. The time honoured democratic processes associated with the civilian control of the military establishment are no longer operative in that the military has assumed a key role in determining and shaping the implementation of national policy and decision making in many areas including the field of education, foreign relations and development. Furthermore, one of the main reasons for spreading 'military influence is indoctrination ...[so much so that] 'leadership training for university students is now run by the army inside military camps'(Economist 2013).

The current regime's espousal of an avowedly ethnic, nationalist ideology also stands out, as previously noted, in its strong policy commitment to national security on the grounds of the likelihood of a return to political instability (Gordon 2013). The actions of the new regime such as a heightened defence expenditure amounting to nearly 3-5% of GDP over last decade gives a strong indication of what kind of governance will be promoted by the Rajapaksa government in the foreseeable future.

Constitutional and Social Policy Changes: Consolidating Power

Perhaps the most significant indicator of what lies ahead comes from the far-reaching constitutional changes such as the removal of Article 31(2) and changes to Article 25 arising from the [passage of the 18th Amendment to the Constitution](#) (CPA 2010). The 18th Amendment proposes to remove critical constitutional constraints on Presidential powers by a) removing the two-term limit on the tenure of the President; and b) bringing every arm of the public service, the police and the judiciary under the control of the Executive authority. At the same time, the 18th Amendment makes the President nominally accountable to Parliament by providing for the President to attend Parliament. In addition, with this Amendment the Electoral Bribery and National Police Commission were also brought directly under the control of the President.

The passing of the 18th Amendment, one of the first major decisions made at the commencement of Rajapaksa's second term in 2010, was only made possible after the government secured a two-third majority by successfully negotiating the cross-over support of some members of the opposition. These proposals have been condemned by civil society organisations such as the Civil Rights Movement as an outrageous constitutional change which was rushed through Parliament without any serious public scrutiny (Wickremesinghe 2010).

More significantly, this radical change to the Constitution completely negates the 17th Amendment by making the appointment of the Constitutional Council a Presidential Executive responsibility. As a result, the statutory authority to approve the appointment of the Attorney General, which previously rested with the Constitutional Council, now rests with the Parliament subject to the approval of the President. To complicate matters this draconian piece of legislation which was unsuccessfully challenged in the Supreme Court, much to the surprise of many informed observers, has served to further entrench the Executive powers of the President and seriously weakened legal accountability. This decision also undermines the rule of law as it violates the concept of an independent judiciary and also that of a State Law Officer, the Attorney General (Usvatte-Aratchi2010). These decisions have clearly violated fundamental principles of public policy which originated from the days of the late colonial state and were entrenched in the post-Independence Constitution of 1948 by the Soulbury Commission Report (De Silva 1977; Cooray 1982).

The arbitrary exercise of power, in many instances unconstitutional and improper, became highly evident in the clash between the President and the former Head of the armed forces, General Sarath Fonseka. The fall out between the General and the President was a sequel to Fonseka's entry into national politics in 2010 as the main oppositional candidate at the Presidential elections. After the convincing defeat of Fonseka at the Presidential election (Jayasuriya 2011), Fonseka was [committed to trial on charges of war crimes](#) committed by him as Army commander as well as allegations of planning a coup to overthrow the government of President Rajapaksa (Burke 2011). Following the trial of Fonseka by a War Tribunal, he was imprisoned and released only in 2013. The legal processes and procedures followed in the arrest and detention of Fonseka were considered highly irregular and in violation of the Constitution (Perera 2012). In fact, a former foreign affairs spokesperson and a onetime diplomat of the Rajapaksa government was so outraged by the impropriety of this action that he described it as 'a [perfect blunder](#)' (Jayatilleke 2010).

This continuing trend towards the unfettered and irregular exercise of power without any regard for due process, the principles of the rule of law or human rights was most apparent and highly visible in the 'impeachment crisis'.² This relates to the impeachment charges brought against the Chief Justice (Shirani Bandaranayaka) on the grounds of misconduct. These proceedings came in the wake of a ruling given by the Chief Justice and the Supreme Court declaring an important government Bill (the Divineguma Bill) to be unconstitutional and invalid. Contrary to the expectations of the 13th Amendment, the main objective of this Bill was to devalue the powers of the Provincial Councils and strengthen the hold of the central government in the Provinces including many Tamil areas. This was to be achieved by establishing a [central authority amalgamating](#) several provincial development agencies (Fernando 2012; Perera 2012).

Overriding a ruling of the highest court in the land, the Court of Criminal Appeal, the government proceeded to act upon the [impeachment decision of Parliament and appoint a new Chief Justice](#) (Fernandez 2013). This action of the government was deemed by many to be unconstitutional but also 'a serious breach of the rule of law' (Robertson 2013). Besides, it also constituted a [gross interference with the independence of the judiciary](#) (Philips 2013). Indeed, as one political analyst stated, if the judiciary cannot decide on the legality and

2 Rajan Philips (2013) provides an overview and critiques of the impeachment proceedings. See also ICJ (2012) for a critical examination of the constitutional and legal issues surrounding the impeachment

constitutionality of laws' passed by the legislature there is a serious crisis of legality and legitimacy of the Government (Jayatileka 2013).

There is no doubt that what was underpinning all these highly irregular and unconstitutional actions was the need to strengthen national security, singled out as the foremost policy consideration of the Rajapaksa government. Thus one of the main arguments advanced in defence of legislative action such as the 18th Amendment and the resort to the arbitrary exercise of power was that the country needed a strong Executive along the lines of those evident among the 'Asian Tigers' to promote development such as Mahathir's Malaysia (Stark 2013).

This developmental philosophy echoes the neo-liberal ideology of the Jayawardena-Premadasa era (1978-94) and was clearly spelt out in the Rajapaksa government's Election Manifesto which indicated its commitment to give priority to the economic dimension by pursuing a policy of market reform conceived as a form of 'military fiscalism' (Venugopal 2011). However, this political rhetoric of a militarised political economy was sharply disputed by political analysts who maintained that 'there is no economist worth his salt who will say that [a strong Executive] is absolutely essential for development to accelerate' (Usvatte-Arachchi 2010).

There is no doubt that the new regime in advocating a distinctly neo-liberal economic ideology has been quick to embrace the 'Singapore sling' cocktail style capitalism (modelled on shopping malls, casinos, clean streets, tourist hotels and resorts etc.) to facilitate the development of the country. This tourist-centric development policy has accorded high priority to infrastructure development which is clearly evident in the substantial investments in ports, highways, and railroad sectors, alongside other development projects relating to power and energy (Rajapaksa 2011). This policy strategy of the Rajapaksa government serves to highlight a growing public debt with a high component of foreign debt, losses in state owned enterprises and wasteful expenditure with a lack of accountability and increasing inequality (Jayasuriya 2013).

This 'developmentalism' represents a significant departure from the Kumaratunga policies of a 'soft welfarism' in the pursuit of distributional equity and social justice during the period 1994-2005 (Jayasuriya 2010; Sanderatne 2011a). Thus we note that the expenditure on health, education, and social services in the 2012 Budget detracts sharply from a commitment to directing economic growth towards greater equality (Sanderatne 2011b). By

contrast, the credo of the Rajapaksa regime, as in many Asian Tiger economies like Singapore, is framed not in terms of distributional equity but along notions of asset enhancement regarded as the key to enhancing the participation and capabilities of its citizens.

Conclusion

At first sight the social and political philosophy rationale underlying this political ideology appears to be slanted towards the Confucian-ist thinking which is based on the defining importance of stability, law and order, and respect for the Leader. However this respect for the Leader can also be understood in terms of a Kautilyan economic philosophy with its emphasis on the importance of material well-being as the priority of state and society (Rich 2010). It is no coincidence that this way of thinking also blends neatly with the ruthless Kautilyan real-politik of this regime's authoritarian constitutionalism. In this regard it may be relevant to draw attention to the public outcry over human rights violations such as War Crimes allegations made against the Government of Sri Lanka (GOSL) by International Observers and UN Agencies.

The Kautilyan ideological perspective is perhaps neatly illustrated by the Rajapaksa government's emphatic rejection of the applicability of the moral and philosophical rationale underlying concepts of Human Rights entrenched in international agencies such as the United Nation's *Human Rights Council* and *Human Rights Watch* in relation to the civil war and its aftermath. These violations and abuses of human rights have been documented by the UN in the Darusman Report on war crimes allegations (United Nations 2011); also by Weiss (2011) and more recently in the 2012 UN's *Human Rights Watch*.³

These allegations have taken centre stage, overriding all other issues of public policy such as the growing public debt with a high component of foreign debt, and increasing inequality (Jayasuriya 2010;2013). In rejecting liberal political values, it was argued that these distinctly Western idea systems were totally alien to the local cultural ideology and were highly reminiscent of a discredited colonial era and constituted a meddling in the internal affairs of a sovereign country. This rejection of liberal political values such as universal human rights is defended on the grounds of cultural relativism as a way of steering clear of the adoption of alien ideas reminiscent of colonialism. This standpoint, of course, can easily degenerate 'into

3. See The World Report of Human Rights Watch(2012) for a detailed account of humanrights violations during and after the civil war; also Pinto Jayawardena (2011) on the question of the justiciability of war crime allegations..

complicity in human rights violations’ (Scheffer 2011) and is widely acknowledged as a ‘deep seated characteristic of authoritarian regimes all over the world’ (Scheffer 2011).

The civil war may have formally ended, but the ‘fault lines’ of the war still remain (Jayatileke 2011). In the end, lurking in the background of the prospect of restoring democratic institutions and processes, there remain some intriguing questions relating to the peace process and reconciliation following the end of hostilities which the two main national parties failed to confront in the 2010 national elections; both Presidential and Parliamentary. These issues hardly surfaced during the elections except for motherhood statements from both sides of politics on the need for restoring peace and harmony. However the appointment of the LLRC (Lessons Learnt and Reconciliation Commission) remains to the credit of the Rajapaksa Government but its recommendations such as those bearing on land settlement policy in the war torn areas of the North and East remain archived and in the ‘too hard’ basket (Perera 2013a).

What Sri Lanka urgently needs is a *Glasnost* marking a new social and political ethos based on a policy of accountability, openness and transparency, freedom, and justice. Above all Sri Lanka needs something along the lines of a ‘Charter 88’ movement committed to the goal of ‘democratic constitutionalism’ and the restoration of a free and vibrant civil society. The Charter 88 in the UK was a reaction against ‘the belligerent and confrontational style of governance’ promoted by Thatcherism (Erdos 2009). But to be effective, such a movement needs to have a broad base that confronts both political and social challenges for contemporary Sri Lankan society, and a Fourth Estate capable of deconstructing and countering the official media. Future developments will indicate how a militarised political economy critically located in the interface of Asia-Pacific geopolitics will respond internationally and domestically to the challenges it confronts in the foreseeable future.

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