

The Hybrid Regime in Post-Civil War Sri Lanka

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Abstract

Following the presidential and parliamentary elections in 2010, the Sri Lankan political system has seen the rise of a 'one party dominant state' and a 'hybrid regime'. This new political order consists of a mix of democratic and authoritarian elements largely seen in countries such as Malaysia and Singapore. This article examines the social and political changes introduced by the highly militarized regime led by Mahinda Rajapaksa, which has slanted towards a Kautilyan ideology and authoritarian constitutionalism. It is argued that Sri Lanka needs a *glasnost*, marking a new political and social ethos based on the principles of accountability, openness, and transparency, freedom and justice.

Keywords

Constitutionalism, electoral politics, one party dominant state, party politics, democracy, presidential system

Introduction

The 2010 Sri Lankan Presidential and Parliamentary elections that took place shortly after the end of the debilitating 26 years long civil war in 2009 constitute a watershed in Sri Lankan 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' (de votta, 2009) have cast a heavy cloud over the future of Sri Lanka's democratic polity.

The political order, which emerged in 2005 with the Mahinda Rajapaksa-led Sri Lanka Freedom Party (SLFP) government, has served to consolidate the

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illiberal political culture and institutions that evolved with the radical social and political transformation of the country since 1978 (de votta, 2002; Jayasuriya, 2012). Notwithstanding the termination of a state of emergency after the end of the civil war (CPA, 2011), the continuing use of ‘Emergency Laws’ such as the Prevention of Terrorism Act (PTA) in the post-civil war period bears witness to the growing militarization of civil society and hostility to political and social pluralism (Jayasuriya, 2010). The fabric of the emergency laws and institutions has become normalized and continues to shape the polity.

Since the 2010 national elections, the government has given priority to national security consideration 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, known as ‘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 elections of 2010 were conducted.¹ The success of the Mahinda Rajapaksa-led SLFP government in 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 Militarized State

Following the 2010 national elections, we witness the inauguration of a new political regime—best described as a ‘hybrid regime’—similar to those existing in Southeast Asian countries such as Malaysia and Singapore (Rodan and Jayasuriya, 2009; Wigell, 2008), 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 organizational capacity of the political opposition (Stark, 2013). A distinctive feature of this new political culture is the organizational cohesiveness of party and state institutions that provides significant informal advantages to the dominant political party (Levitsky and Way, 2010, p. 321), enabling it to reach deep into both the civil society and

political economy. It is now clear that the end of the civil war has 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. It has grave implications for Sri Lanka's historical engagement with democratic institutions and practices.

Although normal democratic institutions such as the legal system and the electoral process are functional and operative, they can be skilfully manipulated to maintain regime dominance. As with the Mahathir government in Malaysia, the Rajapaksa-led SLFP government has been adroit in using state resources to weaken the opposition 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 introduced in 1978 by effectively marginalizing parliamentary politics. Furthermore, in addition to the formal advantages the government enjoys, there is often a tendency to rely increasingly on the 'informalization 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 personalized networks. The delegation of power has been to members of the government, most of them happen to be personally related to the President, such as 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'—a web of interpersonal networks, informal links, relationships and alliances, that has often trumped the operation of the 'normal state'.

The personalization of power, a main characteristic of the new regime and evident in the 'personalized hegemony' of President Mahinda Rajapaksa, is highly reminiscent of the Malaysian authoritarian politics (1981–2003) under the leadership of Mahathir of the United Malays National Organisation (UMNO; Guan and Nesadurai, 2009; Teik, 2003). 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) and the Sinhalese Buddhists, elevating the notion of the *jathika chintanaya* (national psyche) to near-sacral status. This was made quite explicit at the 2005 Presidential election (Department of National Planning, 2005), with a reference to the 'Mahinda Chintanaya', 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 are required to act in accordance with the 'Mahinda Chintanaya' (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 draw 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 through 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 for a secular replacement of the magical or divine powers once attributed to monarchs (Scheurmann, 2011). The consolidation of executive power is best revealed in the current centralization of power; 42 ministers who control over 94 state institutions are directly under the control of the President or one of his close family members (Wijewardene, 2013).

These points to the inauguration of a 'dynastic regime' reminiscent of, but are different from that of Sirimavo Bandaranaike's rule in the 1960s and 1970s (Jayasuriya, 2005) because of the informalization of power—a distinctive feature of the present regime. This has greatly facilitated the virtual collapse of the system of separation of powers between the executive, legislature and 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 removed all constitutional checks and balances in the system of government (Coomaraswamy, 1984).

Importantly, a one-party state with a highly centralized and personalized executive presidential form of government built around informal relationships functions against the backdrop of militarization (Jayasuriya, 2010). The military has an inordinate influence on the conduct of political institutions. The militarization, characteristic of the Rajapaksa regime, has originated from the crushing of the armed Sinhalese youth revolt in the 1980s and gained momentum during the civil war of the 1990s. However, it was the strengthening of the defence forces in the final years of the civil war that led to 'militarism' under President Rajapaksa (Jayasuriya, 2010). The militarization of Sri Lanka is clearly evident in the heightened military expenditure over the decades (Kelegama, 2006; SIPRI, 2013). The growing military expenditure has enabled a powerful military establishment to resort to the use of 'emergency laws' to subvert democratic processes on the ground of legal exceptionalism (Jayasuriya, 2010; Loveman, 1993).

In this regard, there are two main areas of concern. The first and perhaps the most serious one relates to human rights abuse (Zanzi, 2002) by virtue of the immunity granted to officials in the security forces to act outside their professional jurisdiction. The repeal of the Emergency Regulations in 2010 as noted earlier, has done little to end human rights violations (CPA, 2011). The other area of concern is that the militarization in the post-civil war era has seen a blurring of civil–military role, leading to the transformation of civil–military relations. The recent military takeover of land in the Northern Province 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 remodelling 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 the civilian authorities with whom the former has entered into a coalition. The time-honoured democratic practices associated with the civilian control of the military are no longer operative. Rather, the military has assumed a key role in the making and implementation of national policy in many areas including education, foreign relations and development. Furthermore, one of the main reasons for the spreading of ‘military influence is indoctrination’ as ‘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 stated earlier, in its strong policy commitment to national security (Gordon, 2013). The government’s decision to increase defence expenditure to nearly 3–5 per cent of GDP in the post-civil war period gives a strong indication of what kind of governance the Rajapaksa regime intends to promote in the island.

Consolidating Power: Constitutional and Social Policy Changes

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 modification of Article 25) resulting from the passage of the 18th Amendment to the Constitution (CPA, 2010). The 18th Amendment has removed critical constitutional constraints on executive powers by (i) removing the two-term limit on the tenure of the President and (ii) bringing every arm of the public service, the police and the judiciary under the control of the executive authority. At the same time, the amendment makes the President nominally accountable to Parliament by allowing him 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 made possible only after the government secured a two-third majority by successfully negotiating the cross-over support of some members of the opposition. The constitutional amendment, which was rushed through Parliament without any serious public scrutiny, was vehemently criticized by civil society organizations (Wickremesinghe, 2010).

It is important to note that the 18th Amendment completely negates the 17th Amendment by making the appointment of the Constitutional Council a Presidential 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 the position of a state law officer, the Attorney General (Usvatte-Aratchi, 2010). Further, 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 (Cooray, 1982; de Silva, 1979).

The arbitrary exercise of power, in many instances unconstitutional and improper, became evident in the clash between the President and the former head of the armed forces, General Sarath Fonseka. This was a sequel to Fonseka's entry into national politics in 2010 as the main opposition candidate in the Presidential election. After the convincing defeat of Fonseka in the Presidential election (Jayasuriya, 2011), he had to face a charge of planning a coup to overthrow the government of President Rajapaksa (Burke, 2011). Following the trial by a War Tribunal, Fonseka 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 one-time 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 The government brought impeachment charges against the Chief Justice (Shirani Bandaranayake) on grounds of misconduct. The impeachment proceedings came in the wake of a ruling given by the Chief Justice, under which the Supreme Court declared an important government Bill (the Divineguma Bill) 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 over the provinces. This was to be achieved by establishing a central authority amalgamating several provincial development agencies (Fernando, 2012; Perera, 2012).

Overriding the 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 appointed a new Chief Justice (Fernandez, 2013). This action of the government was deemed by many to be not only unconstitutional but also 'a serious breach of the rule of law' (Robertson, 2013). Besides, it also constituted 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

constitutionality of laws passed by the legislature, there is a serious crisis relating to the legality and legitimacy of the government (Jayatilleke, 2013). What was underpinning all these highly irregular and unconstitutional actions was the need to strengthen national security, singled out to be the foremost policy consideration of the Rajapaksa government. Thus, one of the main arguments advanced in defence of the legislative actions 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' such as Mahathir's Malaysia) to promote development (Stark, 2013).

This developmental philosophy echoes the neoliberal ideology of the Jayewardene-Premadasa era (1978–1994) and was clearly spelt out in the Rajapaksa government's election manifesto. It indicated its commitment to give priority to economic development by pursuing a policy of market reform conceived as a form of 'military fiscalism' (Venugopal, 2011). However, this political rhetoric of a militarized 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-Aratchi, 2010).

There is no doubt that the new regime, in advocating a distinctly neoliberal 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 promote development in 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, railroads, power and energy (Rajapaksa, 2011). The Rajapaksa government's development strategy serves to highlight a growing public debt (with a high component of foreign debt), losses in state-owned enterprises, wasteful expenditure, lack of accountability and increasing inequality (Jayasuriya, 2013). This 'developmentalism' represents a significant departure from the Kumaratunga policies (1994–2005) of 'soft welfarism' in pursuit of distributional equity and social justice (Jayasuriya, 2010; Sanderatne, 2011a). Thus, we note that the expenditure on health, education and social services in the 2012 budget indicates a sharp movement away 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 the 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 rationale underlying this political ideology appears to be slanted towards Confucianist thinking, which is based on the defining importance of stability, law and order, and respect for the leader.

However, 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 *realpolitik* of the regime's authoritarian constitutionalism. In this regard, it may be relevant to draw attention to the public outcry over human rights violations including the war crimes allegations made against the Sri Lankan government 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 the concept of human rights. Violations and abuses of human rights have been documented by the UN in the Darusman Report on war crime allegations (United Nations, 2011) and Weiss (2011) and, more recently, in the Human Rights Watch.³ These allegations have taken centre stage, overriding all other issues of public policy such as growing public debt and increasing inequality (Jayasuriya, 2010, 2013). In rejecting liberal political values, it is argued that the distinctly Western system is totally alien to the local cultural ideology and highly reminiscent of a discredited colonial era, and constituted a meddling in the internal affairs of a sovereign country. The rejection of liberal political values such as universal human rights is defended on the ground 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 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 its 'fault lines' still remain (Jayatilleke, 2011). In the end, lurking in the background of the prospect of restoring democratic institutions and processes, there remain some intriguing questions regarding the peace process and reconciliation following the end of hostilities, which the two main national parties failed to confront in the 2010 national elections. These issues were hardly raised during the elections except in the statements on the need to restore peace and harmony. However, the appointment of the LLRC (Lessons Learnt and Reconciliation Commission) remains to the credit of the Rajapaksa government, even though many of its recommendations, including those bearing on the land settlement policy in the war-torn Northern and Eastern provinces, have been archived (Perera, 2013a).

What Sri Lanka urgently needs is a *Glasnost*, marking a new social and political ethos based on the policy of accountability, openness and transparency, freedom and justice. Above all, Sri Lanka needs something along the lines of the 'Charter 88' movement committed to the goal of 'democratic constitutionalism' and restoration of a free and vibrant civil society. 'Charter 88' in the UK was a reaction to 'the belligerent and confrontational style of governance' promoted by Thatcherism (Erdos, 2009). But, in order to be effective, such a movement needs to have broad-based support that confronts both political and social challenges

facing contemporary Sri Lankan society, and a fourth estate capable of deconstructing and countering the official media. Future developments will indicate how a militarized political economy, critically located in the interface of Asia-Pacific geopolitics, will respond internationally and domestically to challenges in the foreseeable future.

Notes

1. See Jayasuriya (2012) for a detailed analysis of the 2010 national elections.
2. Philips (2013) provides an overview and critique of the impeachment proceedings. See also ICJ (2012) for a critical examination of the constitutional and legal issues regarding the impeachment process.
3. See United Nations (2012) for a detailed account of human rights violations during and - after the civil war. Also see Jayawardena (2011) on the question of the justifiability of war-crime allegations.

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