CHAPTER III

CONSTITUTIONALISM IN OPERATION

Sri Lanka, at the dawn of her Independence on 4 February 1948 was a plural society, which had evolved over the centuries. Ethnicity, religion, language and culture, the original divergences that separated the Sinhalese and Tamils, had during the colonial time been diversified to include education, employment, economy and politics. The colonial rulers also enhanced the distinction that already prevailed among the various groups by institutionalizing the existing differences for their own purposes.

In no other country of South Asia or even the Third World, did the constitutional system of a colonial power seem to have been exported with greater success than the British Parliamentary democracy to Sri Lanka. Yet, the internal contradictions ensuing from a patently dependent capitalist path of development resulted in the fact that each successive government was faced with increasingly acute social crises and compelled to rule more and more through special emergency powers, till a total break with the Westminster parliamentary system was made in 1978.

The smooth constitutional manner in which Sri Lanka attained her Independence, has been commented upon widely by many.¹ While some in the colonial tradition congratulate the wise and benevolent² policies of the British as being responsible for this smooth transition, others look to them as having resulted in

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the creation of an elite capable and well-versed in self-government. In this connection, the crucial role of western education both in understanding the "central value system" and consequently in attaining the requirements of "successful opposition leadership" has been particularly stressed in such literature on national movements, not only in regard to Sri Lanka but also other colonial countries.

In a more meaningful substantive sense, however, the rules embodied in the constitution pertain primarily to the methods by which the "legitimate will" of the state is to be formed and by which "powerholders" or state organs are legally entitled to exercise social control. They constitute, as it were, codes and modes of resolving conflicts between various classes and interests in society, especially those in a dominant position, in a peaceful manner, before such conflicts of interest become irreconcilable with each other. Politics, therefore, understood here as the interaction between various sections of society seeking to preserve or further their particular interests, from the major input in the formation of the constitution by a state and thus constitute an important link in the correlation and interaction of a state and its constitutional law, a component in isolating from which neither of the latter can operate. Constitutional politics, hence, can be defined as the process underlying the efforts and actions by which various sections and groups in society seek to protect or further interests through the via media of the constitution.

The Marxist school, in contrast, believes that legal forms must not be confused with the realities of the social relationships which they seek to express. It categorically states that the constitution is "the expression of the will of the classes who have gained ascendancy and hold state authority in their hands." The "will" of a class, in other words, is identical to the politics of that class addressed directly to society through a statute invested with authority by the State.8

To understand the constitutional politics of a country it is of importance to explore the contexts in which the legal framework came into being. The constitutional experiments in Sri Lanka, as of any other country, were determined by both the socio-economic factors and her politico-constitutional developments in the preceding period. The mechanics of the politico-constitutional process is sought to be understood in the light of both the socio-economic structure inherited at independence along with the latter's impact on the politico-legal plane in the following period.

Ceylon's Constitutional and legal status as a dominion rested on several documents largely passed by the British Parliament and acceded to by its counterparts in Ceylon. The three most important documents were:-

2. Ceylon Independence Act 1947; and
3. Three agreements were signed on behalf of the UK and Ceylon governments pertaining to external affairs, defence and transitional matters concerning the

public services. These in turn, were based on other statutes and understood conventions. As a result of these, the British Queen remained Queen of Ceylon till 1972 and the first two Governor Generals of independent Ceylon were two distinguished Britishers - Sir Henry Moore and Viscount Soulbury.

At independence, the economic interests of the British remained undisturbed, their foreign, military and administrative interests in Ceylon accommodated, their political structure and philosophy of government adopted and the whole process of the transfer of power so smooth that Sri Lanka in 1948 could be described as "an oasis of stability, peace and order." The extraordinary degree of dependence on the colonial power internalised by the elite was expressed as late as 1955 in the words, "it is difficult for Ceylon to do away with the Englishman completely. We simply cannot live without them because of the fact that we will be utterly helpless the moment we do so. The day Ceylon did away with English it would go under India."

In regard to the restricted origins of the Soulbury document, while it is true that the 1946 Constitution was based on the Draft Scheme of 1944 framed by the Ceylonese Board of Ministers, the fact that nobody outside the Board of Ministers, not even members of the State Council, were invited to participate in the preparation of the Draft reveals the extent of limited participation in the constitution making.

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process. This was one of the criticisms leveled at the document by the Tamil representatives, resulting in the incorporation of Clause 29 (2) at the time of independence protecting the rights of the minorities.

In its restricted origins, the final phase in the transfer of power 1942-47 was dominated by one man - D.S. Senanayake. His stamp of influence is borne not only by the 1944 document but by the subsequent ones as well. As Woodward points out, the common fear in the British and the Ceylonese moderates led by Senanayake of the leadership of the independence movement passing into the hands of the more precipitate nationalist forces of the Ceylon National Congress or the left-wing forces, made these restricted negotiations for independence mutually beneficial for both the parties concerned.13

Hence, as de Silva cogently puts it, "if the political leadership in Sri Lanka took pride in the smoothness of the transfer of power they seemed oblivious to the political perils involved in making the process so bland as to be virtually imperceptible to those not directly involved." They, thus, exposed themselves to the gibe of "fake" independence from the left wing critics of the government who immediately demanded the scrapping of the constitution and the formation of a new one by a popularly elected assembly.15 It also led to suspicions in the minds of the non-participants in the deliberations for independence regarding collaboration with

British interests and negotiations of a secret treaty compromising Sri Lanka's independence.¹⁶

**Genesis of Constitutionalism in Sri Lanka**

Post-independent politics in Sri Lanka has been dominated by the language issue and ethnic cleavages. The wholesale adoption of the Westminster model of political system, party system dominated by two major parties alternating in power, and free play of diverse interest groups in electoral politics deepened the rift between the Sinhalese and Tamils, changing the nature of the relationship between the two communities from a competitive to a conflictual one. Though Constitutionalism was ushered in on an administrative structure, apparently integrated under one umbrella, it has a genesis tracing the evolutionary growth of the constitution to the present form which merits a detailed analysis here.

The legislative Council of 1924 constitutes the final stage of the earlier colonial policy of fair play and justice, protection of the weak and downtrodden and constitutional safeguards against domination by the ethnic majority.¹⁷

**The Donoughmore Constitution: The First Constitution**

The Colonial Office in November 1927 sent to Sri Lanka a commission headed by the Earl of Donoughmore to recommend constitutional reforms. The consequent Donoughmore Reforms of 1931 were a landmark in the island's constitutional development. This was intended to lead to internal self-government under the authority of the British Governor. A novel feature of the new constitution was the


introduction of a committee system, based on the model of the London Country Council, in the national Legislature. The State Council performed both executive and legislative functions. ¹⁸

An equally important recommendation of the Donoughmore Constitution was the introduction of universal adult suffrage, only three years after its adoption in Britain and introduced for the first time anywhere in Asia. It is to note that universal adult suffrage was introduced in spite of the fact that many of the island's leaders were not yet prepared to accept the implications of the right to political equality and participation by the masses in democratic governance of the country.

Another major recommendation of the Donoughmore Commission was the abolition of ethnic representation, thereby doing away with the strategy of "divide and rule" so effectively used by the British for nearly a century. Though it was intended to do away with communalism it could not fade its tendrils into the background. The political position underlying the constitutional reforms in 1931 thus. "...only those communities who were at an advantage owing to their social and economic position, were able to turn to good account the new opportunities afforded by the government....During the reform debate, which was really a scramble for power, the Tamils and the minorities usually combined against Sinhalese, and when Sinhalese and the Tamils united, the minorities joined hands with the officials against them."¹⁹ The abolition of communal representation, furthermore, was protested against by the minority upper classes especially those of the Ceylon Tamils, who saw themselves as being at a disadvantage in this respect. They viewed the non-inclusion of a Tamil in

the 1936 Cabinet as proof of the deterioration of their status. 20

Despite its attractive features, the Donoughmore reforms failed to stifle political agitation. The political leaders of Sri Lanka, having had a taste of real power, wanted full fledged parliamentary institutions including a cabinet form of government. It was to take more than a decade for that to be realized. In July 1944, the Secretary of State for the Colonies sent a constitutional Commission to Sri Lanka headed by Lord Soulbury. The Soulbury Report led to a new transitional constitution based on the parliamentary mode. But events overtook these reforms and Sri Lanka became an independent nation. 21.

The Soulbury Constitution, 1947

The Soulbury Constitution of 1947, made to fit into an independent framework. It had been predicted on definite safeguards for the minority ethnic and religious groups and it survived longer (1947 to 1972) than any other constitution of Ceylon. The constitution was strikingly closer to the Westminster model than those adopted by most other Commonwealth countries. Like most others, it provided for a cabinet form of government adhering to the principles of collective responsibility, a bi-cameral legislature and a Governor-General as head of the state. Unlike most others, however, it was a unitary constitution and flexible in practice despite its apparent rigidly (as later events were to prove) and contained no bill of rights or "directive principles" of state policy. In being so, it resembled the "rational legal" approach of the original model more closely than did other Commonwealth Constitutions.

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The link with the British Crown was maintained in strict law, although it had no practical significance in the lives of the people or the affairs of the country. The existence of this link tended to obscure the fact of the island’s independence from subjection to Britain. Sri Lanka’s independence thus granted from above, was being regarded as much less satisfying to the spirit of nationalism than if won after prolonged strife and enormous sacrifice as in many other colonial countries. In real terms, Soulbury Constitution instituted a structure and mode of government eminently suited to the needs of the prevalent elitist nature of state power. Broadly speaking, by providing for a cabinet form of government operating under the rules of collective responsibility and a bi-cameral central legislature, the constitution encouraged and resulted in the coalescence of Sri Lanka’s political life along party lines and the gradual emergence of an area of functional consensus among the parliamentary parties.

So up to 1956, Sri Lanka politics was dominated by a single party, viz., the United National Party (UNP). But the 1956 elections ushered in a "two major party system", the UNP and the Sri Lanka Freedom Party (SLFP) emerged as the two major parties, alternating in power. The electoral contest has been limited primarily to these two parties, the minor parties often joining the two major parties in "pre-election alliance and/or post electoral coalition government". While regional parties, like the Federal Party (FP) or Tamil Congress (TC) preferred to align with the relatively secular UNP, the leftist parties like the Lanka Sama Samaj Party (LSSP) and the Communist Party (CP) opted for the "centrist" SLFP. The imperatives of power sharing then, required the leftist parties to abjure much of their radicalism and

endorse the "majoritarian thrust" of the SLFP. Both, the UNP and the SLFP have enjoyed more or less equal support and have had their stronghold among the Sinhalese electorate. Therefore, pandering to Sinhalese Buddhist demands has been a feature of both the parties. With both, the party in power and in opposition, promoting Sinhalese interests, the alienation of the Tamils steadily increased and contributed to the final rupture between the Sinhalese and Tamils.

With the establishment of two dominant parties between which power effectively alternated at each election, a central dominant value system emerged. The position of isolation of the left parties at the initial stages while adhering to their particular class-secular perspective in the fifties and then the gradual subordination to the two major parties in a search for an effective role by the adoption of the dominant ascriptive overtones is especially meaningful in this regard. As a reflection of this state of affairs, they laid aside their desire for the abrogation of the constitution and, instead, reiterated the view of the dominant SLFP of the need to transform Ceylon into a Republic of Sri Lanka and to revise the constitution "to suit the needs of the country". Thus, while the parliamentary system encouraged political participation on the part of the people, it did not allow them to effectively intervene to fundamentally alter the system in their favour.

Meanwhile, the Governor General retained a certain discretion to act under this constitution in a manner corresponding to the discretionary powers of the English


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monarch by convention.\textsuperscript{26} The institution of the Senate underlined the elitist nature of government. The Soulbury Constitution made the provisions for the nomination of a few members to the Senate who are eminent in educational and intellectual attainment or administrative qualifications and experiences. They could offer their services without feeling constrained by the considerations of possible political repercussions.\textsuperscript{27}

Further, the Soulbury Constitution incorporated a form of constituency representation biased in favour of conservatism. Based on territorial, rather than communal principles, the constitution provided weightage to minority groups and to sparsely populated backward areas, to offset their perceived disadvantages and communal fears of total subordination to the majority community. This initially secured a measure of additional representation for the Ceylon Tamils and Muslims, resident in the thinly populated Northern and Eastern provinces. Multi-member electoral districts also sought to improve the prospects of ethnic, religious and social groups living in Sinhalese areas securing representation. Further, in the initial years, while the UNP lost the advantage in the westernized and urbanized areas in the low country, it gained in sum in the rural up country areas. Later, this weightage worked to the advantage of the SLFP.

The ethnic tensions against minorities kept under control by the British in the 1930s, developed openly upon the arrival of independence. Sinhalese of all classes were ready for a new turn of "holy wars" based on ethnicity, language and religion to be conducted against the non-Buddhist sections of the population. Independence

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\item \textsuperscript{26} The Constitution of Ceylon. 1948, Section 4.
\end{itemize}
brought political power to the Sinhalese the majority community which, however, felt that it had not been given its fair share of economic opportunities. The Tamils, on the other hand, feared that their economic advantages achieved during the British rule would be eroded through the exercise of political power by the Sinhalese. The Tamil leaders were not satisfied with the provision in the 1948 Constitution for 25 seats in Parliament. G.G. Ponnambalam, leader of the largest Tamil organisation joined the first independent government, led by D.S. Senanayake and his newly established party, the UNP. This led to a split of the Tamil Congress and the creation of Tamil Federal Party, to become the dominating Tamil Party after 1956.

The Indian Tamil plantation workers and their political rights were the first target of the new UNP Government, facing competition from the left parties. In contrast to his liberal approach to the rights of the minorities, D.S. Senanayake, held the common view of the time that the Indian estate workers in Ceylon were "birds of passage" with no legitimate interest in the island. The UNP Government defined the basis and the prerequisites for the grant of citizenship rights in the Ceylon Citizenship Act of 1948. The Indian and Pakistani Residents (Citizenship) Act of 1949 and the Parliamentary Elections (Amendment) Act of 1949, by their regulations effectively rendered it impossible for the vast majority of the Indian Tamil population to aspire for citizenship. Subsequently, legislation for franchise rights were passed


30. Ceylon was the only country in South Asia to mark its independence by restricting the franchise enjoyed under colonial rule.
in 1948-49 despite the opposition of left parties. The aim of the government was, however, twofold: to reduce the political influence of these workers, both as a minority and as a class. There was an apprehension that the Sinhalese would be "swamped" by the Indians if they obtained citizenship and the right to vote. In the 1947 election, 7 members of the Ceylon Indian Congress had been elected to parliament, and it was feared that the Indian Tamils would continue to be in majority in some constituencies. The Indians in Sri Lanka were exposed as a fifth-column. Besides the ethnic consciousness as Sinhalese, the leaders also betrayed a bourgeois consciousness with class interests to be guarded. The fears of unification of all workers in Sri Lanka and prospects of an impending revolution had been fuelled by strikes, as well as the international political developments in China, Burma and Malaysia.

These two enactments were not unanimously protested and voted against by the leaders of the Sri Lanka Tamils. The Indian Tamils, living isolated in the plantations, being descendants of immigrant workers and of low caste, were looked upon as inferior by the Sri Lanka Tamils. A common identity had therefore not developed. Hence, the voting pattern to a great extent followed class lines cutting across ethnicity." The status of the Indian Tamils was sought to be settled in 1964 in a negotiated agreement with the Government of India (the Sirimao-Shastri Pact). In 1974, the Sri Lanka government agreed to award citizenship to 46.2 per cent of the Indian Tamils living in Sri Lanka in 1948, and the Indian Government agreed to the repatriation to India of the remaining Indian residents. By 1980, approximately 400,000 'Indian Tamils' had gained Sri Lankan citizenship. The UNP government

subsequently agreed to grant citizenship to the supposedly remaining 94,000 Indian Tamils, following the decision of the All Parties Conference in 1984.\textsuperscript{11}

The Courts added a further element of conservatism in that unlike those in the British Political system - they could review the constitutionality of legislation and the legitimacy of the exercise of executive power. The Privy Council, furthermore, could be appealed to in disputes arising out of the ordinary situations in a manner best described as a "supra Supreme Court".

Lastly, the continued use of English (till such a time when Sinhala and Tamil were adequately developed to replace it as official language) indirectly safeguarded the position of the privileged minority of the population to the detriment of the large majority. The consensus, thus, sought to be created by the ruling elite in the post independence period was statusquoist in nature. Corresponding to the dependent, semi-feudal social order, prevailing in Sri Lanka, the 1948 consensus had strong links with that of the preceding period. It conformed to the narrow, paternalistic domination by the privileged minority with strong colonial overtones.

In analysing the factors responsible for the long endurance of the Soulbury Constitution, one needs to begin by dividing the period 1947-72 into two main phases with the year 1956 as the watershed but with a subdivision in the latter period from 1965 onwards. The first phase, 1947 to early 1956, comprised the years of the UNP domination of Sri Lankan politics. During this phase, there were no moves to amend the constitution in any significant way much less to replace it with another despite the UNP government's comfortable two-thirds majority in the Parliament as a fall out of the 1952 elections. The emergence of the Sri Lanka Freedom Party in 1951 did not

initially strengthen the forces of constitutional reform, for the new party did not have the same dogmatic opposition to the Soulbury Constitution as the left wing groups. Indeed, S.W.R.D. Bandaranaike, the founder of the SLFP, had been a member of the Board of Ministers and the Cabinet at the time the constitution was negotiated and adopted.34

An important cause for the rising social conflict during the UNP government in the early fifties was the lack of economic opportunities in the face of the burgeoning population. More specifically, it would be true to say that while the questioning of the hitherto dominant colonial pattern resulted in an assertion of a more indigenous "nationalist" alternative; the later tended, in the context of restricted resources and two well-defined communities of unequal strength, to be interpreted increasingly in terms and values acceptable to the majority Sinhalese community only.35 The conjunction of these factors led to a militant assertion in the political arena of the sorely affected intermediate strata of the Sinhalese urban and rural petty bourgeois and indigenous professional class who henceforth exercised an important influence on the policies of those in power. It is in this context one can justify the claim that the 1956 election served to "shift political power from the westernized bourgeoisie and petty bourgeoisie who lived in small towns and villages, into the hands of the feudal landed non-estate interests of the interior who had found themselves at a disadvantage in the preceding colonial ethos.36

The SLFP led coalition which came to power in 1956 tried to establish socialism of sorts. Examining the `socialism' being propagated in populist rhetoric in

the post-1956 period, its basic tenets could be summed up as nationalization of foreign ownership: indegenisation through a greater role being demarcated for local industrial capital and enterprise; and socialization in two senses -- of an increasing role for the state at the economic level in the direction of providing infrastructural facilities for capitalist development through restructuring private economic relations, chiefly inland, so as to enable a more "efficient" allocation of resources as witnessed in the 1958 land reform seeking merely to "regulate" tenancy legislation.

Thus, in the next ten years, the two SLFP dominated governments attempted to move the country on the path of a mixed economy with the state taking the lead in mercantile and production sectors.37 In the post 1956 period, the rising communal tensions posed the greatest difficulties for the governments of that period. As a reaction to the assertion by the Sinhalese intermediate classes, the Federal Party in turn based among the Tamil petty bourgeoisie and small landed interests38 became the dominant party for the Ceylon Tamils. In August 1956, the Federation Party (FP) demanded autonomy under a federal constitution for the Ceylon Tamil areas, parity of status for the Sinhala and Tamil languages and a satisfactory settlement of the problem of the stateless Indian Tamils in Sri Lanka.39

The over-riding exigencies of parliamentary politics and opposition in a closely competitive two party dominant system resulted in an increasing importance of inducements by the two parties to marginal social groupings leading to an increase of populism. Both the SLFP and the UNP in this period, therefore:

I. made extravagant promises to net the maximum votes:
II. backtracked and retracted from electoral promises later, and
III. exploited passions when in opposition for their own ends.... altogether in a widespread exacerbation of hopes and passions among the populace and confusion, suspicion and disillusionment over their nonfulfillment. 

In this competitive parliamentary context, therefore, the various difficulties faced by the SLFP dominated governments resulted in the UNP led National Front being returned to power in 1965. While taking cognisance of the changed milieu, the UNP more in line with its conservative bias attempted to push through a programme of agricultural modernization within the existing set up. Due to unemployment, coupled with the inflationary trend accompanying the dismantling of import controls and influx of foreign aid and investment, the UNP efforts to promote economic development worked to the disadvantage of the less-affluent sections of the population.

The limited employment opportunity in a relatively stagnant economy endangered a rising degree of frustration and alienation in the minds of the increasingly literate population. To quote Kearney, with special reference to the unemployed youth, "the shifting of hopes and expectations contributed to a growth of disillusionment, alienation and sense of deprivation among youth which in turn heightened the potential for political violence."

The increasing use of the coercive apparatus of the state to curb the growing violence and conflict in political life in the late fifties and throughout the sixties has to be understood in this background. Whereas the day long hartal in 1954 resulted in Prime Minister Dudley Senanayake's resignation; the period after 1956 witnessed frequent resort to police action, deployment of armed contingents and declaration of emergency which went on mounting until periods of 'emergency' became an ordinary feature of administration.43

The SLFP Leader, S.W.R.D. Bandaranaike's main concern at the time he became Prime Minister in 1956 centred on the limitations and curbs on Sri Lanka's sovereignty, which he was anxious to eliminate. However, he was concerned more with the defence agreements with Britain, signed at the time of the transfer of power than with the Soulbury Constitution itself. At the Commonwealth Prime Ministers' Conference in 1956. Bandaranaike secured the agreement of his fellow Prime Ministers for his country's transition to Republican status within the Commonwealth. He was anxious, at the same time, to introduce amendments to the Soulbury Constitution. On his initiative a Joint Parliamentary Select Committee on Constitutional Reforms was set up on 2 November 1957 to prepare the basis of a new constitutional structure.44 But the political instability during the last phase of his tenure could not allow him to further his goal.

Between 1960 and 1965, the SLFP took the view that the Soulbury Constitution should be amended, and its election manifesto of 1960 spelled out the amendments desired: "...a reconsideration of the position of the Senate, the definition

43. Ibid, pp. 767.
of democratic and economic rights, and the establishment of a democratic republic..." Its manifesto of 1965, which had the endorsement of the [LSSP] and [CP], reiterated the theme of a republic and the need to revise the constitution "to suit the needs of the country." The Federal Party by this time was the predominant influence among the Tamil minority, but the federal constitutional structure they advocated was not a politically viable proposition.45

The survival of the Soulbury Constitution, without any fundamental change, during this decade of SLFP dominated governments, can be explained on a different basis. The Soulbury Constitution, which had been in operation from 1947, was intended for a transitional constitutional phase prior to independence. As such, it had not been introduced by an act of Parliament but by an order in Council - the Ceylon (Constitution) Order in Council, 1946. That Constitution gave power to the Ceylon Legislature "to make laws for the peace, order and good government of the Island". The Ceylon Independence Act, 1947, passed by the British Parliament provided that, as from 4 February 1948, H.M. Government would cease to be responsible for the Government of Ceylon, the Parliament of Ceylon should have full power to make laws having extra-territorial operation. The Soulbury Constitution was to continue to be operative as the Constitution of independent Ceylon. Although in legal terms Ceylon became independent and the Ceylon Parliament full legislative jurisdiction, it fell short of being a sovereign legislature with unfettered legislative powers as befitting an independent Country.46

45. Ibid, p.316.

In political terms, it shifted the locus of state power in favour of the "nationalist" feudal and incipient capitalist classes. In consonance with the elitist, westernized value system, the "political nation" was only gradually extended and the same elite continued to maintain predominance in nationalist politics. The new Constitution was merely an adapted version patterned closely after the Westminster model instituting a unitary, parliamentary form of government of a liberal democratic nature. In the interests of the ruling classes, it however, contained deviations from the Westminster model in, notably, the institution of a judiciary with the power to review legislation and a mode of constituency representation weighted in favour of conservatism. As a continuation of the colonial set up, the Privy Council in Britain, continued to have the prerogative of pronouncing the final Judgment/opinion in cases affecting British interests on dispute within Sri Lanka and referred to it. These provisions were later more explicitly supplemented within three years of independence by the institution of provisions for arbitrary preventive detention and the decitizenising and defranchisement of the vast majority of the Indian Tamil workers: both moves being to the disadvantage of any potential challenge posed by the left parties.47

The 1972 Republican Constitution

The Soulbury Parliamentary structure of government was 'tidied' up, with sovereignty flowing from the people, to the Assembly, the Cabinet and then to the Prime Minister; with supreme sovereignty being attributed to the Assembly while executive power in reality resided in the Prime Minister. The Constitution of 1948 stipulated still the British sovereign as the nominal head of the state.

The UNP when in government and in opposition advocated that Sri Lanka should become a republic. But when in power (1965-70) it lacked the parliamentary majority (two thirds of all members of the lower House) necessary to amend the constitution. On the other hand, it was during their years in opposition between 1965 and 1970 that the constituent parties of the present SLFP Coalition made a far-reaching re-appraisal of their stand on the question of constitutional reforms. They came to the conclusion that a mere revision of the existing constitution was inadequate and committed themselves to a new policy of entrusting the task of drafting a constitution to a Constituent Assembly which would derive its 'authority' from the people of Sri Lanka. This was simply a bid to press into service professor K.C. Wheare's notion of Constitutional 'autochthony' constitution for the Island.

The SLFP endorsed its stand for the drafting of a new constitution probably taking into account the judgments of the Judicial Committee of the Privy Council in London, in regard to Section 29 of the Soulbury Constitution which related to the minority safeguards. The Privy Council, in an 'obiter-dictum', had held that this clause was an entrenched provision which should not be amended in any revision of the constitution. Its overwhelming electoral victory in May 1970 gave the coalition the opportunity it sought to put these ideas into effect. One of their first acts after assumption of office was the summoning of a Constituent Assembly.

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49. K.C. Wheare. Constitutional Structure of the Commonwealth. Oxford. Professor Wheare's thesis was that "the Members of the Commonwealth will, as a rule, take steps quite soon after they achieve independence through a Constitution made in Britain...to proclaim that independence in a document which they can claim owes its validity and authority to no outside country or institution but to themselves alone."
To the extent that the desire for a new constitution and an "independent" status in accordance with the increased nationalist consciousness was in keeping with widespread political aspirations, the constitution registered a consensus on the part of all significant political parties. There was however, disagreement over the other essential aspects of the new constitution framed...reflecting the pressures and pulls in the prevailing polity. The major opposition party, the UNP, on the other hand, in keeping with its westernized, rightist orientation grew wary of where the socialist objectives of the ruling [UF] might lead and it not only disagreed and voted against the new constitution but resorted to agitational politics against the UF and the new constitution in the succeeding years.

The 1972 Constitution sought to embody and legitimize the process of social transformation in the direction of a more indigenous self-reliant pattern of capitalist development set in motion in the post-1956 period. In that, due to certain inherent weaknesses of the peripheral social order, it required the state structure to organize and facilitate the process of indigenous capital accumulation. As such, it upheld the socialist mobilizing model as its modus operandi to achieve such a transformation. More concretely, it sought to recognize, albeit with a time lag the reallocations and dislocations entailed by the on-going process. It incorporated the growing trends of egalitarianism, communalism, separatism and centralization in an explicit form: thus establishing a fait accompli in these directions.

The whole endeavour of framing a new constitution was sought to be dramatized in relation to its antecedents for the advantage of the ruling party in a number of ways. Following the "revolutionary" mode of setting up a new order (albeit only in the constitutional sphere), the objective of formalizing Sri Lanka's break with Britain through the declaration of a republican form of government which derived its sovereignty from the people of the country and the incorporating some of the socialist
principles of state policy and fundamental rights in the new constitution was sought to be achieved.

On 22 May 1972, the Constituent Assembly purported to enact the draft constitution as the Constitution of the Republic of Sri Lanka. The earlier constitution was not expressly repealed but, by Article 12 and Schedule 1, it was effectively abrogated. Mrs. Bandaranaike declared, "Today we are in a proud position of owing no allegiance to anyone else, but totally and in every respect, owing allegiance only to our own country." 51

Between the 1970 Elections and the purported enactment of this constitution, the constitution makers had done nothing to consult the people of the country. There was no referendum or plebiscite on the constitution. However, the preamble to the constitution stated:

"We the People of Sri Lanka being resolved in the exercise of our Freedom and Independence as a Nation to give to ourselves a constitution...which will become the fundamental law of Sri Lanka deriving its power and authority solely from the people....Acting through the Constituent Assembly established by us, Hereby Adopt, Enact and Give to ourselves This Constitution."

The plain truth is that it was not the people of Sri Lanka, but less than 125 MPs who were in rebellion against the people of Sri Lanka, the Constitution, the law and the Courts, who resolved that this should be the new constitution of the country. 52

52. S. Ponnambalam, op.cit., p. 163.
The salient feature of the new constitution is the establishment of a uni-cameral republican structure which may be described as a centralised democracy in which the dominant element is the political executive, which has few institutional checks or its use of political power. Calvin R. de Silva, the guiding spirit of the new constitution, preferred to emphasize the role of the National State Assembly in the new constitutional structure: "it constitutes the legislature; the executive is drawn from it; and made responsible and answerable to it; and the courts are of its creation...The Legislative, the Executive and the Judicial functions are only three aspects of the single power of the people and that organic unity of the three aspects of power is carried into the organisation of the state." 53.

The conception of National State Assembly as the vehicle of the sovereignty of the people finds final expression in the provision which denies to the courts the power or Jurisdiction to pronounce upon the validity of the laws enacted by the Assembly. The functions of the Courts are confined to the interpretation of the laws. A constitutional court has been established whose duty is to participate in the process of legislation as the adviser to the National State Assembly on the question of whether any provision of a bill, or a bill itself, is unconstitutional. Its advice is made binding on the National State Assembly, which has to provide a special majority of two thirds of its members to override a decision of the constitutional court that the provisions of a bill are unconstitutional. The Speaker of the National State Assembly is bound by the decision of the constitutional court, and this decision is conclusive for all purposes. Though Colvin R. de Silva claimed this device of a constitutional court was "perhaps the noble feature of the constitution": it had a striking similarity to the

constitutional Court under the Fifth Republic in France.54

The new Republic of Sri Lanka has a President as head of State but his position is perhaps unique in that he is nominated by the Prime Minister and not elected directly or indirectly. In so far as he is the Prime Minister's nominee, there is no change from the position of the Governor-General under the Soulbury Constitution except that it is clearly laid down in the new constitution that the President is appointed for a period of four years. There can be no doubt that nomination by the Prime Minister detracts from the dignity and authority of the President.55

The question of State and Legislative Sovereignty was resolved in the first and fourth articles. The first declared: "Sri Lanka (Ceylon) is a Free, Sovereign and Independent Republic". Article 4 unequivocally affirmed "The Sovereignty of the People is exercised through a National State Assembly of elected representatives of the People." The question of federalism, devolution and the like, were unequivocally put to rest by Articles 2 and 45(1). Article 2 stated: "The Republic of Sri Lanka is a Unitary State". Article 45(1) provided: "The National State Assembly may not abdicate, delegate or in any manner alienate its legislative power, nor may it set up an authority with any legislative power, other than the power to make subordinate laws". Article 6 stated: "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". Other religions were given the private rights of freedom of thought, conscience, worship, observance, practice and teaching. Article 18(1) individual fundamental rights severely restricted by law" in the interests of national unity and integrity, national security, national economy, public safety, public order".. were provided for.

54. Ibid.
55. Ibid, p.320.
It was expressly stated that "all existing law shall operate notwithstanding any inconsistency with" these so called fundamental rights. The fundamental rights of ethnic, linguistic and religious communities were not recognized. However, on the official language, Article 7 of the Republic of Sri Lanka constitution reaffirmed, "The official language of Sri Lanka shall be Sinhala as provided by the official Language Act No.33 of 1956." The official language Act provision was thus enshrined in the constitution, despite the judicial decision that it was ultra vires.56

The status of the Tamil Language reached its nadir. According to Article 8, the use of the Tamil Language shall be in accordance with the Tamil Language (Special Provisions) Act of 1958. The Constitution said that the Tamil Language Regulations "shall not in any manner be interpreted as being a provision of the constitution but shall be deemed to be subordinate legislation". This meant that the Tamils outside the northern and eastern provinces as well as the Muslims and the Indian Tamils, were effectively tied to the yoke of 'Sinhala only' by the Constitution of the Country. Article 9 provided that all laws should be enacted in Sinhala, what was permitted in the Tamil language was mere translation.57

While the Sinhalese nationalist feelings of the majority had been more or less assuaged by the dominance granted to their community in the 1972 Constitution; the minority community led by the FP had, in contradiction, initially sought to temper the constitutional provisions and protect their own position, failing which they boycotted the remaining sessions of the Constituent Assembly and began agitating for nothing less than a federal solution to their problems.

57. Ibid.
The Assembly meeting of 22 May 1972 which was summoned to pass the constitution was boycotted by 15 out of 19 elected Tamil representatives. The manner in which the unanimous opposition of the Tamil nation was ignored and the new constitution was imposed on them has only confirmed the psychology of the Sinhalese imperialistic masters that they ruling over a slave nation according to their own whims and fancies. They did away with the meagre safeguards provided for the minorities in the constitution left behind by the British....and through this imposed constitution made the Tamils their slaves without ensuring them any fine share in the exercise of political power of the state.58

The makers of the constitution it seems had two objectives: firstly, to get rid of all that stood in the way of their unbridled exercise of political power under the earlier constitution, and secondly, to write into the new constitution all the gains that had been made and that needed to be made in turning Sri Lanka into a Sinhala-Buddhist State.59

Assessing the new constitution as a whole, therefore, it would be true to state, as Kearney does that, "the Constitution of 1972....reflected the populist and socialist currents of the preceding decades." It can not, however, be as justifiably contended that the "basic structure of government it created did not appear to differ radically from that set forth in the earlier constitution. In this context, the comments made by an astute British analyst regarding the nature of the "Westminster model" instituted in Sri Lanka in 1972 had greater truth. Observing that the 1972 system instituted the supremacy of parliamentary legislation in a manner more similar to the Westminster model in Britain than did the former Soulbury Constitution, Saul Rose notes that the

58. From the F.P. 1977 Election Manifesto.
59. S. Ponnambalam. op.cit.. p.163.
principle of sovereignty of parliament was invoked, however, not to restrain the exercise of its power, as in Britain but to facilitate it. The prevailing government effectively used its dominant position to follow the logic of its argument in a fashion virtually unknown in Britain with its proverbial "long tradition of resistance to the abuse of power."\textsuperscript{60}

**The 1978 Constitution**

The 1972 Constitution was framed to fulfill the "objectives of a socialist society" and to facilitate this process, a strong form of government was instituted, which, with two thirds majority had the power at its disposal to effect virtually any change in the society. This majority had itself virtually into what could perhaps be best termed as "parliamentary dictatorship" or "constitutional Dictatorship" by the end of its tenure.\textsuperscript{61}

In the economic sphere, in order to augment the process of resource generation for development an attempt was made to replace universal social welfare with the provision of welfare on a selective basis according to need. To effect the much needed long term and fundamental changes in the economy, various types of legislation were passed to implement the development oriented and egalitarian policies and programmes of the government. Simultaneously, contradictory and inconsistent pattern of development followed by the UF led to an increasing measure of economic misery for the weaker sections of the society. The subsidies had undergone "rationalization". The cost of living index registered a rise of 157.3 points in 1970

\textsuperscript{60} Saul Rose, *Sri Lanka at the Turning Point : The Future of Parliamentary Democracy*, Round Table, No.256, October 1974, p.413.

(the base year being 1952 = 100) to 171.9 in 1973 and 251.4 in 1974.\textsuperscript{62} In such a set up, the "representatives of people" and the core of government...the Cabinet and the Prime Minister started analysing their class interests in an effort to comprehend certain implicit reasons for the failure of the coalition programme. The disillusionment and resentment against the regime generated their own dynamics in the regime's response. While, on the one hand, the rhetoric of an adherence to socialism was propagated, on the other, the increase in the coercion and suppression of all dissent was justified as necessary to counter the "reactionary and anti-socialist" forces. In this connection, Obeysekar rightly points out, the major political parties could sociologically be viewed as "factions of a ruling elite", in that while the party ideologies and manifestos might be radically different from one end of the spectrum to the other, the leadership of all these parties was drawn from elite ranks, without exception.\textsuperscript{63}

In the midst of the economic crisis, the relatively greater deterioration in the economic situation led to the revival of separatist sentiment. Finally, the TULF was formed by the three Tamil Parties....the FP, the TC and the Ceylon Workers Congress (of the Indian Tamils) in May 1976 with the avowed objective of agitating for a separate state.\textsuperscript{64} Emergency rule, proclaimed prior to the JVP insurrection, continued in operation for practically the entire tenure of the UF Government till 1976. To this end, not only was the existing legislation, such as the Public Security


\textsuperscript{64} R.N. Kearney. "Language and the Rise of Tamil Separatism in Sri Lanka", \textit{Asian Survey}, Vol.18, no.5, May 1978, pp. 521-34. We would be discussing about the TULF in the subsequent Chapters.
Act, liberally used to detain or jail dissidents, but the judiciary itself emasculated by
the derogation of the power to review the constitutionality of legislation by the
newly-constituted constitutional court.

Thus, while on the one hand it escalated its populist socialist rhetoric to
maintain the mobilist consensus in its favour on the other it had to perforse deal
sternly with the emerging threat and challenge to its interests. The leftist fraction of
the ruling coalition found it impossible to continue functioning with any degree of
credibility with the decrease in the majority to less than two thirds in the parliament.
the remaining constituents of the ruling coalition, the SLFP was forced to hold
elections to restore its legitimacy as this was the only viable option open to it.

The election of 1977, although continuing the pattern of defeats of incumbent
governments, constituted a sharp departure from the tendency towards narrow
margins of victory and fragile coalition governments. The traditional left having been
discredited by its association with the UF regime and in the absence of an alternative
left challenge, the rampant crisis under the UF served, in political terms, to channel
the widespread discontentment in favour of the centre-right party, the UNP — the
party more closely aligned in the past to the westernized, comprador elements. The
UNP had, moreover, profitably spent its years out of office in reorganizing and
strengthening itself.65

The extent and pattern of discontentment can be broadly quantified and
analyzed by the 1977 election results. No defeat in the annals of Sri Lanka’s swinging
fortunes of parliamentary parties had been quite as comprehensive as that suffered by
the rivals of the UNP in 1977. With the highest ever voter turnout of 85.5 per cent.

the UNP won not only 140 out of 154 elective seats, but secured absolute majorities in 126 of these. The SLFP was reduced to a rump of 8 MPs (it had won 40 in 1970), while every candidate of the left was defeated.

Further, for the first time in Sri Lankan history, the winning party secured a clear majority of 51.2 per cent of the popular vote. The familiar exaggerated results of the first-past-the-post system enabled it to win 84.3 per cent of the seats, while the incumbent SLFP with 29.8 per cent of the votes bagged only 4.8 per cent of the seats. As a result of the peculiar demographic profile of the island, the TULF, with about a fifth of the popular vote secured by the SLFP, got more than double the number of seats and thus for the first time, a regional party emerged as the main parliamentary opposition to the UNP.

With such an overwhelming majority the UNP leadership acquired an unrestricted power to effect any change it deemed necessary in the economic, political, or constitutional field. Among other things, what it did first was to draft, adopt and put into practice a new Republican Constitution in order to achieve the goals of a democratic socialist society. It is significant that, unlike the Republican Constitution of 1972 which came into operation after being drafted by a Constituent Assembly as promised in the manifesto of the Freedom Party, the Constitution of 1978 was introduced simply as an amendment to its predecessor. At the same time, no bones were made about the fact that it involved a complete overhaul of the previous system. Two fundamental changes were made. The first which was accompanied by a great deal of fanfare culminating in the memorable claim that he

was the first elected Head of State in a line that stretched back over two thousand years, was the institution of Executive Presidency to which Jayawardena was elevated. Premadasa taking on the post of Prime Minister. Having assumed the post of President accordingly he then amended the constitution on what were claimed to be not so much American lines as Gaullist ones.69

The change in the system of governance and the massive legislative backing enjoyed by the ruling party worked to the advantage of the government in removing many of the political constraints on the UNP’s performance. A constitutional revision in 1978 introduced further changes in the electoral system by adopting proportional representation for the election of legislators in place of a predominantly single-member district system, which had been in practice since the introduction of universal adult suffrage in 1931. This new electoral system enhanced the importance of party leadership at the expense of individual M.P.s.70

While the UNP’S paramount desire to switch over to the Presidential system sprang from its massive electoral mandate, its task was facilitated by the provisions of the 1972 Constitution itself. Accordingly, it set out to accomplish its objective by setting up a parliamentary select committee and had certain immediate amendments enacted under the procedures prescribed by the constitution of the First Republic (1972-78). The 1972 UF Constitution was the first constitution in the world to provide for its own repeal and replacement. This was contrary to known constitutional principles, according to which a constitution, once legally enacted, is a document of permanent validity unless continuity of the state is broken by a Coup d’etat or a successful revolution. What was even more astonishing was that the 1972

Constitution made the process of making a new constitution a legislative function by two-thirds majority of the parliament of Sri Lanka, the same majority required for constitutional amendment.  

It is worthy of note that interest in a presidential system of government appeared within the ranks of the UNP as early as in 1966 and it was J.R. Jayawardena, now President of the Republic of Sri Lanka, who first emphasized the need to create a governmental system with a strong executive whose stability was not "subject to whims and fancies of an elected legislature". According to the UNP, economic imperatives demanded a strong executive and that economic development - an absolute requirement for the preservation of democracy - could hardly be achieved without decisive government action.

This belief was further strengthened by the experience under the UNP government, so that by December 1974, Jayawardena promised substantial changes in the constitution when the UNP came to power. This was later elaborated in the election manifesto promising, among other things, strengthening the safeguards afforded to Buddhism, ensuring the independence of the judiciary from the legislature, a change in the electoral system to provide for a more proportional system of representation and the delegation of greater powers to a popularly elected President.

In view of the growing separatist feeling among the Tamils, in the course of the 1977 election campaign Jayawardena, the undisputed leader of the UNP, emphasized the need for integration and unfolding his plans in the event of an UNP victory declared:

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71. Satchi Ponnambalam, op.cit., p. 197.
"we shall use the mandate we receive to draft, adopt and operate a new republican constitution in order to achieve a democratic socialist society. We shall guarantee the people, to whatever race, religion or caste they belong, equal opportunities in every sphere of life. An all-party conference will be summoned to consider the problem of non-Sinhala speaking people and its decisions will be included in the constitution."”

Having promulgated the Second Amendment to the 1972 constitution, the Assembly appointed a Select Committee on the Revision of the Constitution on 20 October 1977. Initially it was believed that the Government strategy was to effect constitutional changes within the framework of the 1972 Constitution. Despite two previous drafts to this effect, the final report of the Select Committee, however, stated that the Committee had earlier in its deliberations formed the view that having regard to the fundamental changes necessary in the basic structure of the constitution, it was more convenient to formulate the principles according to which the constitution should be revised in the form of a Draft Constitution rather than to attempt to formulate a multitude of specific amendments to a number of sections of the 1972 Constitution.

The Report (together with the proceedings of the Committee and Minutes of Evidence) and the Draft Constitution were tabled in the National State Assembly on 22 June 1978. It was given a second reading and the Assembly debated all vital changes incorporated in the new constitution as well as political exchanges of a largely unedifying character. This bill was then submitted to a Committee of the Whole Parliament on 16 August 1978 for a clause by clause appraisal and adopted the same day. The formal promulgation of the constitution was again delayed till 7 September 1978.

The Parliamentary Select Committee was not quite representative, because the principal opposition group, the TULF, the main political instrument of the Ceylon Tamils, declined to participate in its deliberations as it had done when the constitution of the First Republic was being framed. There was, besides, not a single left wing representative, as none had succeeded in getting elected to the legislature. The Committee in the end, therefore, comprised seven representatives of the UNP, two SLFP parliamentarians including the ex-Prime Minister, Sirimavo Bandaranaike and the only CWC member of the Parliament, S. Thondaman. However, in May 1978 apprehending that this was intended to form the basis for a new constitution as also to include a pernicious provision for the retroactive deprivation of civic rights of political figures. "Mrs. Bandaranaike understandably felt duped and heatedly resigned from the Committee." The Prime Minister J.R. Jayawarden was aware of the limitations of this lack of representation. But being a skilled and experienced statesman, he had two devices to overcome the problem. He stated that the Select Committee hoped to have "the advice of other parties who are not represented in this House." The Select Committee would also hear evidence and receive memoranda from the public. It issued a questionnaire comprising twenty one questions to general public.

So far as the general character of the constitution is concerned, the principal change is the transition to a gaullist-style presidential system. The President is elected by the people for a six year term and must obtain an absolute majority of the votes cast. J.R. Jayewardena was installed as the first President of the Second Republic on 4 February 1978. A President cannot hold office for more than two consecutive terms. So the constitution provided for an executive presidential government with a council of ministers collectively responsible to Parliament. The installation of

Jayawardena as the first President was "deemed for all purposes to have been elected as the President of the Republic" and would hold office for a period of six years from 4 February 1978 whereas the Legislature was elected for six years in July 1977. The President was "the Head of the State, Head of the Executive and the Government and Commander-in-Chief of the Armed Forces" with power to appoint and dismiss the Cabinet and to dissolve parliament.\(^{74}\)

The 1978 Constitution reiterated that Sri Lanka was a unitary state and described the territory of the Republic of Sri Lanka as consisting of the 24 administrative districts. This constitution, for the first time, described and determined the national flag (the lion flag), the national anthem and the national day.

As to the place of Buddhism, it went much farther than the 1972 Constitution. Article 9 stated: "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". The Buddha Sasana includes the doctrine as taught by the Buddha as well as the Buddhist Church.

In regard to the official language, Article 18 stated: "The official language of Sri Lanka shall be Sinhala". This is strikingly different from the provisions of the 1972 Constitution which stated "the official language shall be Sinhala as approved by the official Language Act". Now under the new constitution, Sinhala was proclaimed as the official language. In this way, both the Buddhism and Sinhala were further exalted by the 1978 constitution. In Article 22, the Constitution stated that "the official language shall be the language of administration throughout Sri Lanka". A proviso was added that the Tamil language would also be used as the language of

\(^{74}\) Satchi Ponnambalam, op.cit., p. 197.
administration for the maintenance of public records and the transaction of all business by public institutions in the Northern and Eastern provinces." Article 19 stated that "the National languages of Sri Lanka shall be Sinhala and Tamil". This of course, is absolutely redundant, merely stating an existing fact. Article 24 declared that "the official language shall be the language of the Courts throughout Sri Lanka and accordingly their records and proceedings shall be in the official language." To this again a proviso was added that "the language of the courts exercising original jurisdiction in the Northern and Eastern Provinces shall also be Tamil and their records and proceedings shall be in Tamil Language" (emphasis added). 5

Instead of "citizen by descent" and citizen by registration" as was the provision in the 1972 Constitution, the new constitution provided for single citizenship. But following the 1972 Constitution, it vested the judicial power of the state in the parliament and thereby subjected the judiciary to political control. However, it nominally enhanced the independence of the judiciary by reintroducing the independent Judicial Service Commission, consisting of Supreme Court Judges. By requiring the judges to take an oath to uphold and defend the constitution, the UNP Government placed the question of the constitution's legality outside judicial review."6

By numerous ways, the citizens freedoms were curtailed by the provisions and the new constitution, although Article 3 stated that "In the Republic of Sri Lanka, sovereignty is in the people and is inalienable." In Article 81, the Constitution provided for expulsion and imposition of civic disability on MPs if a special commission of inquiry so recommended. Availing itself of this provision, the UNP

75. Satchi Ponnambalam, op.cit., p. 198.
76. Ibid.
Government appointed a special Presidential Commission to investigate the case of the former Premier Bandaranaike. On its recommendations, it expelled her from parliament and imposed civic disability on her, so that Jayewardene's principal political adversary was kept out of the political arena for seven years.

According to the Preamble of the Constitution,

"the people of Sri Lanka, having, by their Mandate, freely expressed and granted...entrusted to and empowered their Representatives elected...to draft, adopt and operate a new Republican Constitution...We the freely elected Representatives of the people of Sri Lanka, in pursuance of such Mandate...do hereby adopt and enact this constitution..."

But the people who vote at elections do not give a mandate for repealing or the framing of a constitution; they simply elect a legislature for a fixed term to make laws, not to make constitutions which outlived their makers."

The other basic change of crucial significance introduced in the constitution was the system of proportional representation in elections for future parliaments, and indeed in elections to local authorities as well. Another significant systemic change was the abolition of bye-elections. Since the members of parliament were elected by virtue of their membership of a party rather than as individuals, if there was a vacancy it should be filled by the party rather than through an election for an individual position since that might disproportionately alter the membership of parliament for the whole district. The constitution further laid down that if a member of parliament were to be expelled from his party, he would also lose his seat and the party would fill the vacancy by nominating his successor. The utter cynicism of the architects of these provisions became clearer when two amendments were introduced

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77. Ibid. p. 199.
in quick succession. That is the reintroduction of bye elections when a party failed to
nominate a successor to a seat rendered vacant. When the United National party itself
subsequently announced occasional bye-elections, the hollowness of the statute was
exposed. Another amendment that retained a Member of Parliament who had crossed
over or been expelled from his party from losing his seat - unless his expulsion was
ratified by over half the Members of Parliament. It means the members of opposition
were free to join the government if they chose though not the other way around.
Some members of the Freedom Party did and more significantly some members too of
the Tamil Liberation Front. 78

There are possibilities for an acceleration of development and the promotion of
a greater measure of communal harmony under the Presidential set up. The
restoration of the old democratic values of rights and freedoms, judicial independence,
impartiality in public appointment and the separation of powers will no doubt please
the susceptibilities of the middle classes. It could well be that a return to consensus
politics might be achieved under proportional representation and coalition
government. But the success of the system depends on the moderation that needs to
be exercised by the persons at the helm of affairs. But the system could deteriorate
into an arbitrary machine in the hands of ruthless leaders. 79 A constitutional
structure alone is no guarantee of achievement unless the substratum that lends it
meaning and strength shows a willingness to it provide with enthusiasm and
cooperation in full measure. The fears that the 1978 constitution would imply a
harbinger of authoritarianism have unfortunately come true as the Prevention of the
Terrorism Act of 1979 introduced to counteract the Tamil Militancy amply proves.

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The Constitutional and political system of "liberal democracy" set up by the Jayawardene regime has to in this context be viewed as being logically consistent with its economic philosophy of laissez-faire. The widespread decentralization of functions and guarantee of fundamental rights accompanied by the move in the opposite direction towards a strong, executive presidential form of government finds its logic in fulfilling the parallel of the laissez faire system of the economy in the political sphere and instituting the means for an effective centralised management of the system, especially one as crisis prone as Sri Lanka. The integration of the whole society was imperative as a precondition for the success of the economic recovery. So it was imperative to create a conducive environment for investment and initiative of the non-arbitrary and impartial nature of the government as also to create a "moral and just" order universally acceptable to all.

Sri Lanka, a small island nation has had four constitutions since independence of which two have been in the seventies only. Despite a two party dominant system alternating in the classical parliamentary democratic manner, an increasing tendency towards centralization of powers, has been observed since the seventies. Periods of emergency rule have been the order of the day with increasing frequency during these decades. This trend of political developments exposes the hollowness of the understanding of the legalist and liberal school of political thought. The first perceives the problem to be merely a matter of political institutions of participation and representation developing roots in an underdeveloped society. It is also becoming evident that the longer the experience in the working of representative democracy, the greater is the likelihood of its survival in countries of the region. The second, the liberal theories of politics most often draw a theoretical veil of ignorance over the situation through their basic assumption of harmony between the government and the governed. This assumption encourages an underestimation of both the will and the
capacity of the ruling authorities to mount an offensive against not merely the opposition, but also the existing legal political structure of the state.\textsuperscript{*}

The frequent modulation of constitution for the unrestricted use of emergency powers whether in the short or longer run, dramatically revealed how a limited combination of the ruling elite which strategically dominated the state apparently could readily overwhelm the obviously more numerous agents of political action who remained outside the orbit of the formal centre of concentrated authority. The paradox of the situation, however, lay in the fact that such a concentration of power concealed a remarkably weak support structure. Thus, by the nature of the limited base of support, while the "power holders" sought to justify their assumption of virtually untrammelled executive powers on the grounds of national security public order or rapid economic development, they looked for a wider long-term basis of institutional support, either through a reversion to the constitutional order that prevailed earlier albeit with important changes on tailoring the representative democratic system in a fashion that satisfied the hunger for power of charismatic leaders but justifying such a tampering with the classical forms of democracy on the ground that they were not in tune with the generous of the Sri Lankan people. In the process, the most vital task of building political institutions which play an unquestionably crucial role in nation building in any democratic polity - and more importantly in a developing society like that of Sri Lanka - received a setback, thereby rendering the goal of laying a stable political order in the island nation more difficult to reach.

Table. Ethnic Distribution and Parliamentary representation in Sri Lanka, 1946-1977<sup>a</sup>

<table>
<thead>
<tr>
<th>Year</th>
<th>Community&lt;sup&gt;b&lt;/sup&gt;</th>
<th>Population</th>
<th>% of</th>
<th>Elected</th>
<th>Weightage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1946</td>
<td>Sinhalese</td>
<td>4,621,507</td>
<td>69.2</td>
<td>68</td>
<td>71.0%</td>
</tr>
<tr>
<td></td>
<td>Tamils</td>
<td>1,514,320</td>
<td>17.3</td>
<td>20</td>
<td>21.0%</td>
</tr>
<tr>
<td></td>
<td>Muslims</td>
<td>408,823</td>
<td>6.2</td>
<td>6</td>
<td>6.3%</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>6,658,339</td>
<td></td>
<td>95 (Burghers 1)</td>
<td></td>
</tr>
<tr>
<td>1953</td>
<td>Sinhalese</td>
<td>5,616,705</td>
<td>69.3</td>
<td>75</td>
<td>78.0%</td>
</tr>
<tr>
<td></td>
<td>Tamils</td>
<td>1,818,801</td>
<td>22.9</td>
<td>13</td>
<td>13.6</td>
</tr>
<tr>
<td></td>
<td>Muslims</td>
<td>511,425</td>
<td>6.3</td>
<td>6</td>
<td>6.3%</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>8,097,895</td>
<td></td>
<td>95 (Burghers 1)</td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td>Sinhalese</td>
<td>9,146,679</td>
<td>71.9</td>
<td>123</td>
<td>81.0%</td>
</tr>
<tr>
<td></td>
<td>Tamils</td>
<td>2,611,935</td>
<td>20.5</td>
<td>19</td>
<td>12.5%</td>
</tr>
<tr>
<td></td>
<td>Muslims</td>
<td>853,707</td>
<td>6.7</td>
<td>8</td>
<td>5.3%</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>12,711,143</td>
<td></td>
<td>151 (Burghers 1)</td>
<td></td>
</tr>
<tr>
<td>1977</td>
<td>Sinhalese</td>
<td>10,204,000</td>
<td>73.3</td>
<td>137</td>
<td>81.5%</td>
</tr>
<tr>
<td></td>
<td>Tamils</td>
<td>2,644,000</td>
<td>19.0</td>
<td>21</td>
<td>12.5%</td>
</tr>
<tr>
<td></td>
<td>Muslims</td>
<td>983,000</td>
<td>7.0</td>
<td>10</td>
<td>5.9%</td>
</tr>
<tr>
<td></td>
<td>Total (b)</td>
<td>14,850,000</td>
<td></td>
<td>168</td>
<td></td>
</tr>
</tbody>
</table>


<sup>a</sup> The United National Party extended the tenure of parliament until 1989 by means of a referendum conducted in 1982.

<sup>b</sup> Includes Indian Tamils.