

POLITICAL SYSTEM AND CONSTITUTIONALISM IN SRI LANKA



Supreme Court complex



Parliament Chamber

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The basis of our political system is the right of the people to make and to alter their Constitutions of Government.

- George Washington

Basically Sri Lanka is a Democratic Republic and a Unitary State which is governed by a semi-Presidential system, with a mixture of a Presidential system and a Parliamentary system. Most provisions of the Constitution can be amended by a two-thirds majority in Parliament. The amendment of certain basic features such as the clauses on language, religion, and reference to Sri Lanka as a Unitary State require both a two-thirds majority and approval in a nationwide referendum. This article attempts to describe briefly some aspects of the law that are relevant at the present time.

In common with many democracies, the Sri Lankan Government has three branches, Executive, Legislative and Judiciary:

The Executive: comprises mainly of the President of Sri Lanka as the Head of State, the Commander-in-Chief of the Armed Forces; Head of Government, and is popularly elected for a five-year term. The President heads the Cabinet and appoints Ministers from elected Members of Parliament. The President is immune from legal proceedings while in office with respect to any acts done or omitted to be done by him or her in either an official or private capacity. Secondly the Legislative is made up of the Parliament of Sri Lanka which is a unicameral 225-Member Legislature with 196 Members elected in multi-seat constituencies and 29 elected by the National List.

Members are elected by universal suffrage for a five-year term. The President may summon, suspend, or end a legislative session and dissolve Parliament any time after four and a half years. Parliament reserves the power to make all laws. The President's deputy, the Prime Minister, leads the ruling party in Parliament and shares many

Executive responsibilities, mainly in domestic affairs while thirdly the Government also contains the Judicial branch: Sri Lanka's Judiciary consists of a Supreme Court – the highest and final Superior Court of Record, a Court of Appeal, High Courts and a number of subordinate Courts. The highly complex legal system reflects diverse cultural influences. Criminal Law is based almost entirely on British Law. Basic Civil Law derives from Roman Law and Dutch Law. Laws pertaining to marriage, divorce, and inheritance are communal. Due to ancient customary practices and/or religion, the Sinhala customary law (Kandyan Law), the Thesavalamai, and Sharia Law are followed in special cases. The President appoints judges to the Supreme Court, the Court of Appeal, and the High Courts. A Judicial Service Commission, comprising of the Chief Justice and two Supreme Court Judges, appoints, transfers, and dismisses lower court judges.

The concept of Constitutionalism may carry a wide range of meanings, and is commonly mistaken by the public given the very complex nature of the concept. In a layman's terms, Constitutionalism is to be understood as a concept which speaks about the legitimacy of Government. Thus, the concept of Constitutionalism underpins the fundamental law, ideas, and attitudes and patterns of behaviour that limits and regulates the power of the Government. The word power is used in this context rather than the word authority because authority is anyway constitutional. The authority is granted by the most formidable source or supreme law, which is the Constitution of a country. The Government is granted with the people's power 'Sovereignty', on trust, in order to serve the public. This is the reason why in most democratic countries Governments are known to be 'by the people for the people.' The grant of that sovereignty to a Government gives formal powers to that Government of the day, to act on behalf of their citizens which later become the 'Government authority' upon electoral appointment. The Constitution is not only the source that derives this power but also the fundamental source which limits or regu-

lates that power by imposing checks and balances on Government institutions belonging to the Judiciary, Executive, and Legislature. This mechanism is supported by the doctrine of Separation of Powers to establish impartiality and to prevent the abuse of power. The constitutional doctrine of Separation of Power suggests that these institutions, its authority, powers, functions, and personnel should be kept apart without vesting it all on one person or one institution which could lead to confusion. However, it is also reckoned that pure separations of powers do not assist a Government practically in functioning properly and may sometimes lead to a 'constitutional deadlock', if Separation of Powers is strictly practiced.

Rule of Law

The concept of the Rule of Law is not only of great antiquity but also one of the predominant concepts in Constitutionalism. If Constitutionalism suggests the prevalence of the rule of law then the Rule of Law also should be understood in all its virtue. The origin of the concept can be traced to Aristotle. In essence the concept suggests that society should be governed by law alone and all must be equally subjected to that law. This is the similar idea to that of constitutionalism - 'legitimate Government under a Supreme Law'. However, the legitimacy is ascertained only by strictly observing the Rule of Law. This strict demand for adherence gives rise to the concept of responsible Government.

Sovereignty and Government

Sovereignty is generally reckoned as the unlimited power over a domain, and Government could be identified as the persons or bodies or other ways and means in which that unlimited power is exercised. Once this demarcation is accepted we can go on to speak of a limited Government under unlimited Sovereignty. In Sri Lanka, the Constitution is the supreme body of laws governing the country and no law can go beyond it. Even if the President of Sri Lanka, the 'Executive' violates the Constitution on a serious breach,

an Impeachment against the President could be brought up by the 'Sovereign', the citizens of Sri Lanka.

Such an Impeachment against the President of Sri Lanka' could be brought up against actions in several situations as per Article 35(3).

1. Where in his office as President he simultaneously acts as a Minister, for example (Ministry of Defence, Ministry of Finance) and violates the Constitution in that capacity.

2. Where he is subjected to the common notion of 'Impeachment'.

3. Where there is an issue in his appointment to his office as the President is prevalent.

Article 33(F) sets further limitations on the powers and functions of the President and limits its power to do all acts and things, not being inconsistent with the provisions of the Constitution or written law, as by international law, custom or usage he is required or authorized to do.

The Sri Lankan Constitution clearly shows how the Government is granted with power and how that power has been limited in certain cases. The people's unlimited power / 'sovereignty' can at any time make the active Government of the day void for not observing those Constitutional limitations.

Fundamental Rights

This is one of the most important elements of the Constitution of Sri Lanka. Chapter III of the Constitution of the Democratic Socialist Republic of Sri Lanka (1978) enumerates the Fundamental Rights guaranteed by the Constitution through Articles 10 to 17 among which are: Freedom of thought, conscience and religion; Freedom from torture; Right to Equality; Freedom from arbitrary arrest, detention and punishment, and prohibition of retroactive penal legislation; Freedom of speech, assembly, association, occupation and movement.

In conclusion, as required by law, strict adherence to the Constitutional provisions presently in force is required until a revised new Constitution is passed.

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