

# REFLECTIONS ON GOVERNANCE

BRADMAN      □      SHELTON  
WEERAKOON   □      WANASINGHE

*Introduction*  
by  
*Godfrey Gunatilleke*



MARGA PUBLICATIONS  
DEVELOPMENT REVIEW SERIES

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## INTRODUCTION

**Godfrey Gunatilleke**

This publication is the first of a series which the Institute expects to produce under one of its main current programmes-the Development Review. The activities under this programme are aimed at mapping the direction of change and evaluating the quality of development in Sri Lanka in terms of the social, political and economic trends and outcomes. One major objective of the programme is to provide as far as possible a comprehensive overview of the process of development as a whole. It attempts to focus on the critical interrelations between the social, political and economic components and inquire how these need to reinforce each other in the Sri Lankan context in order to achieve the quality of life which has to be the end product of development.

One regular item of the programme is an annual survey. The first "bench mark survey" is under preparation and planned for publication in October 1994. It will thereafter be updated annually. The other major activity under the programme is the study and analysis of selected issues and problems which are perceived as being of strategic importance for the future of Sri Lankan society. In this part of the programme the Institute attempts to promote a close dialogue between those who are actively involved in the formulation of policy and those engaged in research and scholarly inquiry. The paper writers are selected from both within and outside the Institute. The papers and studies prepared are presented at a series of seminars and workshops and discussed in depth. The paper writers thereafter prepare a final version for publication.

For the first phase of the programme, the institute selected key issues for each of the three areas- social, economic and political. They include the issues of poverty alleviation and equity in the market economy, intergenerational relations, government finance

and the development strategy, the sustainability of the democratic system, and the restructuring of the government administration. The papers in this publication deal with the last two themes.

In his paper on the sustainability of democratic institutions Bradman Weerakoon poses a number of fundamental questions regarding the viability of the democratic process in Sri Lanka. Taking the different elements of the ongoing political process, he examines them by one by one and identifies the critical problems and vulnerable spots in each, which threaten the stability of the entire system. He points out that we have not yet reached a national consensus on some of the fundamentals of government- the Constitution for the country and the system of government . Our multi-party system and the electoral processes continue to be flawed; the political ethos and disciplines such as the acceptance of opposition and dissent have not yet become a natural and integral part of political belief and behaviour. He draws attention to the persistent deep-seated distrust and lack of confidence in the democratic system among the sections of the youth and inquires whether this could lead to a recrudescence of militant youth movements which reject the democratic method and system; he questions whether we have been able to bring these elements into the democratic mainstream and argues that a much greater effort at public education in liberal and democratic values is needed. At the same time a much more convincing example of the capacity of the democratic system to engineer the rapid socio- economic changes that are desired is essential. Weerakoon proceeds to discuss the other crucial aspect of our democratic polity - the relationships between the majority and the minorities. He discusses the nature of the political failures in this areas and presents some of the alternative scenarios relating to the present military conflict. He also points to the potential for conflict in the plantation areas. The political and socio- economic changes that are taking place- grant of citizenship, rising educational attainment and improvement in living standards- are rapidly raising expectations particularly among the youth. These recall

the changes which took place in the rural sector after independence leading to the disaffection and frustration of large sections of the youth as a result of the failure of the system to fulfil the expectations that were generated. These expectations encompassed employment, economic opportunities and social roles that were commensurate with their education and the changing social and economic environment. The problems flagged by Weerakoon call for a sound strategy which profits from the mistakes of the past and provides for full opportunities to this section of the population for participating in the social, economic and political life of the larger society. In his paper Bradman Weerakoon seeks to make a dispassionate and objective appraisal of the prevailing system without a trace of any partisan political bias. It is therefore addressed both to policy makers and scholars. He identifies and defines the conditions we must satisfy and the issues that must be resolved if we are to develop into a mature democracy.

Shelton Wanasinghe's paper deals with the new functions and responsibilities of government in relation to two major changes. The first is the shift from a regulated and state- dominated economy to a market economy in which the private sector plays the leading role in growth and investment. The second is the transition from a highly centralised government and administration to a system of devolution. Both changes demand radical re- adjustment on the part of bureaucracies and the political executive. The bureaucracy has to transform itself from a controlling agent to one who facilitates and promotes the free activity of the agents outside government ; the political executive must change from the organ which gathers power to itself to the instrument which empowers the levels below it and the people as a whole.

Wanasinghe examines the structures and institutions that are necessary to change the nature of the relationships between government and the private sector on the one hand and the government and the people on the other. The main focus of the discussion is on the methods of administration, the management styles and the institutions which will promote the processes of

consultation and participation at all levels as one of the basic instruments of good and effective government. Wanasinghe stresses the importance of local government institutions and discusses the need to rationalise the present structure of devolution to give them their due place. Subsidiarity would mean that only the powers that cannot be exercised at the lower level would be retained for exercise at the higher levels. Such an approach would lead to the empowerment of people on a rational basis; the structure of power would be developed from the bottom upwards. Subsidiarity, conceived in this manner would lead to a fully participatory democracy.

Both papers deal with issues which have been relatively neglected in the discussion of economic growth and development. More recently the issues of good governance have begun to dominate the agenda of international bodies and the relations between developed and developing countries. These issues however are considered independently in their own right. Democratic government, the protection of human rights and the rule of law are upheld as fundamentals which bestow legitimacy on governments and become conditions for international assistance and supportive relations. Democratic government and the enjoyment of human rights with the attendant freedoms are no doubt ends in themselves and the quality of development at any time must be assessed in relation to the degree which these are present in a society. But they are also the means that are essential for sustaining and promoting development. Bradman Weerakoon's analysis suggests that in order to sustain an orderly process of development and rapid growth it is essential that we address question which are crucial to the stability and sustenance of the democratic political order. Wanasinghe points out that an important dimension of development is the development of effective institutions which are adapted to the new challenges posed by economic liberalisation and political devolution. The Institute hopes that this publication will stimulate further discussion and inquiry into the issues that have been raised and contribute to effective policies and actions for dealing with them.

# SUSTAINING DEMOCRACY IN SRI LANKA

## Opportunities and Challenges

**Bradman Weerakoon**

### Introduction

Sri Lanka's political history in the 1980's - a divisive ethnic conflict, foreign intervention in the internal affairs of the country, youth unrest and the JVP insurgency, the Emergency and the State's counter offensive, residual violence and allegations of human rights violations have all raised questions about the ability of the Sri Lanka State to fulfil the essential requirements of democratic governance.

This Paper takes the view that the Sri Lankan polity while being flexible enough to accommodate to changing needs should also be capable of sustaining and enhancing the core values of the society.

The presentation will look beyond the external forms of the political order at the processes and structures of the political system today, identify some of the critical areas of vulnerability which could threaten breakdown and reflect on some desirable policies and actions which would ensure sustainability over time.

This component of a Marga Study on sustainability will examine particularly the conditions deemed critical for ,

*maintaining the democratic political order; managing the multi - ethnic and multi - cultural polity, and ensuring the political stability*

essential for sustained political development.

The major points of enquiry will include such potentially critical sources of instability as :

- \* the capacity of the polity to manage and provide viable solutions to current ethnic and religio - cultural conflicts,
- \* the possible recrudescence of the disruptive forces which led to the crisis in the South in 1987 and 1989,
- \* the problems in the Plantation Sector resulting from the ongoing socio-economic changes and rising expectations of the hill- country Tamil population,
- \* the apparent inability to reach consensus between the main political parties on the ways and means of resolving fundamental national problems. This is reflected in the current relations between the parties and the language of political discourse and debate. It is adversarial and confrontational on most issues,
- \* the continuing centralization of the decision-making process. This is contrary to and at variance with the avowed objective of increasing power-sharing, devolution and popular participation,
- \* the impact of prolonged violence leading on the one hand to militarization of the State, and on the other, to an increasing propensity of civilians to resort to physical force in the resolution of disputes,
- \* the dangers inherent to Sri Lanka from external threats, such as, the international trade in narcotics and arms and organized crime and terrorism,

- \* possible destabilizing influences from political developments in the region and globally.

In the second half of the 1980's the convergence of a number of these factors made Sri Lankan society almost ungovernable and threatened the collapse of the social and political order.

What are the essential elements of a stable political order for Sri Lanka? What are the core values or objectives which would need to be ensured over time? Some of these have been reiterated in the Directive Principles of State Policy in the Sri Lanka Constitution. Others have gained mention in the Manifestoes of the main political parties, either implicitly or explicitly. They represent a mix of core values and norms :

- \* the unity and integrity of the Sri Lankan state,
- \* a democratic polity. This would encompass representative government and free elections, an independent Judiciary, the rule of law, the right of dissent, and the other fundamental rights which guarantee the liberty of the individual, equality and fraternity,
- \* checks and balances which would prevent the rise of authoritarianism and reduce arbitrariness in decision making.
- \* power-sharing especially between the centre and the periphery and popular participation,
- \* non - discrimination in the treatment of all citizens in the context of a multi-ethnic society, and the protection of minority rights including vulnerable groups such as women and children.

- \* balanced development of the whole country and the efficient delivery of State Services.

While these ideals and objectives of good government are enshrined in most Constitutions, there is apparent, not only in Sri Lanka but globally, an increasing disenchantment at the large and growing gap between the **ideal** which is projected and promoted as the standard and the **reality** of the actual conditions as perceived by the average citizen. This credibility gap is remarked upon not only in the developing countries, but in the established democracies as well. This discrepancy between the ideal and the real has resulted in Sri Lanka in two kinds of responses.

One has been the case for a re-definition and re-fashioning of the Constitution through appropriate structural amendments. The objective here has been to re-establish such core elements as the sovereignty of Parliament, the protection and empowerment of vulnerable groups and investing the institutions of government with greater transparency and accountability.

In contradiction to this faith in constitutionalism has been a response which manifests an intense disbelief in the ability of constitutional forms to deal effectively with the reality of ethnic and religious conflict, violence, intolerance and inequality.

The credibility gap has bred a cynicism to the political process and the political elites who are seen as alienated from the mass of the people. More serious and disconcerting in the Sri Lankan context, is the obvious disenchantment with established systems among some sections of educated youth. Their world view is characterized by "the ideologies of the vernacular" which are based on the discourse of radical Sinhala and Tamil intellectuals.

Some youth groups have in the past been enamored by a vision which is anti-systemic. The JVP insurgencies of 1971 and 1987

and the Tamil militant movement of the past 15 years exhibit in their philosophy, organization and modus operandi the extreme end of this frustration and disenchantment.

What has been the response of the elite to this phenomena? A combination of palliatives and strong arm tactics. Upendra Baxi in "*The Crisis of the Indian Legal System*,"<sup>1</sup> perceptively refers to the lack of internalisation of the values and norms of liberal democratic behaviour, which exists among the Indian political elites and upper - middle classes. In their day to day behaviour and through their indiscriminate use, or abuse, of political power, they are seen to have not truly internalised the value of legalism and the rule of law. This according to Baxi creates not only a demonstration effect and a justification for similar behaviour by other groups, but also dual legal systems, one for the rich and powerful, and the other for the poor and powerless.

How to make the democratic alternative something which is appealing and meaningful for, especially the young, will be one of the major challenges in ensuring sustainability. As the Report of the Commission on Youth (1990) reminded us, one beginning would be the education of youth in the practice of liberal democracy.

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1 " The idea that Legal rules are binding upon all sections of society has been rejected in practice by the governing elite of the country. Modern India seems to have at least two parallel Legal systems, one for the rich and the resourceful and those who wield political power and influence, and the other for the small men without resources and capabilities to attain justice or fight injustice. "

See Section on 'A Crisis of Legitimation of the Law'. Introduction to 'The Crisis of the Indian Legal System.' U Baxi (Vikas Publishing House 1982)



## **Guaranteeing The Democratic Political Order**

The last two decades, beginning with the adoption of the First Republican Constitution in 1972, may be taken as crucial in an examination of the democratic political order in Sri Lanka. The 1972 Constitution was said to be the first to have been designed and adopted by the Sri Lankan people to reflect their aims and aspirations. The 1946 Constitution under which the country was governed since independence, was held to be largely the work of the Soulbury Commissioners and technically an Order-in Council of the British Parliament.

### **Two Systems of Government**

The imperative of this 20 year time span is that it encompasses two radically different systems of government : the Parliamentary (Westminster) type and the Presidential system. The fact that the two major players in the political league today - the UNP and the SLFP - place their faith in one or other of these systems is reason enough for looking at these two forms government. Do the seeds of democratic truth lie here ? Is democracy guaranteed by one or other of the systems? This is likely to be a major issue between the UNP and the SLFP in any future election.

There appear to be a large number of variables in the way of asserting a simple superiority of the one system over the other. These include the style of leadership and the nature of the challenge to state power, both internally and externally. Given the varying political experiences of the last 20 years, many may even be enticed by the expedient that "whatever is best administered, is best".

The personal leadership style of the incumbent Prime Minister of Executive President is undoubtedly of extreme relevance. Is the

behaviour and attitude of the leader autocratic and authoritative or consensual and liberal? This could determine whether the process of governance is authoritative or consensual. Again, regardless of the individual, does the system itself encourage an incumbent to authoritative or consensual forms of decision - making? How do the built in checks and balances in any political system operate, and how can they be sidestepped or managed? Such questions need to be addressed in searching these two systems for a promise of the greater democratic guarantee.

Political analysts espousing the Westminster model, are taken with the idea that a freely elected legislature to which the political leader is accountable has deep roots in our country's history. They see the concentration of power in a political leader, distinct but directly elected, as providing a means for the erosion of some rights which were traditionally inherent in the people.

What are the powers and privileges that the Executive President possesses that the Prime Minister in the Westminster model, accountable to Parliament, did not enjoy? Is the Executive President's exercise of those powers undemocratic in any sense ?

Walter Bagehot in his analysis of the British Constitution believed that the "**dignified functions**" and "**efficient functions**" of government should not be combined in the same person. In the Westminster system these sets of functions are performed by the Monarch on the one hand and the Prime Minister on the other. Under Sri Lanka's Republican Constitution, the two sets are combined in the same personage and therefore the Head of State is also the Head of Government. But would this be a distinction without a difference, since the Governor-General in the Westminster system was appointed by the Prime Minister and acted mostly on his directions?

The fact that the **immunity** provisions designed for the Monarch or his representative have been carried over to the Executive

President in the Second Republican Constitution, **does impact with a difference**. While the Monarch or his representative has held to be politically neutral, the President under the Second Republic Constitution is striking in his political accoutrements assumed after electoral engagement.

In terms of Article 38 of the Constitution, immunity is provided to the President against legal proceedings in any Court or Tribunal in respect of any act of commission or omission by him in his official or **private** capacity. This privilege was in the past reserved for the Monarch or his representative, the **de jure** Head of State.

Another feature of the powers and privileges of the Executive Presidency under the Sri Lankan Constitution which has drawn comment is that of the President not being answerable to Parliament. While deemed unexceptionable in the context of a politically neutral Monarch, this privilege invested in the President by the Standing Orders of Parliament has been called in question. The point at issue is that the Executive President could hold several ministerial portfolios; and ministerial actions should be subject to parliamentary vigilance. In fact, however, there are Deputy Ministers who answer questions and speak on behalf of the President in Parliament on each of the portfolios the President may hold.

The strict separation of powers between Executive and Legislature manifest in the US and French Constitutions is not maintained in the Sri Lankan case. Some analysts point to Article 48(2), which provides for the President to be Head of a Cabinet of Ministers composed of members of the legislature, as being unique in a Presidential system. Members of the Executive are not members of the Legislature in the US and French systems.

Most of the arguments in favour of a powerful Executive President refer to the need for **strong leadership** free from the constraints of parliamentary formality. A similar line of reasoning

is that of **political stability** which generally ensures continuity of policy. The direct election of a President with a virtually unassailable term of office of six years is said to ensure this. Of course, a situation could arise where the President has to govern with a hostile Parliament, but thus far the possibility has remained an exercise in contemplation. The provisions in the Constitution which prevent crossovers and enable a party to fill vacancies caused by defections are designed to ensure that the Executive maintains the majority it may obtain at a General Election through out the period of its life of six years. There is also the final sanction of the power of dissolution of Parliament by the President on his own initiative.

It is generally conceded that the Presidential system does achieve both strong leadership and political stability. But questions about the cost of the opportunity remain.

In the context of our multi-ethnic polity, there is a special point which is urged in favour of the Presidential system. Where the major political issues to be resolved involve the delicate balancing of majority/minority interests, having the primary source of power directly elected by the people is particularly valuable since it would ensure equality and non-discrimination between the groups.

The constituency of the Executive President is the whole country. The president must gain the support of all sections of the populace to be elected. Therefore, consensus-seeking is favoured. The experience of the two contested Presidential Elections of 1982 and 1988 support the thesis that a winning Presidential candidate must obtain votes from not only all over the country, but from the ethnic groups as well. Given the national spread of the communities - Sinhalese 74%, Tamils 12.5% Moors 8% and Indian Tamils 5.6%, and that the Presidential contests are usually two-cornered, it appears clear that some minority community votes are

necessary to obtain the 50% of the registered voter population needed for victory. Admitting the obduracy of the ethnic question and the fact that this issue alone has so many implications for the democratic order, this single facet of the Executive Presidential system gets high value.

Political commentators point out that the Westminster system by itself has been no guarantee against arbitrariness. For example, the system did not prevent the then government which was elected in 1970 for a five year term from extending its life by a further two years until 1977, without mandate from the people. However it is also remarked that this arbitrariness underwent no abatement in the Presidential system which prevailed after the second Republican Constitution of 1978. The government was constitutionally able (on obtaining a 2/3rd majority in Parliament and then winning a referendum) to give itself a second lease of life in 1982, for a further six years. This act has been referred to many times over as being frugal in its appreciation of the democratic right of the people to elect a government of its choice at **constitutionally prescribed intervals**. It was very severely criticised by the Commission on Youth <sup>2</sup> appointed in 1989.

In the period up to 1977, when Parliament was supreme and the Westminster system in play, it was not the system itself, but the representational procedure of "first past the post" which enabled electoral victories with such phenomenal majorities. In the 1970 elections, the SLFP won a 2/3rd majority; and in the 1977 elections, the UNP a record 5/6 majority. In both instances, the

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2 "The extension of Parliament by its own fiat in 1972 and by a Referendum in 1982 would appear to be deeply resented by the youth as flagrant abuse of democratic values. These actions of politicians carrying a gossamer veneer of democracy are perceived as affronts to the people, especially the youth, called upon to celebrate 50 years of Universal Franchise, ironically in the same year as the Referendum". page XVII - Introduction to the Report of the Presidential Commission on Youth, Sessional Paper 1 of 1990. (Govt. Press)

incumbent government which called the election was decimated at the polls.

The predominant feature of the basically two party system as it has evolved in Sri Lanka has been the attitude of the winner taking all. <sup>3</sup> This has led to a divisiveness in the body politic at the level of even the smallest political unit in the country, the village Committee, or at present, the Pradesheeya Sabha; and to a pernicious rivalry between the parties of government and the opposition.<sup>4</sup> The intensity of this rivalry is vividly brought out in the proceedings of the presidential Election Petition of 1988. Measures to moderate party rivalry and point it in a productive direction remain a continuing challenge to the sustainability of the democratic system.

### The Opposition and Consensual Processes

The perception of a lack of participation and power sharing in any effective sense robs the Opposition in Parliament of a sense of legitimacy. This has generally been the view of all opposition parties in our recent past. It was true of the opposition parties during the period of the Westminster model and is similarly true today with the Presidential system. Proportional Representation has clearly made a difference in reducing the possibility of huge parliamentary majorities; but the mere increase of heads in Parliament without greater participation, both in spirit and practice has the Opposition seeing itself as largely ineffective.

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3 "The winners always acted in a manner so as to give the impression that the supporters of the losing political parties ceased to be citizens of this country." Representation made before the Commission on Youth - cap 1 p 1.

4 The writer has personal experience of such attitudes in his service as Government Agent, Ampara in the period 1970 - 1972.

Another instance of consensual activity came about not to deal with a particular crisis, but to present a Sri Lankan viewpoint to an external audience. This was when an All Party Parliamentary delegation visited India, Bangladesh and the Maldives to explain the position which had led in June 1990 to a re - commencement of the war with the LTTE. As reflected in press releases at the time, the members of both the government and the opposition parties who constituted the delegation displayed a remarkable uniformity of position. The visit clearly indicated that positive bipartisan attitudes towards national problems was possible in a climate of involvement and participation.

A recommendation of the Youth Commission which dealt squarely with the issue of consensus in politics, is that of the Nominations Commission. This body, consisting of ten members representative of political parties in proportion to their share of seats in Parliament, would be vested with powers to recommend to the Executive President names of persons for appointment to key policy-making institutions. Through this process it was expected that the discretionary power of the President to appoint whoever he chose to institutions such as the Public Service Commission, Land Commission, Media Commission etc., would be tempered, and the appointments made more broadly representative. Of course, the Nominations Commission would bear in mind the basic attributes and skills called for by a particular position. The intention was to de-politicise these institutions. Agreement on the basic principles was achieved at the APC and draft legislation was formulated. However the Government did not proceed to place it before Parliament and this pivotal recommendation of the Youth Commission must now be regarded as rejected. The realization of this proposal would have been significant in guaranteeing the sustainability of the democratic political order.

Political parties are the main instrument through which the political will of the people can be expressed. The Commission on Youth

makes the interesting observation that many who came before it expressed scepticism about the role of the traditional political parties. This was because the traditional parties appeared to value family over merit and had no internal democracy. As a result, the Commission found very few of the youth who came before it interested in the traditional political parties as a means of redressing social grievances.

The disillusionment of the youth with the main instrument of the political will - the party, strikes at the very root of the democratic order.

How is this to be resolved?

Although a political party is a private institution, the very nature of its business makes its decisions of critical importance to the public and private life of the citizen.<sup>7</sup> Hence, it could be maintained that the average citizen has the right to be kept informed of the structure and functioning of political parties the relationships between its different organs and these organs and the command structure; and the reactions within the party to public issues. The Commissioner of Elections has recommended in his Report on the 1989 Parliamentary Election that there should be a mandatory provision by which the constitution and other basic details of a political party should be made public knowledge.

The Proportional Representation electoral procedure, and provisions in the Constitution prescribing the manner in which the

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7 " The actions of political parties do not affect the rights and liberties of members only. It affects the entire population, individually and as a community. To that extent, a political party quite independent of the rights of its members, is an organization of the highest public concern."

Report of the Commissioner of Elections on the 9th Parliamentary General Election of Sri Lanka held on 15. 2. 1989.

29 National List Members are elected to Parliament, also underscore the importance which the party enjoys today. With the change to PR as a method of representation, the party has assumed a greater significance in choosing who should represent the people. In the earlier representational system of a single constituency, the people had a more direct choice. Now the fate of the average voter is held in the hands of the party as it chooses the candidate who will represent him in Parliament. The nexus between the voter and his MP which was part of the political tradition since the State Council days (1931) has been broken.

The earlier system had many negative implications, since the MP's chit had assumed a magical importance. However, one of the positive elements had been that the MP had to be alert and alive to the needs of his electorate. The other valuable function that the MP performed was to act as a barometer of public sentiment, keeping the party informed of the manner in which the government's policies and programmes were being received by the people. This was a valuable feedback mechanism. It would be interesting to examine the extent to which PR has caused distortion in this vital link between the government and the governed.

The electoral process itself deserves some comment in our assessment of sustainable democracy. It is regrettable that the electoral process is increasingly being seen as seriously flawed. Voting at elections, it is alleged, has been restricted and interfered with by groups contesting the election or by others opposed to the very process itself.

The Report of the Commissioner of Election on the 1989 General Election is unsettling in its reference to interference with the basic right of the individual to elect a candidate of his choice. One particularly serious example<sup>8</sup> from that election may be noted:

<sup>8</sup> Para: 331.1- Report of the Commissioner of Elections on the 9th Parliamentary General Election of Sri Lanka held on 15.2.1989, Page 179.

**331.1: "Polling Station No 35- Ambalangoda Maha Vidyalaya : At about 10.00 am. an armed gang of ten persons arrived in the polling station. They threatened the Senior Presiding Officer and his staff as well as the Assistant Returning Officer who had arrived at that time. No protection was provided by the security officers. Eight ballot paper books were forcibly taken and stuffed in the ballot box. The details of these ballot papers were recorded by the SPO. Then at about 11.00 am. another armed gang had arrived and forcibly taken another seven books of ballot papers. The SPO and the ARO made a detailed report on this incident to the Returning Officer. They recommended that the 750 ballot papers be treated as invalid, because they have not been marked by the registered electors and excluded from the count."**

In this particular case, the vigilance and integrity of the polling staff ensured that the stuffed ballots did not influence the final verdict. The fact that only 63.6%<sup>9</sup> of the registered voters all Island actually cast their votes in this important election and that in certain electoral districts the voting was as low as 19%, testifies to the level of intimidation and threat faced by the voting public. The situation obviously calls for immediate remedial action, so that public confidence in the electoral process which is one of the basic features of the democratic system, could be ensured. It is customary for a Select Committee of Parliament\* to address the issues highlighted by the Commissioner of Elections. The future

<sup>9</sup> *ibid*: page 533, Table x x x v

\* A Select Committee of Parliament consisting of representatives of all parties was appointed by the Speaker on 15 November 1991 to examine the Report of the Commissioner of Elections on the 1989 Parliamentary General Election.

of the democratic political order in Sri Lanka may depend on the attention paid by the Select Committee of Parliament to the observations of the Commissioner of Elections on the 1989 Parliamentary General Election.

## **Managing The Multi-Ethnic Polity**

The most profound challenge that Sri Lanka faces in trying to guarantee its democratic order is that of resolving in a just and durable fashion, the ethnic question. Accommodating the needs of the minority groups, especially the Tamil community and giving all groups a sense of equality in society has been a complex task ever since independence. By and large the endeavour has been relatively successful in respect of the Moors, the hill-country Tamils (the issue of citizenship has been settled) and the minor groups: the Malays, Burghers, Borahs, etc. who have either been absorbed or have migrated abroad. In the case of the Moors, the demand for a separate cultural identity in the Eastern Province where they constitute 35% of the population has surfaced in recent years, while in the case of the Tamils of Indian origin (the hill-country Tamils) problems of employment outside of the plantations and integration with the local community remain.

### **The Ethnic Problem - National and Global Issues**

However, it is in the case of the Sri Lankan Tamils - 12.5% of the total population in 1981 (95% of the population in the Northern Province and 42% in the Eastern Province) that questions of identity and nationality have assumed proportions which have threatened the unity and maintenance of the democratic order. The complex issues underlying the **Tamil question**, also called the national question by some - need therefore to be addressed in some depth. Past attempts for an acceptable accommodation of the

demands of the Tamil community for equality and identity have been in the main, unproductive and unsuccessful. These efforts by the political leadership include the aborted Bandaranaike-Chelvanayakam Agreement of 1958 (the Regional Councils model); the still -born Dudley Senanayake - Chelvanayakam Pact of 1965 (District Councils under the direction of the government); the short - lived District Development councils of 1978 (President J.R. Jayewardene) and the interim North - East Provincial Council arrangement which resulted from the Indo- Sri Lanka Agreement of 1987.

The arrangements for devolution and limited power - sharing incorporated in the 13th amendment to the Constitution ( Provincial Councils along with the interim merger of the Northern and Eastern Provinces) do not appear to have been accepted even by the mainline Sinhala majority parties. The reported **consensus** between the UNP and the SLFP in the Select Committee of Parliament, (October 1993) after several months of discussion, is that the two Provinces be **demerged** and that there be two separate Councils, one for the North, and the other for the East. The opposition has focused primarily on the interim merger and the likely threats to the interests of the Sinhalese and Muslims who would be minorities in the merged North - East.

The merged Province was perceived in the Indo - Sri Lanka Accord as a concession to the Tamil demand of a traditional 'home-land.' Merger was seen by many as a forerunner to the separate state of Eelam - fervently desired goal of the LTTE and anathema to any Sri Lankan government pledged to protect the unity, integrity and sovereignty of the country and uphold the Constitution and its entrenched provision that Sri Lanka shall be an unitary state.

The Tamil minority parties who accepted the 13th amendment have been of the view that the powers of the Provincial Councils under

the 13th amendment, have not been freely and fully devolved by the centre. These parties demand that the interim merger be made a permanent one. In recent statements they have averred that this is a non-negotiable point. The Select Committee of Parliament mandated to reach a consensus on the question has in their majority decision (the Tamil parties dissenting) recommended the demerger of the 2 Provinces and greater devolution of powers to all Provincial Councils so that their powers would be approximate to the powers devolved to the states in the Indian Union. The Select Committee recommendations are far removed from the position taken by the LTTE whose struggle has been for a separate state of Eelam covering the areas of predominantly Tamil speaking people.<sup>10</sup> The non-militant Tamil parties too have rejected the Select Committee compromise.

The Tamil parties maintain they have always stood for a merger. They are doubtful whether devolution on the Indian model could be implemented without constitutional change requiring both a 2/3rd majority and a referendum of the whole people.

Meanwhile, the armed struggle of the LTTE against the Government of Sri Lanka which has continued from June, 1990 shows little sign of being concluded, either through the defeat or surrender of the LTTE. The latest victims of this war, in a series of suicide killings of political leaders, have been a former Minister of Internal Security and the President of the country who also was Minister of Defence and Commander-in-Chief of the Armed Forces.

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10 The Indo-Sri Lanka Agreement (1987) to establish Peace and Harmony in Sri Lanka recognized in its Preamble that "the Northern and Eastern provinces have been areas of historical habitation of Sri Lankan Tamil speaking peoples who have at all times hitherto lived together in this territory with other ethnic groups,"

The international dimensions of the conflict are also wide and becoming increasingly deep-seated. They involve:

- Sri Lanka's relations with India and particularly with the State of Tamil Nadu
- issues relating to refugees both in South India and elsewhere in the world and their eventual repatriation to Sri Lanka
- attempts at mediation by foreign Governments, particularly of the Commonwealth
- the participation of international and inter-governmental agencies in relief and humanitarian services such as, the United Nations High Commissioner for Refugees (UNHCR); the International Committee of the Red Cross (ICRC); and Medicines Sans Frontieres (MSF)
- the monitoring of the human rights implications of the conflict by international groups such as Amnesty International and the UN Commission on Human Rights (UNCHR)
- the creation of a far-flung and influential diaspora of Sri Lankan Tamils around the globe
- the worldwide spread of illegal activities by Sri Lankan Tamil militants in arms smuggling, illicit entry into countries and the narcotics trade
- negative influences on tourism and private foreign investment as a result of security scares

The external ramifications of the problem are serious and underline the need for urgency in a just and lasting settlement to the ethnic question.

In spite of the negative features and the political loss to the economy through its continuation, the increasing prosperity of Sri Lanka largely as a consequence of open market economic policies has masked the impact of the war. Especially in the south of the country, the war is perceived as being relatively far away. The mild euphoria that accompanies a 4-5% rate of growth may be masking the need for serious and sustained political efforts to bring the conflict to an end. The action and bloodshed are never near enough. The shocks that reverberate in the South through isolated acts of terrorism do little to activate a sense of urgency in addressing the basic question of what lies behind the terrorism.

The role of the media is also relevant here. An overly enthusiastic, generally **patriotic** slant in reporting news of the war contributes to the impression that victory for the government forces is close at hand. The likelihood of this guerrilla type war being a lengthy engagement seems not to be seriously entertained, although the shortest dating of the present conflict is from June 1990. One of the casualties of this gap between expectation of an early military victory and the reality of no real change in the ground situation is public credibility. What follows is a growing sense of apathy and frustration in the public mind with the sight of victory being so close but yet so far. As some foreign observers\* have commented, there appears to be a collective inability to face up to the reality which is imperfectly communicated through a largely managed media.

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\* See for example William Macgovern's observations on the cultural disposition towards ambiguity and the need not to 'lose face' in "ONLY MAN IS VILE", Harper Collins, Canada-1992.

The political leadership echoing the desire of the international community for a negotiated political solution has publicly opted for the political approach. The work of the APC where the LTTE also sat as a member for several months between September 1989 and May 1990 and the present activity in the Select Committee of Parliament are indications of this search for a political consensus.

The assertions and utterances of many individuals and groups both in Government and outside do not however support a political solution. These speak more of attitudes favouring a military solution with no concessions to the **intransigent** and **untrustworthy** armed Tamil group. As the war drags on, individuals and groups who are perceived to favour a negotiated political settlement are increasingly marginalized. They are seen in the public eye as being anti-national; or in infrequent slips of accommodation, gullible and naive.

#### Four Scenarios

What are the likely scenarios for the future out of this impasse in which Sri Lanka finds itself? What prospects are there for the multi-ethnic polity? Given all that has gone before, into which some reference has been made above, it is possible to sketch perhaps 4 scenarios.

The **first** would be an extension of the present two-pronged approach-the political and the military-together. On the one hand a continuation of the endeavour to reach a political consensus on the package to be offered to the Tamil ethnic group, this package to include, in addition to what is already in place such as Tamil as an official language and recruitment to State Services on the ethnic ratio, the devolution of powers to Provincial Councils more widely and more effectively than at present. The critical issues to be addressed in such devolution would clearly be the Provincial



Councils' powers over state land, the raising of finance, foreign borrowings and security. A key element in the political package would be the **unit of devolution**. Is it to be 2 separate councils in the North and East, a merged North - East Province or a new unit incorporating largely areas of Tamil habitation in the 2 Provinces created by the re-demarcation of the Provincial boundaries which have come down to us from colonial times?

Concurrently with the above political package which would need the consensus of the mainline Sinhala parties, the non-militant Tamil parties and the parties representing the Muslims, the second prong of the strategy would be a military push against the LTTE with the objective of reducing their strength, and bringing them to the negotiating table. Those who see this scenario as a possibility, stress the importance of the second leg, of a political package as a vital component of the military action which would enable in their view, the winning over of hearts and minds of the local population. This is regarded as critical in any military strategy to overcome an adversary which has a support base in the population and which has adopted guerrilla tactics.

The **second** scenario basically changes the ordering and emphasis of the two prongs., the military and the political. This sees the military option as being by far the more urgent and important. The "beefed up" security forces - Army, Navy and Air Force are seen as engaged in an all out assault on LTTE positions to eliminate terrorism, root and branch. Persons who favour this approach presume that the action would be quick and surgical. They admit however that given the density of population in the Peninsula and the suicidal motivation of the LTTE, civilian casualties could be high. However this would need to be a calculated risk. In this scenario the political package, perhaps not as generous as in the first scenario, would **follow** the military defeat of the LTTE.

There are some obvious downside implications to this scenario which could be identified. One is the moral and ethical consideration of a government waging an all out war against a section of its own people. There are also some relevant external facts which bear consideration. There is the attitude of the Government of India which has traditionally shown an active interest in the security of the Tamil people.

This concern mirrors the disquiet which does arise in Tamil Nadu whenever pressure is exerted on the civilian population in the Peninsula. It evokes memories of interventionist action as in 1987. These fears are sometimes discounted as not relevant any more after the assassination of Rajiv Gandhi in May 1991. However the likelihood of a distinction being made between the treatment of the LTTE and the treatment of the Tamil civilians by the Government of India cannot be ignored or assumed.

Equally significant could be the reactions of the Western donor countries, Japan and the US, who have often called, at Aid Consortium meetings and the Commission on Human Rights in Geneva and at other fora for a peaceful negotiated political settlement to the problems in the North - East. That an adverse response by the international donor community could have serious implications on the country's foreign aid prospects cannot be doubted. It is relevant to note that the response of the European donors could be influenced by the effect a strike against the Peninsula could have on the large number of expatriate Tamils who presently live in the donor countries. A peaceful settlement would clearly make it possible for many of those who have claimed refugee status in these countries to be repatriated back to Sri Lanka. Conversely a military settlement coupled with a long period of pacification and intermittent guerrilla action would foreclose the repatriation of the many thousands who are now becoming increasingly a strain on the donor countries.

A further possibility which needs to be kept in mind following on this scenario is the response of the United Nations. In recent times as reflected in actions taken in Somalia and Yugoslavia, the Security Council has taken the initiative in peace-making and peace - keeping in situations which appear intractable and unresponsive to local solution. A long drawn out, low intensity war with little hope of solution and which costs hardship to civilians and has 'spillover' effects into other countries could qualify for the kind of intervention into which the Security Council is now increasingly being drawn. The North-East problem unfortunately does appear to carry the seeds of the above mentioned disabilities.

The **third** scenario would be a continuation of the present state of stalemate. This would envisage the political dialogue proceeding at the leisurely pace at which the Parliamentary Select Committee has worked on the one hand and the occasional military action which is mainly **reactive** on the other. The military action would aim at obtaining 'domination' over increasing areas of territory, the liberation of the local population from the LTTE and the maintenance of normalcy with a strong security backup.

The final scenario anticipates the agreement reportedly reached between the UNP and the SLFP in the Select Committee, that is,

1. that the North and East be de-merged,
2. that Provincial Councils be devolved with powers similar to the powers enjoyed by the states in the Indian Union,
3. that there be no concurrent powers as in the present arrangement under the 13th Amendment, and
4. that early elections be held for Local Government institutions wherever possible in the North and East.

Under this scenario, the steps to be taken would involve initially normalizing the Eastern Province, holding Local Government (Pradesheeya Sabha) elections early in 1994, following up these elections with a referendum in the Eastern Province which would elucidate 'the will of the people' regarding the desirability of merger or non-merger, and finally, proceeding to Provincial Council elections for the North and the East.

The military strategy under this scenario would be in consonance with the political objectives outlined above.

There has been comment made that in spite of 'provocation' of a much larger magnitude than the ambush and killing of 13 soldiers in Palaly in July 1983 which led to the anti-Tamil riots of that time, no such further reprisals have occurred. The latest such situation was in connection with the funeral of late President Premadasa when it was feared that since the suspected assassin was a Tamil, there would be widespread reprisals on Tamil persons and property owned by Tamils. However there were no reported incidents of hostility against Tamils or their property at this time.<sup>11</sup> Does this only mean that in Colombo which has been a cosmopolitan city for some decades, the multi-ethnic polity is being realized or does it mean that lessons have been learnt, on all sides, on how to manage the tensions of multi-ethnicity in terms of the behaviour of law enforcement officers, managing of personal household security and a change in social behaviour and attitudes.

### Other Minority Issues

Two other areas of political divisiveness which challenge the concept of the multi-ethnic polity are the Tamil-Muslim

<sup>11</sup> Foreign press reports mentioned that thousands of Tamils had moved out of Colombo soon after the assassination of President Premadasa and taken sanctuary in Vavuniya, Batticaloa and Trincomalee.

relationships in the Eastern Province and the search for identity of the hill-country Tamils (5.6% of the population). The growing militancy and the rise of fundamentalist thinking among Muslim youth is not only related to the threat faced especially in the Eastern Province from Tamil militancy, but can also be seen as related to the changes and challenges facing the global Muslim brotherhood. The spread of Islamic fundamentalism in West Asia, the re-emergence to nationhood of the Muslim republic of the former Soviet Union and more recently the Ayodhya crisis in India which places the Muslims in the position of a threatened minority have all undoubtedly contributed to a heightening of the awareness of identity and togetherness among the Sri Lankan Muslims. The Muslims in Sri Lanka have always shown a sense of strong group solidarity. Except for the riots between the Sinhalese and Muslims as far back as 1915, there has been no history of conflict between the two communities.

In fact strong bonds of accommodation based on occupational specialization which precluded competition, Muslim involvement in the mainline political parties and mutual respect for religious rituals subsist. The fact that the Muslims living in the South by and large know the Sinhala language, are distributed throughout this part of the country in small groups and are largely engaged in service occupations and trade, have assisted in enabling the Muslims as a community to live in relative harmony with the majority community. However, in the East where the Muslim concentration is considerable (42% in the Ampara District), the sense of identity and perceived threat from the Tamils have led to territorial claims by them well. The rise to prominence of the Sri Lanka Muslim Congress in the late 80s and its ability to gain representation both in the North-East Provincial Council of 1988 and at the Parliamentary General Election of 1989 in a relatively short period of time signals the fact that the **Muslim factor** will need to be acknowledged in any settlement involving devolution of powers in the North-East.

Curiously, Tamil-Muslim hostility has not been a characteristic of the Eastern Province in the past.<sup>12</sup> The two communities have co-existed for many generations in comparative harmony and the pattern of settlement along the Eastern seaboard has enabled each community to keep its distinctive identity and enjoy its cultural rituals without trespassing on each other's local territory. The Tamil language has been the common link and at one time buttressed the proposal for a Federal unit of Tamil speaking peoples.

However with the rise of Tamil militancy and the now well published attempt of the LTTE of "ethnic cleansing" of isolated Muslim villages in the East and also in the North in Jaffna and Mannar, the old relationships between the communities have been greatly disturbed. As long as Tamil militancy remains, the fears of the Muslims will remain. Moreover in such a situation of conflict between the Tamils and the State, the Muslims in the Eastern Province will be regarded by the Tamils as potential fifth columnists and informers and thereby objects of hostility. This is borne out by reports of clashes which have occurred between the LTTE and the Muslim homeguards. Obviously the present situation is an unsatisfactory one. In any long term settlement in the East, the claims of the Muslims for safety, security and power-sharing in identified locations would need to be recognized.

A relatively stable situation has prevailed in the plantation sector - especially after the major issue of citizenship of the hill-country Tamils was resolved. However the economic problem of how to find meaningful employment for those who cannot be absorbed on the plantations remains. Especially it is acute in regard to the youth who have gained education. The structural changeover from state ownership and management to private sector management has led to some uncertainty in the plantation trade unions in respect of conditions of labour, such as guaranteed minimum wages and the number of days of guaranteed work.

<sup>12</sup> The writer had the experience of 4 years of service as Government Agent in the Districts of Ampara and Batticaloa in succession in the early 1970s.

The dominant position of the CWC, (the Democratic Workers Congress (DWC) having almost collapsed after the death of its founder) and the influence wielded by its charismatic leader in the Cabinet, has not only enabled the economic problems of the plantation workers to be largely addressed, but has also included a sense of collective identity and the search for non-violent ways of achieving the community's political aspirations. These centre around securing adequate representation and political leadership in the local, regional and national popular assemblies - the Pradesheeya Sabha, Provincial Council and Parliament. If this goal is realized, it would represent for this community a roll-back of disabilities which the community has perceived since the disenfranchisement of the Tamils of Indian origin in 1949.

Since the numbers in this community have come down sharply with the repatriation under the Sirima-Shastri Pact (they represented around 12% of the population in the 1946 census and had come down to 5.6% in 1981) while the Kandyan Sinhalese numbers have increased, it is less likely today that ethnic tensions would be aroused by the hill-country Tamils gaining some political representation and some political leverage. Indeed this could well act as a safety valve and defuse tendencies to achieve political aims through militancy. The fact that the CWC leadership has interested itself actively in the cause of the Jaffna Tamil community - the Thondaman proposals on the ethnic question are well beyond what the Select Committee has come up with - indicate that there is everything to be gained through an integration of the hill-country Tamils into the mainstream political order.

The most critical problem for the hill-country Tamils however remains the economic one, of meaningful employment to the new generation children of these registered citizens. The children have been born and bred in Sri Lanka and have unlike their parents little touch with India. Unemployed and alienated hill-country Tamil youth - like other young people similarly placed throughout

the country, could represent a potentially significant explosive force. How to provide them access to employment outside the plantations and how to do so without creating new ethnic tensions will remain a problem calling for innovative and imaginative strategies. This is an issue to which sufficient attention has regrettably not been given in view of the priority claimed by the Sri Lanka Tamil ethnic issue. However, recent militant tendencies among hill country Tamil youth and reports of links between them and the Northern militants suggest that attention to this potential problem can no longer be delayed in the political discourse.

### **Ensuring continuity with change**

A sustainable democracy can be evolved in Sri Lanka given the political will to change while building on the several 'assets' we have presently in place. These include, the experience acquired over several years of the competitive Parliamentary form of Government, well organized political parties, an independent Judiciary, a literate voting public, procedures and administrative system geared to periodic elections, perceptive and critical media personnel, and an active NGO community. What needs to be done is to manage and accommodate change within the framework of the systems already set up and to build a consensus in order that the changes become largely acceptable.

In a sense it is the capacity to look at

***"What is right in Sri Lanka  
to correct what is wrong in it."**<sup>13</sup>*

Such an exercise, it is assumed, would be less disruptive and more cost effective, and lead to sustainability than through the total overhaul of existing structures and systems. The guiding principle should be that of renewal which encompasses both the idea of

<sup>13</sup> Adapting a noteworthy line in US President Bill Clinton's Inaugurations speech of 21 January 1993 in Washington D.C.

change as well as continuity - continuity to benefit by the learned experience and collective wisdom of the past, change to be prepared to review systems and procedures and to accommodate to the needs of the present.

Clearly, democracy in the political system has deep roots in Sri Lanka. Even the monarch in ancient times was limited in his authority by the obligations of kingship, the *dasa raja panatha*, whose breach could result in popular disaffection and even a change in the leadership. Many of Sri Lanka's traditional institutions like the *Sangha* and the *Gam Sabha* were structured and functioned on democratic lines.

### Civil Society and NGOs

The prime agent in enabling democracy to operate in deed and not only in word is the regime in the seat of government at any given time. It is the government which determines the framework, the priorities, and given the centralized nature of decision - making in Sri Lanka, the space available for the agencies of civil society to function. The vitality and dynamism of civil society, NGOs, professional groups, the religious organizations, the media, the business community etc. is usually a critical index of the strength of democracy in a country.

What is the situation in respect of some of these important elements in civil society? Sri Lanka has had a tradition of effective NGOs at both village and national levels. Many NGOs are active in the field providing humanitarian services. The conflict in the North-East has prompted several international NGOs with local affiliates to expand their activities in that part of the country. These include the well-known International Committee of the Red Cross (ICRC), *Medecins Sans Frontieres* (MSF), *Save the Children*, *Oxfam* and *Care*. Local NGOs have recently felt

constrained by the inquiries instituted by the Presidential Commission on NGOs. They claim it has had a chilling effect on their activities.

While the NGO Commission's inquiries have gone on for over two years, no recommendations on NGOs have yet emerged. In the meantime, no material restrictions have been placed on the functioning of NGOs. There is no doubt that at some time important NGOs like *Sarvodaya* have felt restricted and stifled owing to the inquiries into their activities. It is important that the space that has existed for their work will continue to be available to the NGOs. The Report of the NGO Commission whose work will terminate at the end of 1993 will therefore be eagerly awaited.

The NGO community, like many other civil institutions, are today confronting serious challenges. These reflect the diverse consequences of a rapidly changing socio-economic situation. They call for a review by NGOs themselves of how their contribution can be optimized in the midst of change. One of the critical drawbacks of many national NGOs is their limited social base. These are usually confined to the English-speaking intellectual fraternity of the middle and upper classes. Encouragement should particularly be given to NGOs who have engaged themselves actively on the ethnic issue and in the protection of human rights. Their overall influence in society has been restricted owing to their class affiliations, urban base, and visible connection to international movements which are unfairly perceived as antagonistic and hostile to the government.<sup>14</sup>

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<sup>14</sup> A case in point is that of *Amnesty International*. This organization was tabooed by government fiat from visiting Sri Lanka for 10 years from 1980. A former state Minister of Defence was reported as having referred to it as a 'terrorist' organization in 1989. *Amnesty* who was permitted access to Sri Lanka in 1990, through a series of incisive reports on the human rights situation has been able to significantly influence the manner in which the Government has since dealt with the question of human rights violations.

A development which would be vital to a multi-ethnic democratic society would be the widening of the base of NGO networks and the establishment of a coalition of these committed to multi-ethnicity and human rights. If this network could encompass all religious groups, and the Sinhalese and Tamil speaking constituencies, it would undoubtedly enhance the contribution which the NGO involvement could make to sustainability.

### **Violence and the Protection of Human Rights**

A serious threat to the democratic order is the increasing level of violence in society.<sup>15</sup> The breakdown of law and order which accompanied the campaign of terror in the 1988/89 period and the repressive use of state power to contain it, clearly contributed to the growth of the 'gunculture'. Vigilante groups,\* outside the normal law enforcement framework, acted with impunity during this period. The lack of accountability for criminal acts committed at this time has contributed to the residual violence which has now regrettably become a part of the daily existence. Disputes which would earlier have been settled within the framework of the legal process, are now being 'resolved' through violent reprisal. The revolver, hand-bomb and the grenade threaten the foundation of the legal order on which a democratic system must rest.

There has been also, a serious erosion of public confidence in the guardians of the law - the Police. The process of politicisation

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15 The assassination of Lalith Athulathmudali, the leader of a political party contesting the Provincial Council election of May, 1993 at a political meeting at the start of his campaign and the killing of President Premadasa a week later at the May Day rally are only the most dramatic and recent of a long wave of political violence which has beset the country.

\* Former DIG Udugampola's affidavits of 1992 (later withdrawn) amply testify to the under cover operations of these groups in 1989 and 1990.

which has affected the Public Service has permeated the Police Service too, particularly at the periphery. How to turn this situation around and restore confidence in the processes of the law in the resolution of conflict will be a concern of the highest importance.

The State's response to a threat against it has conventionally been the imposition of an Emergency under the Public Security Ordinance. In fact, in the past 23 years (1970 - 1993) the country has been under emergency rule for over 15 years. (viz: 1971 - 1977 on account of the first JVP insurrection, 1983 - 1988 anti-Tamil riots and militancy in the North, 1989 onwards, JVP and LTTE militancy.) Emergency Regulations confer special powers on law enforcement officers and restrict or derogate from the fundamental rights which citizens enjoy under the Constitution. A point of view taken at the All Party Conference, that discussed the issue of the imposition and continuation of an emergency, was that in addition to approval in Parliament, continuation of an emergency should be subject to judicial review. This was in the context of experience of the past, where the Emergency had been kept in force after the threat to national security which had demanded its imposition, had passed. It was felt that the normal law and the Prevention of Terrorism Act would be sufficient to deal with lesser situations of threat.

Use of Emergency Regulations is often the only way of safeguarding the community and establishing law and order. But emergencies once imposed, have the tendency to continue in force even after the situation has returned to normal. The emergency itself is then perceived as being repressive and becomes the cause for further violent counter-action. Political analysts have contended that it should be possible, given the political will, to restrict the operation of an emergency to a particular locality where a threat exists. Similarly, the more severe of the regulations could be lifted as the security situation improved. The revision of several

Emergency Regulations in February and June 1993 relating to arrest and detention procedures indicates that this is possible and has been commended by Human Rights groups.

A further unfortunate tendency has been for issues completely unconnected with the needs of security to be made the subject of Emergency Regulations.<sup>16</sup> While this practise has been sought to be justified on the grounds of urgency, pending introduction thereafter of the appropriate legislation in Parliament, this latter step is often delayed or not taken at all. The danger is therefore that the Emergency Regulations could be used as a way of side - stepping Parliament and providing another route for the Executive to 'Legislate.' This could be seen as a serious erosion of the basic right of the legislature to legislate and as providing an opportunity to belittle the concept of the separation of powers between the Executive and the Legislature.

Sri Lanka's human rights record in the 'years of terror', especially the large number of disappearances in 1988/ 89 invited a comprehensive international review and monitoring of the situation.<sup>17</sup>

The pressure of local and international human rights groups has led to the establishment of mechanisms and procedures aimed at increasing transparency and placing accountability on government functionaries charged with the protection of human rights. The APC<sup>18</sup> recommendations in this area are structural in nature

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16 The Human Rights Centre at the University of Colombo has made an analysis of the current Emergency Regulations and identified several which are unconnected with security needs.

17 see Report of the U N working group on Disappearances October 1991 and the Amnesty International Report on the "Situations in the North - East".

18 Draft legislation on the Human Rights Commission and the 17th Amendment was finalized at the APC in Early 1992. However the draft bills have not yet been passed through Parliament and are reportedly yet in the Cabinet process.

with important implications for strengthening human rights over the long term. They include the setting up a national Human Rights Commission with a strong investigating arm and some significant amendments to chapter 3 of the Constitution - the Fundamental Rights chapter.

The importance of nurturing a human rights culture to sustain democracy cannot be overstated. It is indispensable for the proper functioning of the established systems of law and the institutions that sustain the democratic order. Especially important in this respect will be human rights education in schools and the training of key officials, especially in the Prisons and Security Services in the protection of human rights.

Concurrently with the security threats encountered by the State in recent times, there has been an increase, quantitatively and qualitatively, of the security forces - the Army, Navy, Air Force and the Police have seen rapid increases in personnel and equipment.<sup>19</sup>

This has greatly strengthened the capacity of the state to counter internal insurgencies. It has also, negatively, in terms of the sustainability of democracy increased the power and influence wielded on the political process by the military. Fortunately on a positive note, in Sri Lanka as in India, the Armed Forces have taken pride in maintaining their 'neutrality' as between opposing

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19 At the Emergency debate on December 16, 1992 the Hon. Ranil Wickremasinghe, Leader of the house mentioned that the total strength of the Army, Navy Air Force and homeguards is 186,000 made up of - 129,000 in the Armed Forces and homeguards, and 57,000 in the Police.

He added that as regards equipment, the Armed Forces had - 24 aircraft - Jets, Helicopters, Transport Planes, ets. 130 mm Long range artillery, main battle tanks, light tanks, armoured cars, landing craft, gun boat, fast attack craft and 2 years supply of ammunition.

political forces. Loyalty to the Government in power has been traditionally one of the guiding principles of the Armed Forces. This has been demonstrated in Sri Lanka on several occasions, in spite of long periods of emergency rule. At such times, the Security Forces have wielded considerable powers, yet it does not appear that the opportunity provided for a takeover of the process of government (barring the attempted coup d'etat of 1961)<sup>20</sup> has been seriously contemplated.

The current escalation of the conflict in the North-East popularly termed the Ealam war has introduced an added dimension. The sacrifices in life and limb of the Armed Forces<sup>21</sup> have made the Security Forces a factor in the resolution of the problem. Military Commanders have asserted that the final solution to the ethnic problem will have to be a political one. It is clear that any political solution will have to be acceptable to the military as well. This factor narrows the options for a political solution.

Recruitment to the Armed Forces to meet the secessionist threat to the state has been largely from the Sinhalese. If recruitment is to be on the principle of the national ethnic ratio then the Tamil community too should be represented in the Armed Services and the Police at least up to 12.5%. The fact that the Armed Services and the Police today are composed largely of the majority community (the Armed Forces more so than the police), could be a further reason for the Tamil claim of discrimination and unequal status. The Tamil case for separateness on the grounds of safety and security for their community is as a result of the policy

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20 Justice Alles (retired) has provided a detailed description of how the emergency in 1961 was utilized for an attempted coup d'etat by disaffected factions of the Armed Forces and the Police.

21 In 3 years of conflict June 1990 - 1993, the figure of security personnel killed in action is around 4,000, those seriously injured exceed 8,000. (Estimate from figures disclosed at Cabinet Press Briefings)

recruitment that has been followed so far further strengthened. The naming of the Army Regiments after the Sinhalese Kings has conveyed the impression of a Sinhalese Army, rather than a Sri Lankan Army. The building of Tamil militant groups - at one time the EPRLF were regarded as training a Tamil National Army - is rationalized by protagonists of the Tamil cause as a defensive measure to meet the eventuality of future military onslaughts on their community. Whatever be the validity of such a line of thinking, recruitment to the Armed Services and the Police on the lines of the ethnic ratio as has now been proposed, has much to be said for it. Indeed, one of the prerequisites for a multi-ethnic polity could well be a multi-ethnic Security Force.

The need for such a policy has been highlighted by the recent demand for a 'Muslim Regiment' to safeguard as is said the Muslim community in the Eastern Province against reported efforts by the LTTE at 'ethnic cleansing.'

### **The Role of the Media**

The role of the media in guaranteeing the democratic political order and managing the multi-ethnic polity will be crucially important.

Discussion on the media's role - and this includes the mass circulation Press and the electronic media, TV and Radio - in relation to enhancing democracy - raises issues such as:

- \* the freedom of expression as an institutional right
- \* credibility, especially in regard to the state controlled media.
- \* the promotion of multi-ethnic tolerance and pluralism
- \* appreciation of the watch-dog function or the adversarial relationship of the Press to Government, and



- \* access to information which is relevant for the public to make up its mind on current issues.

There are some major problems to be addressed in regard to the media. As far as the Press is concerned there are a variety of daily newspapers in the three languages and a growing tabloid circulation. However the readers of any one newspaper appear to receive only a partial picture of the social reality. This is because each newspaper representing a particular policy, based on its political ethnic or religious standpoint would seek to project news and views in line with their Management's world view. As far as the Lake House (ANCL) group of news papers is concerned and this presently constitutes a very wide readership because of its obvious strength and superior organization, a similar orientation representing mainly the Government's own political stance is evident. This it may be argued could have positive effects in terms of the ability a government gains to enhance information flow and the policy of multi-ethnic coverage.

The point at issue however is that the very fact of control of such a powerful medium gives the party in power an enormous advantage in the propagation of its own view. There is therefore an uneven - playing field as far as the fora for propagating policies and views is concerned. Inevitably the Opposition can claim that the cards are stacked very much against them. Especially is this true at times of election.<sup>22</sup>

The correction of this imbalance which arises through the Government's ability to control the media, has become one of the most

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22 The 24 member International Observer group who monitored the Provincial Council elections of May 1993 made pointed reference in their recommendations to the need to give adequate TV and radio time to opposition parties to also make known to the public their policies and programmes.

important issues which need to be addressed in enhancing and sustaining democracy.

When one considers the profound influence that television and radio exert today on the thought processes of the public, the inequity in access to the media is even more starkly seen. According to the latest survey figures (1992) there are an estimated 900,000 TV sets in the country with viewing audience of 4.5 million. In the case of radio there are over 2 million sets and a listening audience of 9.5 million (over the age of 15 years).<sup>23</sup>

Liberalisation of the media was one of the issue which received broad agreement at the All Party Conference. A consensus was reached on the need to -

- \* broadbase the ownership of the Lake House Group of Newspapers in terms of the existing Law on the subject;
- \* set up a Media Commission with an independent Board to provide guidance to both the electronic media and the press as to the manner in which certain specified objectives, e.g. building national consciousness, enhancing multi-ethnicity, etc. could be projected. Independence of the Board could be effected by use of the procedure of selecting Board Members from panels of names submitted to the President by the Nominations Commission - a recommendation of the Youth Commission intended to depoliticize key policy making bodies;

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23 Estimate obtained in survey conducted by Lanka Market Research Bureau (L M R B) August 1992 for SLBC.

- \* repealing the Press Council Act and bringing its regulatory provisions under the purview of the Media Commission;
- \* strengthening the Fundamental Rights provision in the Constitution relating to freedom of expression, to include also the right to information.

Unfortunately, it has not been possible to develop any of the above recommendations to the point of implementation. Working on this agenda for a start would go a considerable way to strengthening the democratic political order and enhancing the concept of multi-ethnicity.

The role of the media at a time of national crisis as when the country is at war poses special problems, particularly as regards the extent to which the media should report on events considered sensitive for security or the country's international image. There could be a dilemma here as to whether the media does right to 'expose' the facts or to 'conceal' them. In such extreme circumstances, there is much to be said for following the advice that John Delane (Editor of the London Times) gave to his reporters during the reign of Queen Victoria. When one of his reporters from the front, concerned with the sacrifices, the waste and the blunders of the Crimean War asked whether he was to "tell these things or hold his tongue," John Delane responded, "Continue as you have done to tell the truth and as much of it as you can"

## Conclusion

The sustaining of democracy in Sri Lanka calls for a multi-faceted, focused and collective endeavour by all groups and institutions in the country, pre-eminently the government in power.

Sri Lanka has a proud history of constitutional development with its people having exercised universal franchise for over 60 years. The constitutional framework and the democratic institutions like the independent Judiciary, elected representative Assemblies, generally free elections and a critical press, are at hand. These are valuable assets to be built upon. What is yet lacking and needs to be developed is the 'culture' of democracy and acceptance of the values that are inherent in it, such as internal democracy among the political parties, tolerance of dissent and the recognition of the legitimate role of an Opposition.

In what is basically a multi-ethnic, multi-religious, multi-cultural society, where the approach should be pluralist, the ruling attitude has been majoritarian in substance. The value of devolution and the need to buildup foci of power other than the centre to prevent any move towards authoritarianism, needs to be more widely appreciated and accepted. The role of civil society is vitally important and the contribution which NGOs can make in protecting the public interest, especially in areas like human rights, is immense. However there is as yet inadequate appreciation and acceptance of the value of the NGO contribution in creating a more participatory democracy.

The matter of the willing involvement of youth in the tasks of nation - building is of vital significance. Given the preponderance of young people in Sri Lankan society and the anti-systemic response of the most motivated among them, urgent attention on a broad front to the multifarious problems youth face today, is imperative. The attitude of educated youth has been generally shaped by non-democratic ideologies. Marxist concepts and thoughts have been widely disseminated in the national languages. The gap between the ideal proposed by the elite and the social reality, has induced a great deal of scepticism among the youth about the democratic system and its ability to usher in the 'promised land.'

The Commission on Youth examined in great depth the origin and causes of the widespread discontent of youth and their total lack of confidence in the in the working of the present democratic institutions, Although the Government in early 1990 accepted all of the 53 recommendations of the Youth Commission, many of the more important of these, have not been implemented as yet. Three of the more significant of these recommendations which were accepted in principle but not proceeded with are:

- the establishment of a **Nominations Commission** to depoliticize some of the key decision-making agencies of administration
- a **Media Commission** to liberalize the Media and ensure a balanced and fair presentation of views on questions of public importance, and
- a permanent **Bribery Commission** to root out a pernicious evil in the body politic.

Preserving and sustaining democracy in the long term would need both government and community action on a broad front. The commitment and involvement of youth would be crucial. Action in a sustained and focused manner on the thoughtful ideas and agendas set out in the reports made to Government from time to time by bodies, such as, the Commission on Youth, the National Education Commission and the Commissioner of Elections on the Presidential and Parliamentary Elections of 1988 and 1989 would go a long way towards laying the foundations for recovery and renewal of democracy in Sri Lanka.

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# TOWARDS A PARTICIPATORY DEMOCRACY IN SRI LANKA ( THE INSTITUTIONAL UNDERPINNING )

Shelton Wanasinghe

## The Need for Institutions

The discussion which follows is, in essence, a journey of exploration. It is triggered by the realization that the institutional milieu in which Sri Lanka finds itself in 1993 is inadequate to serve as an underpinning for a sustainable participatory democracy.

Such an enquiry could, perhaps, best begin with attempting to understand the significance of institutions.

*It is a society's institutional structure which enables it to function as an organism, coping with its internal tensions and responding flexibly to external changes. These are tasks which are basic to a society's growth and its continued stability. The internal consistency within the institutional structure and the complementarity amongst its several sub-structures and components would, therefore, be major determinants of the effectiveness with which a society meets its challenges.*

Thus, in Sri Lanka's move to being a participatory democracy by the twenty first century, its institutional structure would play a critical role. It could either act as a facilitator of or be an

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impediment to a smooth transition. The relevance of the institutional structure both to the task demands of the transition as well as to the emerging aspirations of the people, its in-built capacity to evolve as demands and aspirations change and the degree of its acceptability to society as a whole, therefore, become key determinants of the pace and quality of the transition.

It is this concern which leads this discussion to focus on the country's institutional structure, in terms of its adequacy as a facilitating instrument to support the transition towards a participatory democracy. In this context, basically, two types of institutions are considered. The first are those which are directly responsible for the task of formulating and implementing public policies and programmes. These would include such institutions as the political and administrative organs of the State. The second are those institutions which are outside the State but contribute to the public policy process. Political parties, organizations of the private and intermediate sectors of the economy, civic organizations (NGOs) and associations of labour fall into this group.

To keep within a manageable frame, the discussion has opted to limit itself to the participatory dimension only. Hence, significant though they may be in the context of Sri Lanka's future growth and stability, institutions which are purely concerned with economic activities have, by design, been left out of the discussion.

The institutional structure of a participatory democracy is a composite. It embraces political institutions, administrative institutions, non governmental organizations (NGOs), organizations of the private and intermediate sectors as well as the associations of organized labour. Each sub-group plays multi-dimensional roles - as policy makers, as planners, as implementors, as advocates and lobbyists, as defenders of rights and privileges or as self-regulators.

Institutional structures have to be understood, appraised, projected and envisioned in the context of the changes which are both ongoing and are likely to occur in the specific society. It is, therefore, appropriate to seek to understand the nature of such changes in the Sri Lankan society before proceeding to discuss the institutional content.

### **The Changing Context**

Sri Lanka's post-Independence history of four and a half decades has witnessed several major structural changes in the polity, the economy and the society. Some of these evolved over time, in response to environmental pressures. Others were the specific outcomes of deliberate ideological initiatives. These structural changes have left their imprint on the character of the Sri Lankan society, the nature of its polity and the direction of its economy.

Such changes would, no doubt, continue to occur in the future and leave their own impact. Even so, it is now possible, in the context of the changes which have occurred hitherto, to envisage what the salient characteristics of the Sri Lankan society and its economy are likely to be as the country moves towards the twenty first century.

***The most significant feature is that the principal role actors of the future Sri Lankan economy would be the private sector - whether small, medium or large in size or individually, corporatively or co-operatively owned and managed.***

This contrasts sharply with the dominant role played by the public sector in the economy in the first thirty five years. The economy would be characterized by multiple centres and levels of asset

ownership and decision making, rather than by a monolithic structure. This key role of the private sector would require the improvement of the capacity of its collective bodies to play a more active role in the national policy process.

***An equally important characteristic of Sri Lankan society would be that, within the context of the greater role for the private sector, there would be a clear preference and an active search for enhanced equity in the distribution of economic asset holdings and of income as well as in the access to public goods and services.***

Equality of access would be sought by spatial regions as well as by individuals and groups. The future Sri Lankan society would have a low tolerance of high disparities of ownership, income and access. This would demand new and enhanced capacities in the political and administrative organs for the formulation and implementation of regulatory policies directed towards ensuring equity objectives. Equally strong would be the need for institutions and mechanisms within the private sector to establish the rules and practices of fair competition and consumer protection.

***The growth of economic activity would, in the future, be increasingly accompanied by its spatial spread, with a concomitant dispersed presence of a relatively better-off work force.***

This trend would increase the demand for a wider geographical spread of economic and social infrastructure. Meeting these demands would require organizational changes, capacity enhancement and strengthening of financial resource bases of the sub-national political and administrative institutions, both at the regional and local levels.

***The future Sri Lanka would witness a process wherein the citizens would seek increased participation in development decision making and in programme management.***

This would be set in motion by the continuing enhancement of education, of political awareness and of access to information on comparative global developments. This trend would be reinforced by other factors as the emergence of multiple centres of economic decision making and the need to respond to ethnic and regional aspirations. The logical trend would be towards the devolution of political and administrative management to local and intermediate sub-national levels. This process would generate a demand for appropriate and effective institutions for such participation. As significant as the new role and structure of sub-national political and administrative institutions would be the role of the NGOs as well as appropriate regimes for their autonomy and their public accountability.

Such elements in the changing scenario are not only mutually complementary but also mutually reinforcing. The emergence of the citizen as the economic decision maker, the search for individual and group as well as spatial equity, the spread of economic activity and the desire for active citizen participation in governance are all far reaching changes. As already briefly indicated, they have implications for the nature of the political, administrative, economic and non-governmental institutional structure of future Sri Lanka.

The changing context is not confined to the features already referred to. There has been, over the years, a breakdown of some of the systems and institutions inherited from the country's past.

***The structures and traditions of the bureaucracy which were absorbed predominantly from the***

***British colonial period have all but disappeared. The semi-feudal patron-client relationships, which characterized the society, the economy and the polity have been gradually erased. The citizen's dependence on the state is steadily eroding.***

However, whilst these changes have and are taking place, a new institutional culture has yet to emerge. The failure to recognize the ongoing changes has contributed to the absence of a proactive process of institutional development. This, in turn, has led to the genesis of trends, such as institutional in-fighting, intolerance of differences in views, majoritarianism, an incapacity for teamwork etc., which are inimical to healthy institutional development.

New value systems, new work disciplines and a new social ethos are, therefore, required to foster the institutional development needed for the future. This would be a major demand on the future planning of institutional development.

### **The Emerging Expectations**

Any discussion on institutional development must, necessarily, be based on certain assumptions as to the expectations concerning the desired direction of movement of the society. ***This discussion is based on the assumption that, even given the often apparently contradictory cross currents of political expression, there is a strong underlying desire on the part of the Sri Lankan society for a continuing move towards a functioning participatory democracy.***

Perceptions as to the actual institutional structure of such a functioning participatory democracy, of course, are varied. They have been influenced both by history as it is perceived by

individuals and groups as well as by their own role aspirations. Subjectivity, rather than objectivity, has dominated such perceptions. They are fractured; are rarely holistic. The ad hoc translation of such fractured perceptions into institutional prescriptions has tended to yield ineffective institutional mosaics rather than effective systems.

A new, holistic approach is called for. Towards this objective, this discussion would seek to concretize the underlying desire in terms of its different expectations. It would, then, seek to posit an institutional structure which could best contribute to these expectations being met.

The emerging expectations represent a major change from those which were common in the early decades of the post-Independence period. This fact is often overlooked, with adverse consequences, in the planning of institutional changes. These emerging expectations have been heavily influenced by the recent advance in private sector led economic growth. This, as exemplified elsewhere, has triggered a desire in the citizens for greater participation in the polity. This desire has been reinforced by the growing political maturity of the society, by the lessons being driven home from the current ethnic and youth unrest, by recent international developments in regard to political and economic liberalization as well as by a wider access to higher levels of information and education.

***At the centre of the future expectations, is the citizens' desire for optimal participation in the process of decision making within the polity.***

There is growing awareness as to how these decisions directly affect their well being. Such decision making occurs at the local, regional and national levels and relate to a range of concerns. These range from the delivery of public goods and services and the

management of the public infrastructure; to development policies, strategies, programmes and projects; to the guarantee of individual freedom and the maintenance of law and order; to the country's sovereignty and external relations.

How is 'participation', as expected above, to be defined? It implies that such decision making would be conducted, at the relevant level, by directly elected and recallable representatives of the citizenry. For this to become a reality, there must, necessarily, be a consensus as to the specific level at which each category of decision would be made. It would include the citizenry being able to bring their viewpoints to bear on the decision-making through overt processes such as public lobbying, public hearings etc. It would also extend to the right of the citizenry to engage in free public debate and discussion on such decisions as well as to seek referendums, at the appropriate levels, thereon.

Such a view of participation is in contrast to and wider than what has obtained, hitherto, in Sri Lanka. Participation has, hitherto, tended to be narrowly conceived as being confined to the exercise, by the citizens, of their vote at periodic elections, and a passive reception by them of political debates and arguments amongst full time political practitioners. The lack of specificity in manifestos presented to the electorate by political parties as well as the lack of institutional mechanisms for citizens to participate in decision making and influence its details, makes the citizen's current role in governance, at best, marginal.

But if optimal participation of the citizens in decision making is to become a reality, several pre-conditions have to be satisfied. Four of these are briefly discussed below.

***A basic condition is that such participation is universally and manifestly accepted within the polity.***

This, as would be seen from the later discussion on political institutions, is a far cry from what has hitherto obtained. Participation continues, in many quarters of the polity, to be construed in the narrow sense earlier described. Not unoften, active participation in decision making by the citizenry is viewed as a threat to the continued exercise of power by political practitioners.

Participation, as viewed in this discussion, is not confined to the citizen being active merely vis a vis the formal political institutions at the different levels of the polity.

***It extends to the ability of the citizens to participate in decision making within the political parties and groups themselves.***

This contrasts with the current trend of such decision making being confined to elitist cadres within the political parties.

***The participatory institutions should be so structured and so operational that they provide for equitable and universal participation.***

They should not be merely nominally representative - with the membership continuing to be passive and the decision making remaining with entrenched elite groups who would continue to manipulate the institutions. Such a situation would only contribute to continued corruption and mismanagement. An equally important need is for healthy leadership structures to develop so as to prevent participatory institutional mechanisms foundering in varying types of internal disputes. Both these situations have been encountered in Sri Lanka.<sup>1</sup> Citizen education, which would need to be built into any effort at institutional development, could provide a means to overcome such deficiencies.

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<sup>1</sup> Examples can be found in co-operatives, political parties, NGOs and the like.



Participation in public decision making would also be enhanced by the availability of institutional mechanisms such as public hearings which have become common features in other polities. What is critical would be the level and intensity of interaction which would exist between the public institutions and the citizens - both individually and collectively.

In this context, the role of non-governmental organizations becomes critical in terms of strengthening the citizens capacity to participate. Such a role should not only be accepted, but appreciated, facilitated and legitimized.

***The key factor which could activate all this would be the capacity and ability of the citizens for such participation.***

The Sri Lankan reality, however, is that there is considerable room and an urgent need for this capacity to be enhanced. Such enhancement could come only through a greatly increased access of citizens to development management information and through their heightened and widened awareness of current development issues.

Greater dissemination by state organs of information related to development strategies, programmes and projects, at planning as well as at implementation stages, and providing adequate time and opportunities for their discussion would become a desirable institutional mechanism for enhancing information access. Such dissemination should occur at all levels of the polity - local, regional and national - as is relevant. A major contributor to enhancing the awareness of development issues would be the intensity of the discussion of such issues in the media - print as well as electronic-in all languages. Both the above are areas in which much spade-work needs to be done. Such initiatives should form integral elements in any programme of institutional development.

***Parallel with the expectation of optimal participation in decision making is another expectation. This is that the citizens be left free to pursue their individual and collective economic, social and cultural activities.***

This, obviously, has to be within norms and standards agreed to by society as a minimal framework to ensure that the public good is not affected. The Sri Lankan society of the future would resist attempts by groups exercising political authority for the time being to seek to impose, on the society at large, sectarian preferences as to what is permissible or not as economic, social or cultural activities.

These expectations provide the context for a discussion on an appropriate institutional system for the country - a system which would include the political sub-system, the administrative sub-system, the organizations within the private and intermediate economic sectors and the Non-Governmental Organizations. Such a discussion on an appropriate institutional system, however, needs to be preceded by an understanding of the role of governance in Sri Lanka's future participatory democratic polity.

### **The Changing Role of Government**

***Throughout the post-Independence period, Sri Lanka has witnessed a steady growth and a strong entrenchment of a pervasive role for the government in all areas of economic, social or cultural activity.***

Over time, the government came to assume the role of initiator, planner, implementor and even monitor and evaluator of activities in all such areas. The trend saw a steady growth - even with changes of governments of different political persuasions. The pervasive

role of government came to be projected as the best assurance of equity. Vested interests of political cadres and of the bureaucracy took root in the system. An entire generation of Sri Lankans has grown up within the system knowing no other.

Self-management by the public, within their local communities and through their institutions, became more the rare exception than the norm. This, in turn, has led to a growth in public apathy. The public have been conditioned to accept that, once a political group is voted into office, they should be considered omniscient and allowed to make all societal decisions.

Over the years, the practice of democracy grew to be passively ritual rather than actively participatory. Those who questioned the trend became marginalised, seeking extra-constitutional solutions to the issue of participation, thus contributing to the societal trauma which Sri Lanka has witnessed during the recent years.

The dominant role assumed by the government in the area of economic management and its contribution to a slower pace of growth than should have resulted from the available physical, human and financial resources is adequately documented. The resultant failure in solving social problems such as unemployment, the poor quality of education and health care etc has contributed to the societal tensions which are commonplace today.

The pervasive role of the government, taken for granted for almost a half century, failed to serve the country's needs. Hence the need for a new look at the role of the government and to redefine its limits.

If Sri Lanka is serious in moving towards a participatory democracy, it should seek a radical reversal of the earlier trend and initiate a qualitative change in the role of the government accompanied by a progressive reduction of its directly active role.

***Beginnings have already been made in the area of economic activity, with the process of privatization and the non-entry of government into micro management in new areas of economic activity.***

This process needs to be steadily pursued, despite resistance from the bureaucracy and from political cadres, until the government totally withdraws from direct involvement in the micro management of economic activities, facilitating the private and the co-operative sectors to play the role.

The government's past active involvement also encompassed both the delivery of social services such as health care and education as well as the management of economic infrastructure such as power systems, irrigation facilities, roads and highways. There has been an increasing centralization in the organization of such activities which has contributed to their low responsiveness to community demands and a lagging behind in their quality - trends which need to be corrected.

***A start in this direction would be the removal of such tasks from the 'domain of government' to the 'arena of the community'.***

Whilst all such activities would operate within the parameters of national policy, their micro management could, increasingly, move to the local community - operating through its local government institutions, through NGOs or through the private and co-operative sectors.

The withdrawal of the government from the task of micro management of economic activities does not imply an abdication of its role vis a vis the furtherance of the country's economic development and ensuring of the quality of life of its people. However, the nature of the role and its constituent tasks would change.

In future, the primary tasks of government in the economic sphere would be to:

Formulate and operationalise national policy regimes which would guide the economy in the desired directions and keep it within the parameters of societal goals;

Ensure the availability of the facilitating and enabling institutions and of measures which would support the growth of economic activity.

Provide the necessary regulatory safeguards for the protection of public interest vis a vis the operation of economic enterprises.

The above changes imply a redefinition of the 'limits of government' from that which has obtained in the Sri Lankan polity during the first forty five years. The new role is, at the same time, a narrower yet more far-reaching role. It would be limited in 'activeness' yet rich in its impact on the future of the society; refraining from hands on activities yet accepting responsibility for the monitoring and evaluation of the impact of such activities on the society. Its primary focus would be on reaching consensus on national policies, on facilitating their operation and on monitoring and evaluating their implementation.

Such a redefinition of the role and limits of government run directly counter to the entrenched perceptions of the role and limits as have evolved through Sri Lanka's post-Independence history. This, itself, no doubt, creates a serious impediment to effecting a smooth transition from the historical to the desirable - both in terms of roles and of institutional structures. Yet, it is a situation which has to be faced and corrected if Sri Lanka is to avoid being saddled with irrelevant and costly institutions which

would, in seeking to preserve their entrenched positions, thwart the development of a participatory democratic polity, a market responsive economy and a self-reliant society in Sri Lanka by the turn of the century.

***If participatory democracy is to be a reality, devolution must, necessarily, be its definitive character. The road to a participatory democracy point inexorably towards a devolutionary system - in the polity to the regional and local levels, in the economy to the enterprise level and in the community management of social infrastructure.***

Such a structure of devolution for Sri Lanka is best developed on the principle of subsidiarity.<sup>2</sup> In following the principle of subsidiarity, each level within the political and administrative institutional structure, starting from the 'lowest' level, must be given all those responsibilities and functions which can be effectively assumed and fulfilled by the participatory representative institutions at that level. Only those responsibilities and functions which each such level cannot effectively assume should be taken up to other levels. This basic principle of subsidiarity can become the touchstone for determining the institutional relationships between the different levels and could also be a useful frame of reference in resolving issues relating to the extent of devolution.

Hence, though devolution has become a highly sensitive issue, through its being enmeshed in the confused debate on the current ethnic tensions, it has to be recognized as a must for its own sake. It is basic to the functioning of a participatory democracy. The ensuing discussion on political, administrative, private sector and

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2 For example, in its history of constitution making, Switzerland has demonstrated the value and validity of the adoption of the principle of subsidiarity.

non-governmental institutions would, therefore, proceed on the assumption of devolution as the basis of the future institutional system.

### **The Political Sub-system**

Before proceeding to a discussion of the political sub-system, it would be useful to identify some of its major institutional deficiencies. To begin with, there is a serious lack of clarity in the relationships between the Presidency, the Cabinet of Ministers and the Parliament which contributes to conflicting perceptions and interpretations of roles and relationships. This adds to the confusion of the citizenry and to inefficiency and ineffectiveness of political management. Added to this is a proliferation of Ministries which, through duplication and absence of co-ordination, weakens the country's development management process. The failure to effectively devolve functions to the sub-national levels, both local and regional, has contributed to a waste of scarce financial, physical and human resources as well as to lowering of operational efficiency. Coupled with these are the lack of mechanisms for continuing citizen participation in the polity, apart from the electoral process, and the absence of processes and institutions for enhancing capacity at the sub-national levels of government.

*The same four and a half decades which saw the entrenchment of a pervasive role for the State also witnessed a progressive march towards a centralized polity - through a process of overt and covert modifications to the already centre-prone political and administrative institutions acquired at Independence.*

All political parties which sought office at periodic national elections found in the centralized system an easily controllable instrument for pushing through preferred economic and social agendas. Concurrently, there also evolved a new relationship between the political party, the Member of Parliament and the constituents. Fostered by the political parties and their cadres themselves, has emerged an excessive dependence of the citizens on the state via their 'own' Member of Parliament and the relevant political party - a situation which has not been allowed by the political parties and their cadres to disappear even with the introduction of the PR system of elections to Parliament.

The political parties, therefore, irrespective of their ideologies, found it attractive to strengthen the centralized polity.

Thus, in the recent past, Sri Lanka has had no real experience of virile institutions which could provide a sense of community and identity at the local and sub-national levels. Whatever institutions of local administration there have been have suffered from lack of self-reliant resources, of adequate power and authority as well as of mechanisms of accountability to the local community. Conceived and functioning as institutions subordinate to central ministries and departments, they never had a chance of developing a 'persona' of their own.

The institutional structure of the future polity should seek to correct this situation. If this is to become an acceptable reality, the future political institutional structure should provide for elected institutions at all three levels of the polity, namely the local, regional and national levels. Such institutions should have clearly demarcated and differentiated authority and responsibility without the confusion of powers being concurrently shared. The ensuing discussion in regard to the political sub-system should, therefore, be understood in this context.

## The Local Level

*An effective system of local government institutions would, as the preceding discussion has shown, be essential as a strong base for a functioning participatory democracy in future Sri Lanka. This should, therefore, constitute a key element in the restructuring of political institutions.*

Local government, as traditionally understood in colonial and post-colonial Sri Lanka, had evolved to deal specifically with services to the community. The range of such services, of course, varied as between urban and rural institutions, with the former dealing with a wider range than the latter. The more important development and administrative functions were the responsibility of the higher levels of governance. This tradition needs to be examined afresh in the changed context.<sup>3</sup>

With the progressive transfer of economic activities much of the production support services which hitherto had been the domain of the public sector would now pass on to the private and intermediate sectors. The residual economic services would be infrastructural in nature and, together with social services, can, as earlier discussed, be the responsibility of the elected local government institutions. In terms of national tasks, this would, at the local level, leave mainly the statutory services due to the citizen.<sup>4</sup> There is no valid reason why such services also cannot be provided by the elected local government institutions, themselves, on behalf of the relevant national authority.

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3 This issue has been discussed at length by the Administrative Reforms Committee in its Report No.6 on "Administrative Changes in Support of Devolution" - February 1988.

4 Such as the registration of births, marriages and deaths, issuance of national identification documents etc.

Almost all categories of public sector services which are required by the citizens can be more effectively delivered through their combination at the local level. What, in the context of this discussion, is important is that this be done under the aegis of the elected local government institution.

*For such a system to be effective, the responsibility for the provision and management of all public and community services and infrastructure within a local government area should be fully devolved to it.*

This entails the dismantling of the current complex legislative frame mandating and supporting the provision and management of such services etc by ministries, departments, 'authorities' and other agencies of the central and provincial administrations. It also implies that the local government institutions should be in total control of the technical, administrative and support personnel who are required to perform the attendant tasks.

The legislation providing the basis for such a system should be uniform and non-discriminatory in regard to responsibilities, powers and authority as between local government institutions in urban and rural areas. The efficiency of the local government system would also be enhanced by a reversion of the electoral system from the recently introduced proportional representation system to one based on geographical wards.

*The oversight of local government institutions should vest with the relevant public and not with central or provincial ministries or departments.*

The level of public accountability should be enhanced through such measures as the submission of audit reports for public discussion; provision for recall of the local government

institution, or its individual members, by referendum; the subjecting of the local government institution and its individual members to judicial process; and the limitation of terms of office of members.

In Sri Lanka, effective devolution at the local level requires the development both of governance skills in the political cadres, as well as of the managerial and administrative infrastructure at the local level. Sri Lanka, unlike several other countries, has yet to develop institutions to support the political cadres and enable them to develop skills of governance. The institutions of decentralization, in the form of Divisional Secretariats, could be utilized to bridge both these gaps. But for this to be possible, they would need to be removed from the overweening control currently exercised by the Centre and be organically linked to the political institutions of the people at the local level, namely the local government institutions.

### **The Regional Level**

The next level of future governance would be the regional level. The role, functions and composition of the regional level institutions<sup>5</sup> are best approached in the context of the role of primary level local government institutions as discussed above.

In a context wherein the local government institutions would be directly responsible for the economic and social services and infrastructure in their respective areas, the primary role of the Regional Councils would be to reconcile the plans and programmes of the individual local government institutions so that cohesive regional plans would emerge. Flowing from this is the task of allocating the regional financial resources for the implementation

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5 These are referred to as Regional Councils in this discussion.

of the programmes of the local government institutions. It would do so within a framework for minimizing spatial disparities. A concurrent task would be to support the local government institutions with common services which would be uneconomic for them to obtain on their own.

There is another key role for the Regional Councils. Looking outward from their respective regions, they would both interface with the national level institutions on behalf of the local government institutions as well as collaborate with other regions in projects which, for their effectiveness, must transcend regional boundaries.

If Regional Councils are to be effective, it is essential to arrive at a national consensus on the number of regional areas. Such a consensus should be based on considerations of spatial size, shared natural resource bases, social cohesiveness, communications, affordability, viability, etc. Given the ad hoc colonial period origin of the boundaries observed in regard to today's administrative provinces and districts, there is a strong case for an objective approach to the demarcation of regions.

It is necessary to provide for an integral link between the Regional Councils and the primary local government institutions. With this end in view, the electoral system used to constitute the Regional Councils should be so designed that their primary constituency would be the local government institutions, with each being equally represented. These could be supplemented by a lesser number being elected, on a PR basis, by a region-wide constituency.

The life of a Regional Council should be five years - with individual members being limited to a maximum of two terms.

The Councils would need to be engaged in business only for a limited period each month and should organize their work at the

level of fully empowered sectoral committees, each headed by a Chairperson<sup>6</sup>. These Chairpersons should constitute an Executive Board, with its own Chairperson, entitled to make decisions, subject to approval by the Council, during the periods when the Council is in recess.

The Governor of each region would be designated by the President of the country, subject to ratification by two thirds of the members of the relevant Regional Council. The Governor would have the responsibility for approving the decisions of the Council.

The institutions at the regional level should recruit their own staff, within their financial resources, to attend to the functions specific to them.

### **The National Level**

The institutional structure at the national level should be examined in the context of the limited, though important, range of functions which continue to be essential at the national level, within the framework of devolution to the local government institutions and Regional Councils, and conforming to the principle of subsidiarity. They comprise those which:

*Underpin, symbolize and articulate the integrity and sovereignty of the nation as, for example, foreign relations, citizenship, national security;*

*Contribute to the formulation of national policies;*

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<sup>6</sup> The number of such sectoral committees could be kept at five, perhaps, on the basis of economic infrastructure; social infrastructure; human resources; law and order; finance and planning.

*Concern the planning and implementation of trans-regional programmes, projects and activities;*

*Relate to the mobilization of financial resources which, by their nature, must be nationally mobilized - such as import levies, taxes on corporate and personal income, excises, external borrowing.*

Given the nature and scope of the tasks and functions which would fall into the above categories, the structure at the national level should be conceived in a framework of 'institutional minimalism' - in sharp contrast to the present culture of institutional proliferation.

The responsibility for national policy decisions in a democratic polity must, necessarily, be participatory and collegiate and cannot vest in an individual or a small executive group. The most appropriate forum for making such decisions, therefore, is a national Parliament which is constituted via a system of proportional representation.

The Proportional Representation system which is used to elect such a Parliament should be based on the Regional Council areas. Registered political parties would file two lists of candidates, in order of precedence - one for the region and the other for the national seats. Fifty percent of the seats could be allocated nationally on the basis of the total votes polled, nation-wide, by each party; the other fifty percent being distributed regionally to be allocated on the basis of the votes obtained by each party in each region.

The term of a Parliament should be five years. It would, however, be desirable for individual members to be restricted to a maximum of two terms.

Membership need not be regarded as a full time pensionable occupation. Parliament should restrict its deliberations to short periodic meetings and arrange its work via sector-focussed committees.

Also, given the devolution of authority and responsibility to local and regional levels, it is difficult to justify the present large size of the Parliament. A more appropriate size to be considered would be between 100 and 125.

The Parliament should have responsibilities and powers encompassing national policy, the oversight of the national executive, international relations and trans-regional matters as well as legislation thereon. This would include:

the approval of appointments of members of the Cabinet;

the ratification of treaties and similar instruments;

the consideration of the national plan presented by the Cabinet of Ministers;

the approval of national policies and related policy instruments such as the national budget and appropriation accounts, legislation etc.;

the consideration of the Auditor General's reports and oversight of public accounts at the national level.

In the context of a devolved democratic polity, its powers of oversight and enforcement of accountability should be limited only to the national level executive.

An equally important issue is that of the processes observed by the Parliament. Transparency in such processes is essential to the credibility of the institution. The procedures should provide for public hearings as part of the discussions on policy issues and trans-regional programmes. The importance of the public being able to feel that it is an integral part of the process of discussion of national issues cannot be over emphasized.

In the context of the devolution<sup>7</sup> of management functions to the local government institutions and of operational planning, support and allocative tasks to the Regional Councils, the executive functions at the national level would be restricted mainly to tasks which relate to:

the maintenance of the sovereignty of the country, its security and its external relations and the determination of citizenship;

the monitoring and evaluation of national policies and their impact;

the regulation and enforcement of national standards, specially as they relate to public goods and services;

the collection and management of national revenue;

the planning, implementing and managing of trans-regional infrastructural projects;

Most of these national level executive functions should be seen as being of a facilitating nature wherein the government's role would

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<sup>7</sup> Directly relevant in this connection is the 'principle of subsidiarity' elaborated earlier.



be to use private and other non governmental organs to achieve policy objectives rather than seeking to do so through government managed and staffed bureaucratic organizations.

Neither of the two alternatives of a national executive - an executive Cabinet responsible to a directly elected Parliament or a directly elected executive Presidency working with and through a Cabinet responsible both to itself and to Parliament - which have been tried so far has proved to be totally satisfactory or acceptable. Hence, designing a model for a national level executive which would be appropriate for a polity based on a system of devolution and of minimalist governance poses a serious challenge. The ensuing discussion provides several parameters which could assist in developing such a model.

Such a model should recognize that the Presidency<sup>8</sup> both symbolizes and actualizes the sovereignty, integrity and cohesiveness of the State. In this role, it is concerned with the country's interface with other countries and with its defence and security.

The Presidency should be vested with the responsibility of approval of national policies<sup>9</sup>, as agreed to, from time to time, by the Parliament. It could also initiate, as appropriate, national policies for the consideration of the Parliament.

***The Presidency would both over-arch and serve as a link between the Parliament and the Cabinet.***

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8 The incumbent of the Presidency should continue to be elected by a nation wide franchise, as at present, but for a term of four years with each individual incumbent being restricted to a maximum of two terms.

9 The reference to national policies also includes trans-regional programmes and projects.

The Cabinet, under the leadership of the Prime Minister, executes the national policies and programmes as well as trans-regional projects which are agreed to by the Parliament and approved by the President. The Cabinet is, thus, an executive group - not a policy-making group. In effect, it would be the only real national level executive body in the polity<sup>10</sup>.

In such a context, the Cabinet should have a pre-determined size, based on a rational delineation of 'subject groupings', with only temporary minor increases being possible<sup>11</sup>. The Prime Minister and other Ministers would be drawn from amongst members of Parliament and would, before their formal appointment by the President, be required to obtain a vote of confidence in the Parliament.

The task flow at the national level would be cyclical. It would commence with proposals for national policies. These would originate as responses to changes in the society and the economy and to demands from the regional and local government levels. They would also arise from perceptions within the Parliament itself and proposals originating from the Presidency. These proposals are studied, deliberated modified and agreed upon by the Parliament. Once agreed, they are approved by the President and guidelines and directives thereon are issued to the Cabinet which proceeds to implement them. The results of the monitoring and evaluation of such implementation are, in turn, fed to the Parliament for its consideration and decision.

The discussion on the national level focusses on changes of a fundamental nature in the polity. Obviously, a discussion of this

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10 Integral to this model of the Cabinet is that the President would not be entitled to hold any ministerial portfolios. The Presidency and the Cabinet should be regarded as separate and distinct entities.

11 This aspect is elaborated in Report No.7 of the Administrative Reforms Committee on 'Rationalisation of Functions in Government' February 1988.

nature can only deal with the broad parameters of such changes. The pros and cons of the structure proposed as well as the details of its implementation need to be objectively examined, at length, before the society can adopt a new structure.

Considering the unfortunate history of the earlier episodes of constitution amendments, it may be wise to adopt the procedure of setting up a Commission on Constitutional Reforms comprised of representatives of all registered political parties, assisted by a panel of technically eminent individuals. Such a Commission would be required to present a broad framework for public reaction and to develop detailed proposals through a process of continuous interaction with the public. It would be required to arrive at a consensus within a given time frame. Such consensus could, then be presented to ratification at a referendum.

Before the debate on institutional restructuring gets mired in controversial arguments on details, it is essential to work towards achieving a national consensus on the broad framework of the constitution. In this sense, both the 1972 and the 1978 constitution making episodes provide poor precedents. Hence the importance of informed public discussion and the dissemination of institutional-structure-related information to support such discussions. All these constitute key elements in the constitutional reform process envisaged above.

### **The Judiciary<sup>12</sup>**

The maintenance of a dynamic tension within a participatory democracy depends on the degree of checks and balances which

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12 This reference to the judiciary has been included in this discussion only for the purpose of drawing attention to the strategic significance of the judiciary within a participatory democracy. The subject needs to be addressed in depth, which can only be adequately done in a separate discussion.

exist amongst its constituent partners. In this context, the judiciary, with its autonomous powers of judicial review, has a key role to play. The effectiveness of this role would depend on the modalities adopted for the constitution of the judiciary. The principal objectives in adopting such modalities should, therefore, be the preservation of judicial independence and the demonstrated acceptability of its members. Nominations for appointments to the Supreme Court should be made by the President and be ratified by the Parliament<sup>13</sup>. The Supreme Court should be entrusted with the appointments of all other members of the judiciary.

### **Political Parties**

Institutions of the polity depend, for their effective functioning, on the institutional strength of the political parties which participate therein. Such institutional strength would depend on the transparency of their constitutions and internal management processes as well as on the level of effective internal democracy provided in such constitutions and processes. An issue which deserves consideration is whether these concerns could be met by the adoption of mandatory requirements for such constitutions to be registered and for regular party elections etc to be held. The Commission on Elections (which would replace the present Elections Commissioner) could act as the regulator of their observance.

### **The Administrative Sub-system**

The administrative sub-system has been a key constituent as well as a crucial underpinning of the hitherto centralized institutional

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13 Such ratification should follow a procedure of enquiry by a Select Committee of Parliament and approval by no less than two-thirds of the whole Parliament.

system. Its culture, constitution and operation has been highly influenced by the nature of the centralized polity. Hence, in the transition to a decentralized participatory democracy, the administrative sub-system would require to undergo far reaching changes.

The future of the administrative sub-system has to be examined in a radically new context. Not only would the role of government have changed, de-emphasizing its operational role whilst stressing its policy, strategy and regulatory role, but also independent and representative political institutions, with direct accountability to the people, would have emerged at the community, regional and national levels. These two changes would have a profound influence on the structure, staffing and ancillary matters related to the administrative sub-system.

The sub-system, as it has been known up to now, will, for all intents and purposes, cease to exist. This, however, does not imply that the role of the administrative sub-system will cease to be crucial. In a sense, it is the administrative sub-system which would need to provide for continuity while facilitating change throughout the polity. Hence, the structure of administrative support institutions at the national, regional and local levels must have the capacity to facilitate the redefinition and differentiation of the role of governance at these levels.

As the role of governance changes to one of arriving at consensus on policies, strategies, programmes and projects, of facilitating their implementation and of maintaining, in the public interest, a regulatory oversight, administrative support would be required for such tasks at all three levels of governance. What would be the salient characteristics of the sub-system which would be required to provide such support?

This question needs to be addressed on the basis stressed earlier.

***The institutions of governance at the three levels, whilst being inter-dependent, are not parts of a hierarchical chain of control.***

Each, as already stated, has a separate existence, accountable to its specific constituency. This is an essential requirement of a participatory democratic polity and has several future implications which need to be dwelt upon.

It would, in the future polity, be unrealistic to expect, at the regional and the local levels, a uniform institutional system which is centrally imposed. The specific institutions at each level would need to be adapted to respond to the individual requirements of the different areas. Hence, unlike in the past, the polity must learn to live with variety.

Each institution of governance would be better served by cadres specifically recruited by it rather than by ones assigned to it by centralized 'Combined Services' or personnel bureaus. In such a context, any joint recruitment procedures (for economy or efficiency) should be the outcome of voluntary collaboration rather than be centrally imposed. **The 'employer', in the future, would be the specific agency of governance rather than the Government of Sri Lanka.**

At levels other than at the local level, the traditional concept of a life-time career service would, often, be irrelevant. The professional skills required by the administrative agencies at the regional and national levels, would be highly specific and not necessarily developed within life-time career services. Also, as the tasks of governance change with the changes in the environment, the skills, themselves, are likely to require replacement. Hence, much of the skills would need to be attracted, as required, on contractual basis from the market rather than be inducted into career 'Services'.

Hence, in the new administrative structure the public sector institutions at different levels would use individuals and services from outside the State on specific contractual assignments. This would imply that new modalities of providing for personnel services would have to be developed and the current forms of cadres and salaries budgets be radically restructured.

The progressive withdrawal of the government from operational activities, if pursued to logical ends, has far reaching implications. It is not only, as commonly assumed today, from the 'enterprises' that the government would withdraw. The inexorable logic of the privatization process means that, at some point of time in the last decade of the century:

the provision of infrastructural services (including toll roads, telecommunication facilities, railway transport, delivery of mail etc) would move to the private and intermediate sectors, within user tariff frameworks set by the government;

the provision of health care services as well as education and training services would be the task of the private and intermediate sector, autonomous universities and of NGOs, within user tariff frameworks set by and targeted access support measures operated by the government;

the management of irrigation facilities would be the task of multi-level community-managed and user-responsive institutions.

Through this process, the 'activity role' of 'administrative agencies' would be attenuated.

Thus, in the future, both at the regional and the local levels, the need of the administrative structures would be for groups of well experienced professionals, supported by appropriate other cadres, who would be preoccupied with the tasks of:

matching national policy objectives and local community aspirations and translating them into implementation strategies, programmes and projects;

identifying, catalyzing and supporting strategy-programme-activity implementors from the private, intermediate and NGO sectors;

overseeing, on behalf of the community and its good, the implementors and their outputs in terms of responsiveness to demand and quality; and

feeding in local aspirations to the national policy making process.

Within this task frame, the administrative sub-system has to be viewed as an active, as distinct from a passively pliant, professional instrument of the people for the above purposes. If one were to view society as an enterprise with clearly articulated goals, long as well as short term, one would perceive the citizens (organized for action at the three levels) as its shareholders, their elected representatives as boards of directors and the administrative groups as the executive. What is significant and worthy of emulation by the world of governance is that each has a clearly defined and well understood role.

Of course, in applying the corporate model, it is necessary to note several qualifications. One is that, in the world of governance, the citizens would play a more active role vis a vis the 'boards of

directors' and the 'executives' than the shareholders would play in an enterprise. The second is that the goals and functions in government are different and more complex from that of an enterprise with its clearly defined goal of return on investment. Thus, the citizens, as 'shareholders in government' would be expressing themselves qualitatively differently through such mechanisms as NGOs, political parties, the media etc.

The efficiency and effectiveness of the future administrative sub-system is dependent on its personnel - their quality of recruitment as well as their level of training and development. Direct recruitment to jobs rather than to 'services' would improve the matching of qualifications to jobs and individuals to task demands. Recruitment for specific periods would contribute to the necessary imperative of renewal and the graceful exit of the irrelevant. Properly structured training would be a pre-requisite for their improved performance in their changing roles.

### **The Private Sector**

The preceding discussions have served to spell out the emerging new role of the private sector which would increasingly take the lead role in the economy as well as in the actual delivery of social services. In the new context, the organization of the private sector merely as discrete individual enterprises would be inadequate. They would need to be collectively organized to be active role actors in a participatory democracy.

It is not that the private sector has been lacking in collective institutions. It is that they were differently, mostly inwardly, oriented. Their major pre-occupations have been the defense of individual and group well-being as well as the advocacy for restraint-removal and for individual and group privileges. The new role, however, would emphasize a move to constructive and

co-operative involvement in furthering the common good of the society and the economy and to being a co-determinant of strategies and programmes which would contribute to it.

*A significant difficulty in mobilizing the private sector for a collective role in national policy formulation is its inadequate perception of how the normal task of representing their collective interests as private sector businesses is an integral part of their role in contributing to national policy. A major effort at changing of perceptions is, thus, called for.<sup>14</sup>*

There is a clear need to improve the overall institutional and legislative framework for the private sector organizations as a means of reorienting, reorganizing and revitalizing them for their new roles as well as of ensuring that, structurally, they fit into the new institutional system of the participatory democratic polity at the national, regional and local levels. In essence, a shift is necessary from a pre-occupation with a narrow focus to an expanding concern with the wider canvass. A certain degree of rationalisation of institutions, which have had ad hoc origins, would also be inevitable.

In order to be effective both in participating in societal decision making as well as in assisting individual constituents in the private sector to co-ordinate and rationalize their efforts and to optimize their performance, the private sector institutions would need to enhance their research and professional capacity. Export expansion, investment policies, marketing, quality standards and their enforcement, project preparation, social impact of policy

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<sup>14</sup> The recent initiatives in this direction are worthy of study and extended application. These include the emerging institutional mechanisms for private sector - public sector dialogue, the genesis of regional Chambers, the efforts at professionalising the Chamber Secretariats etc.

options, fiscal and monetary policy are but some of the areas in which research capacity needs to be developed.

***Self regulation by the private sector should increasingly replace externally imposed regulation by government bureaucracies.***

The enforcement of public-interest-related Codes of Conduct on their members would be one of the major tasks of private sector institutions - both of trade and industry related institutions as well as of profession-focussed ones. This is an area in which, currently, society at large has the greatest distrust of and cynicism about the private sector. The willingness of society to accept the private sector as a credible partner would, ultimately, depend on the degree to which private sector institutions succeed in enforcing self-regulation.

The participation of private sector institutions is not restricted to policy and strategy formulation - it, necessarily, extends to their implementation. The goals which Sri Lankan society has set for the medium term future include poverty alleviation, rapid generation and spatial dispersal of employment, export expansion and improving the citizens' quality of life. In each one of these areas, the private sector has the major implementing role. Hence the private sector institutions have a critical role in formulating strategies, in providing technical assistance to members, in skill development and in providing institutional mechanisms for their members to participate in the national development process.

As important as research capacity in the private sector institutions would be the availability of secretariats staffed by well trained professional staff. This would enable the institutions to better serve their membership and also to participate more effectively in economy-wide decision making as well as in implementing such decisions.

Private sector institutions should be actively present at all three levels of the organization of the polity - national, regional and local. Currently, the presence is, overwhelmingly, at the national level. Organizations emerging at the regional level, albeit too slowly, are weak. There is no organization at the local level. The pros and cons of a 'top down' branch structure vis a vis a 'bottom up' structure of a federation of local/regional institutions needs detailed study and discussion. What might prove appropriate as a start would be a combination of the positive elements of both. It would help to keep in mind that an institution structure cannot be rigid and static but should continuously evolve over time.

Given the ad hoc nature of the origin of much of the private sector institutions, their proliferation was, perhaps, inevitable. Yet, this proliferation acts as a serious barrier to their effectiveness. Hence, institutional arrangements for their better co-ordination have become an urgent necessity and could, with advantage, be part of the process of restructuring envisaged above.

### **Non-Governmental Institutions**

The term NGO has been one which is vaguely understood in Sri Lanka. It, therefore, requires clarification in the context of a participatory democratic polity. In such a polity, the citizens would organize themselves, outside of the state and the private business sector, for purposes of satisfying their economic needs, for achieving social objectives, for religious or cultural purposes, for articulating concerns of quality of life etc.

***Whatever their purpose may be, NGOs in a democratic polity share the characteristic of being independent entities.***

The special character of the genuine NGOs is that they are **voluntary and self-generated organisations**. They are equal partners in any institutional system which underpins a democratic polity. They are not dependent instruments of the political, the administrative or private sector institution sub-systems. If they were, their value would be severely affected. This is a fact that is often forgotten and even ignored - with the result that NGOs either become pliant instruments of the other sub-systems, particularly the political and administrative as occurred in the case of the co-operatives, or become confrontational to the others. In both events their effectiveness suffers.

The manner of genesis of NGOs is also a critical factor in their long term viability. The more successful ones have been those which owed their genesis to the initiatives of the concerned public rather than to external initiatives. In this regard, the failures of the co-operatives and of rural development societies which owed their genesis to bureaucratic initiatives serve as an example. Equally counter-productive could be the NGOs which owe their origin to initiatives of foreign aid organizations pursuing their own agendas. In both cases, the relationship of dependency which is created and the manner in which the initiators' agendas capture the NGOs concerned make them ineffective partners in an institutional system of a participatory democratic polity.

Whilst initiatives are best sought from amongst the people, reality tells us that, invariably, it is a single or few individuals amongst the public who would take the risks of initiation of NGOs. Growth of NGOs would be wider spread to the extent that the society is successful in producing such risk takers. In this regard, the country's education system, particularly the curriculum content and teaching methodology, plays a major role and needs to be kept under review - as to whether it is equipped to produce active participating citizens or merely passive onlookers.

The internal participatory character of NGOs and the practice of decision making at the grassroots level are also critical to their effectiveness - more so given the elitism which continues to prevail particularly in rural society.

Equally important would be the level of transparency in the management of NGOs and their activities. This applies particularly to systems of fund management and of internal checks and controls, as they directly contribute to public credibility and acceptability.

NGOs would need to be active on their own as well as to interact with the other institutions at all three levels of the polity. Hence their pattern of organization would be important. Currently, the sub-system embraces national NGOs which are active also at sub-national levels as well as local level NGOs. The inter-relationships between them are tenuous and are not systemic. Also, for the foreseeable future, the NGO sub-system in Sri Lanka would continue to include foreign NGOs. Hence, the relationship between the local and foreign NGOs, with its advantages as well as disadvantages, would remain an important issue of the institutional structure.

Of special significance for the future institutional structure of the envisaged participatory democracy is the forging of interactive links between the NGOs at the local level and the corresponding local government institutions. This would be highly relevant in demand articulation, in project and activity formulation and in implementation.

On balance, therefore, it would appear to be more appropriate to focus on the local level and to proceed, based on experience, to build supportive structures at the regional and national level. There, obviously, would be exceptions to the generic approach - particularly in the areas of research, religious activities etc.

Two key factors in the environment are also critical to the successful participation of NGOs in societal decision making and implementation.

The first is the degree to which there is openness and acceptance of the right to express differing opinions in Sri Lankan society, characteristics which are considered basic in a democratic polity.

The second is the extent to which development information, both national and international, is available and is readily accessible - to enable informed participation in decision making.

### **Trade Unions**

Trade unions have been a major presence on the Sri Lankan scene for a considerable period of its pre and post-Independence history. As institutions of the organized workers in the economy, they would, naturally, have a significant role in the institutional structure of the future participatory democracy.

Given their genesis in confrontation, it is, perhaps, inevitable that they have, within the economy, continued in a confrontational relationship with the employers. The response from the employers has tended to reciprocate this confrontational attitude. This situation has been to the detriment of the possible constructive role which the trade unions could play in the economy and the society.

The situation has been made even more complex by the fact that trade unions have, in the main, tended to be closely linked to the different political parties and groupings which contend for political power in the country. Periodic alienation of trade unions

from participation in the decision making processes depending on the political fortunes of their patron political parties has been to the detriment of the growth of a healthy institutional relationship.

The 'export-oriented-free-market' based strategy currently in vogue continues to be suspicious of associations of labour and the confrontational relations they have fostered in the past. Within this approach lurks the danger that the role of trade unions will be diminished and that, consequently, the benefits of economic growth will not be equitably distributed between capital and labour. A way out has to be found if the equity objectives of a future participatory democracy are to be achieved.

For a resolution of this entrenched situation to come about a process of internal reform carried out by the trade union movement itself would be necessary. Internal discussions, development of optional strategies, worker education, exposure of trade union membership to developments in other countries etc would be elements in such an internally induced process of reform. What is noteworthy is that such reform is essential if the trade unions are not to be marginalised within the institutional structure of the future participatory democratic polity.

In this context, it would be appropriate to assess, as part of the institutional development effort, what elements of the 'social market' could be grafted, with adaptations as necessary, to the structure of socio-economic management in Sri Lanka.

### **A Strategy for Institutional Development**

The main initiatives and changes which are recommended in this discussion as being integral to the achievement of the overall institutional structure envisaged therein are briefly recapitulated in this section to provide the framework for a strategy for



institutional development in the last decade of the twentieth century and to indicate a possible agenda for action.

***Such an agenda for action is best initiated with a comprehensive redefinition of the 'limits of government' from that which has obtained in the Sri Lankan polity during the first forty five years. The new role of governance has been spelt out above and flows from the changing context and the emerging expectations as earlier discussed.***

***If participatory democracy is to be a reality, devolution must, necessarily, be its definitive character - in the economy to the enterprise level, in social infrastructure towards community management and in the polity to the regional and local level.***

***An effective system of local government institutions would be essential as a strong base for a functioning participatory democracy in future Sri Lanka and should constitute a major element in the future restructuring of political institutions. Such a restructuring should include the improvement of the local government financial resource base, institutionalizing of the independence of local government institutions and a reversion to the 'ward-based' electoral system.***

***The strategy would also include a major redefinition of the functions and responsibilities at the regional level, in the context of a greater devolution to the local government level as well as the modification of the electoral system to the Regional Councils.***

The radical changes to the institutional structure at the national level as well as the recommended reforms concerning the sharing of responsibilities, functions and tasks of the different constituent institutions would, as already recommended, necessitate

***the constitution of a Commission on Constitutional Reforms as part of the strategy.*** This should be followed by a referendum as already proposed.

The new administrative structure would use individuals and services outside the state on specific contractual assignments. ***A key element in the agenda would, therefore, be to plan and introduce changes in the public personnel systems and practices at all levels of the polity, including new modalities of providing for personnel services and the restructuring of current forms of cadres, salaries and budgets.***

***Concurrently the move towards the privatization of the provision of public goods and services, within regulatory frameworks and targeted access support administered by the government should continue.***

***The strategy should provide for the improvement of the overall institutional and legislative framework for the private sector organizations.*** This is necessary for reorienting, reorganizing and revitalizing them for their new roles as well as for ensuring that, structurally, they fit into the new institutional system of the participatory democratic polity.

***The strategy for institutional development should include the implementation of measures which would create conditions conducive to the growth and effective functioning of NGOs .***

***The strategy should also focus on operationalizing a process of internal reform within the trade union movement carried out by the movement itself.*** In this context, it would also be appropriate to assess, as part of the institutional development effort, the possibility of introducing appropriate elements of a 'social market approach' to the structure of socio-economic management in Sri Lanka.

## **Conclusion**

The preceding discussion accepts the position that the bedrock of self-governance is the capacity to experiment with various forms of association in order to solve common problems and to pursue common goals. Individuals must be free to associate and to set the terms of that association. They should have the right to appropriate the benefits of that association and be able to enforce its rules. A population learns self-governance by practicing it and, in this context, local groups would be the prime source of innovation.

The State and the constitution can either assist them by lending their authority to encourage innovation and association or monopolize authority, initiative and resources. In a participatory democracy, the choice is clear and the relevant political, administrative and judicial institutions would need to be structured in a manner which would motivate as well as enable them to play the required facilitating role. In such an institutional structure, institutions at the national level are, no doubt, important. But, if they are developed at the expense of the diverse and relatively autonomous local institutions, a change in the culture of democracy cannot be expected to emerge.

The practical problem in development is to provide an environment in which incentives to innovate are channeled in socially useful ways that improve economic efficiency. This becomes a major challenge to institutions concerned with policy making and calls for a continuous awareness of the changes which are constantly occurring in the institutional environment.

Thus any approach to institutional development for the Sri Lanka of the twenty first century must recognize the historical truism that a participatory democracy is not static. It is evolutionary, is continuously changing and is always seeking higher levels of

participation and a greater degree of individual and group control over the future. Such an evolution cannot be served by a static and rigid institutional system. As people's aspirations evolve and their functional environment continues to change, the relative roles and positions of the institutional partners (political institutions, the administrative structures, private sector, trade unions and NGOs) within the system would also change.

Any process of institutional change must expect resistance from vested interests in the specific institutional sub-system and in the environment. Hence, any programme for institutional change must also provide for strategies which would help to counter-balance such resistance. These could include the creation of public awareness and open public discussion as well as a participatory search for optimal solutions to institutional issues. In order to be effective, such activities should be planned for and should occur not only at the national level but also at the regional and local levels.

The challenge to future institution builders would be to initiate and sustain such a process of change within the Sri Lankan society and its institutional structure. A sustainable institutional structure must be open to and ready for continuous evolution and change. Hence, our continuing task would be not to cling to the present but to steadily fix our gaze on and anticipate the unfolding future.



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