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# **A REFLECTION ON THE MAKING OF THE SRI LANKAN CONSTITUTION THROUGH THE INDIAN EXPERIENCE**

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## **ABSTRACT**

Sri Lanka and India, on the face of it have strong case of having identical struggles in the making of their constitution and nation-building. The two South-Asian colonial siblings however have contrasting experiences, one which was plagued by a civil war and the rather relatively stable. Analysing the Sri Lankan account through its parallel Indian developments' highlights a very critical element in a modern-day democracy.

Two British colonies in the Indian ocean separated by a mere fifty kilometres with numerous similarities happen to tell a different tale about their struggle to form a constitution, one nation in fact does not have such an account. The Indian account was a culmination of ninety years of freedom struggle; however, Sri Lanka had a peaceful transition and was dubbed the model colony and the jewel of the east. Unlike the Indian National Congress its Sri Lankan counterpart -the inter-communal elite- the Ceylon National Congress remained committed to greater constitutional concessions from the empire and did not become a mass movement<sup>1</sup>.

They were successful in achieving their goal and was in fact the first non-white British dominion to have universal suffrage, achieving through the Donoughmore Constitution<sup>2</sup>. However, the most material aspect of the 1931 constitution was the doing away of communal representation, according to the British if communal representation remained as a feature of their constitution it would hinder the national spirit and the socio-economic developments of the nation<sup>3</sup>. A modern democracy or in essence a modern European democracy would remove this deadlock of communal identity.

The island-nation remained loyal to the empire during the world war and did not utilize this opportunity like India, this loyalty was rewarded through constitutional reforms. The Soulbury commission was sent in 1944, the following year the report suggested a Westminster model, a unitary bicameral parliamentary system<sup>4</sup>. The cabinet with which the executive power rests was presided by a prime minister, appointed by the governor-general the latter was also empowered to protect the minorities against majority community's dominance in parliament and policy making, clauses were also included to prohibit legislation which discriminated on the basis of ethnicity, religion or language unless two-thirds of the House of Representatives allow for the same<sup>5</sup>.

The Island nation with its territory unscathed and without any malevolence to the empire achieved quite peacefully. However, this promising land started to show its flaws and was noticed by the British High Commander in 1952<sup>6</sup>. To avoid any apprehensions about the Sinhalisation of the country, which could have in effect delayed independence, D. S.

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<sup>1</sup> Harshan Kumarasingham, "The Jewel of the East Yet Has Its Flaws': The Deceptive Tranquility Surrounding Sri Lankan Independence" (2013) 73 Heidelberg Papers in South Asian and Comparative Politics 1.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid* 4

<sup>5</sup> *ibid* 4.

<sup>6</sup> *ibid* 6.

Senanayake (referred to as the father of the nation) appealed to the small ethnic groups and the Tamils through a speech to the State Council<sup>7</sup>. However, this was in 1945 and his successors failed to stick to such ideals.

The elitist Ceylon National Congress was not inclusive of all the elites in their populace, and Ponnambalam Arunachalam (a Tamil civil servant and legislator) and some Muslim members left the organisation in the 1920s due to disputes associated with territorial representation<sup>8</sup>. According to them, balanced representation was ideal for the nation and territorial representation would establish dominance of one community. The minority groups and even the Sinhalese had founded parties based on ethnic and religious fronts. Therefore, the Congress was never the bearer of the aspirations of all the entire populace, the only party which was able to break through communal lines was the communist party<sup>9</sup>. But the British would not have transferred power to an entity which believed in withdrawing from the empire and rejecting the dominion status.

To proscribe a situation where the communists would take control of the island, the Colonial office was swift in its actions after Senanayake raised his concerns. The value of an indigenous leader protecting British interests even after transfer of power was incalculable and the British depended on solely on Senanayake for the same<sup>10</sup>. Although he was not the sole spokesperson for a particular community, like Jinnah or the leader of an expansive national party like Nehru. He appealed to the empire as a figure resembling a conventional Dominion Prime Minister found in Canada, or Australia<sup>11</sup>. Negotiations for independence was done by him and just three others - Sir Oliver Goonetilleke and Sir Ivor Jennings but they remained under the command of Senanayake. The elitist endeavour of the Sri Lankan independence is further highlighted by the fact that independence was brought forth legally through an Order-in-Council and not as an Act of Parliament as in India<sup>12</sup>. Such an Act would require extensive discussions and deliberation and Senanayake was impatient. Again, antithetical to what happened in India and Pakistan there was no Constituent Assembly established to develop the most integral national document after holding deliberations with representatives of the whole country.

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<sup>7</sup> *ibid* 6.

<sup>8</sup> *ibid* 7.

<sup>9</sup> *ibid* 8,

<sup>10</sup> *ibid* 8.

<sup>11</sup> *ibid* 8.

<sup>12</sup> *ibid* 9.

The concept of having a Constituent Assembly entered the arena of Indian politics in 1934 in opposition to the Proposals of the British Government contained in The White Paper of 1933 arising out of the work of the Three Round Table conferences<sup>13</sup>. Indian liberals did raise concerns such as illiteracy, communal feelings and social customs of the masses will hinder them from making a reasonable decision in choosing their representative and a conference method with few individuals involved would be a viable option<sup>14</sup>. Again, they had not tried to build a rapport with the general public and a constituent assembly elected by them and their resistance to a democratic body was foreseeable. However, the leaders of the masses were adamant on establishing a constituent assembly representing the populace and emphasised on it being the only democratic method for constitution-making<sup>15</sup>. Senanayake dismissed such requirements and his decisive operations were applauded by Jennings. This strategy worked till 1952, without any internal issues to be dealt with, Sri Lanka under Senanayake took interest in global affairs<sup>16</sup>.

Continuity was undeniable the core of this regime, even India is subject to the same criticism, where the Indian constitution is not revolutionary and carries on your colonisers command. However, colonial continuity is not alien phenomenon in postcolonial constitutionalism. The Indian constitution is in fact one of the very few constitutions in the post-war era drafted without any direct or even indirect involvement of the colonial power, and headed by the leaders of the popular anticolonial movement<sup>17</sup>. Therefore, it was never the case that European understanding of modern democracy would be implanted as it is.

Comparing India and Pakistan born out of the same British India, on the stability of their democracy, India fares well as the British had devolved power to the Indians starting with the 1882 Self-Government Act, and eventually the Government of India Act of 1935 which brought about a certain degree of parliamentary democracy at the provincial level. The Indian constitution which reproduced 250 of 380 articles of the Government of India Act of 1935<sup>18</sup>. This quelled the anxiety of the dawn of new political and social order and brought in stability

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<sup>13</sup> Gurmukh Nihal Singh, "The Idea of an Indian Constituent Assembly" (1941) 2 *The Indian Journal of Political Science* 255.

<sup>14</sup> *ibid* 265.

<sup>15</sup> *ibid* 260

<sup>16</sup> *cf* Kumarasingham (n 1) 9.

<sup>17</sup> Sandipto Dasgupta, "'A Language Which Is Foreign to Us': Continuities and Anxieties in the Making of the Indian Constitution" (2014) 34 *Comparative Studies of South Asia, Africa and the Middle East* 228- 229.

<sup>18</sup> Christophe Jaffrelot, "India and Pakistan: Interpreting the Divergence of Two Political Trajectories" (2002) 15 *Cambridge Review of International Affairs* 251- 253.

in young India, as the provinces which eventually became Pakistan were heavily militarised and denied political exercise it effected the nation adversely. It also helped develop a robust political party system in India, which continued to prosper even when the Nehru-Gandhi dominated Congress continued to remain at the helm in New Delhi for numerous terms<sup>19</sup>. The continuity did in fact aid India. Much before family dynasties in politics was established by the Gandhis in India, Ceylon established political parties and kept power within parties<sup>20</sup>. It was never a fight of policies but personalities, and in such an environment having a robust political-party system was secondary, this remained in contrast to the modern democracy it was set to develop.

The transfer of power was so fragile that even the reach of D. S. Senanayake was restricted. Rather than having a sizeable majority in 1947 elections as the man who brought freedom, he could only make a coalition government<sup>21</sup>. The Ceylon Citizenship Act of 1948 and other legislations denied citizenship to the Indian Tamils, and with this about 12% of the population lost their right to vote. According to Senanayake this community was not of this island, he and his successors did not want this community to outnumber the Sinhalese community<sup>22</sup>. This however did not raise alarms over how rights could be manipulated or denied.

The Soulbury Commission and the Colonial Office did receive proposals from the Tamil Congress leader G. G. Ponnambalam. His party (not representing all Tamils) advocated a 'fifty-fifty' representation in the legislature with the Sinhalese having half the seats and the rest filled by the minorities. He believed that this would quell the primary motive to perpetuate communalism and further questioned as to why Sri Lanka's minorities received no safeguards like other plural societies elsewhere in the empire have like Muslims, Sikhs, Christians and others under the Government of India Act 1935<sup>23</sup>.

In 1951 S.W.R.D. Bandaranaike left the Senanayake government and formed his own party, the Sri Lanka Freedom Party (S.L.F.P.)<sup>24</sup>. Senanayake's United Nation Party (U.N.P) believed in civic nationalism and this never appealed to the masses outside Colombo's plush suburbs but S.L.F.P.'s empowering Buddhist-Sinhalese nationalism, SLFP was able to proclaim the

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<sup>19</sup> *ibid* 253.

<sup>20</sup> *cf* Kumarasingham (n 1) 10.

<sup>21</sup> *ibid* 10.

<sup>22</sup> *ibid* 12.

<sup>23</sup> *ibid* 13.

<sup>24</sup> *ibid* 10.

sacredness of Buddhist Sri Lanka and its intangible link to the Sinhalese<sup>25</sup>. The 1956 election, with Bandaranaike coming to power changed the course for Sri Lanka, the Official Language Act No. 33 of 1956 or the Sinhala Only Act was introduced ushered in communalism and laid the framework for the communal riots which plagued the island for long<sup>26</sup>.

Undeniably India is not without her unrest, whether it is against the state or among communities. However unlike Sri Lanka where communal representation was done away with and not substituted with any necessary safeguards; the extensive deliberations done by the Indian constituent assembly whether it was with regards to constitution, judiciary or representation for minorities has proved fruitful. India must continue on the path envisaged by its founding father must remain vigilant so that it does not meander and become plagued with majoritarianism. The account of these two nations show the relevance of constitution-making which is inclusive of the populace.

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<sup>25</sup> *ibid* 14.

<sup>26</sup> *ibid* 14.

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