

Impeachment and the Constitutional Crisis

Jayadeva Uyangoda

It should have happened a few years ago, while the Founding Father himself was at the helm. Though belatedly, the inevitable crisis flared up. As many preferred to call it, it was the long anticipated conflict between the Executive President and the Legislature. Mr. Ranasinghe Premadasa, the President for two years and ten months, was besieged by a Parliament, unprecedentedly assertive, outspoken and combative.

Fallen victim to the row between the Executive and Legislative branches of the state was the ruling UNP, transformed into a monolith by the ex-President Jayewardene. The party governed by a regime of iron discipline was shaken. Ten of its parliamentary members, including two Cabinet Ministers, had left the ranks. Many more were rumoured to join the rebels in the weeks to follow.

At the centre of the controversy was the motion for impeaching President Premadasa. 'Impeachment', a word that had never figured in the political debates in this country, became the key metaphor referring to a wide range of issues being debated by the politician, constitutional expert and the lay person alike.

Initially, the debate concerning the impeachment resolution revolved around two key issues. Taking impeachment literally in its constitutional meaning, it meant, firstly, the removal of President Premadasa from office. Secondly, and intertwined with the first was the abolition or reforming of the presidential system itself.

Were these two issues really connected? The proponents of the impeachment resolution appeared to think so. According to their thinking, changing the Presidential system was predicated on the removal of its present incumbent. Or at least, the curtailment of his powers, described as excessive and

authoritarian, was viewed a must for the return to what they called parliamentary sovereignty.

Why, then, the need to impeach a President who had not completed his third year in office?

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Many were the explanations thrown around in the extreme heat of the political debate. The proponents of the Impeachment claimed that President Premadasa had been staging a 'one-man-show' of governance, thereby violating the traditional norms of collective responsibility and collegial decision making. Too much power was concentrated in the hands of one individual, they argued. And that had, so went the argument, led to many commissions and omissions of serious magnitude. Arming the LTTE with modern and deadly weaponry was the key example they cited to illustrate the perils of the 'one-man-show'. That was also a major point in the serious allegation that the President had wilfully violated the Constitution of the Republic.

An impeachment motion is a constitutional mechanism to remove a President in office. And the Constitution lays down conditions under which a removal process could be initiated and executed. Meanwhile, the constitutionally-sanctioned grounds for an impeachment motion are so wide and imprecise that they can include any Presidential action that may deviate from even semi-established norms of executive behaviour. Take, for example, the abuse of power clause. Or

the provisions concerning mental incapacity and the violation of moral turpitude. These are not precisely or rigorously defined 'offences', in legal as well as political terms, when it comes to the behaviour of professional politicians who happen to discharge the functions of an office of the state. Hence the long list of highly personalized allegations against Mr. Premadasa reportedly included in the motion for his removal. It was indeed a moot point that only a handful of politicians could have emerged unscathed if the wide net of these accusations was liberally cast.

Wilful violation of the Constitution would perhaps be the most serious ground to impeach a President. Has Mr. Premadasa acted in such a manner as to warrant an attempt for his removal from office on a charge of constitutional infidelity? This is exactly where many political issues concerning the Presidential system in general and the Premadasa presidency in particular should have come under close scrutiny.

Interestingly, the defenders of Mr. Premadasa did not deny the 'one-man-show' allegation, although the President and some of his Cabinet colleagues refuted it at the outset. As ably argued by some of Mr. Premadasa's younger admirers, the 'one-man-show' was "regrettably, necessary" for systemic reforms; it was a style demanded by a crisis situation in order to make more receptive to mass needs a system which was 'inherently anti-people, exclusionary and elitist.' Hence, a variety of 'authoritarian populism' was a foregone conclusion.

Reforms of the system or not, Mr. Premadasa had certainly been an 'activist' or 'interventionist' President with a single-minded determination to implement a project which he himself had conceived. He assumed office at a time when the country was engulfed in a twin rebellion, one in the Northeast



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and the other in the entire Sinhalese South. It was also a time when the stability and the legitimacy of the state had eroded to the core. Premadasa's was thus a restorationist project, to enable the state to reclaim what it had largely lost, namely political stability and social legitimacy. Hence the Janasaviya, the mobile Presidential Secretariat, school mid-day meals, talks with the LTTE, peace appeals to the JVP, multi-ethnic proclamations, the All Party Conference and last but not the least the Ministry of Buddha Sasana.

This restorationist project had been a terribly delicate one in a situation where the society and polity were immensely fragmented. By implementing his programme, ironically, Mr. Premadasa revealed some hidden contradictions of the very constitutional system which he came to preside over in January 1989.

As everybody appears to agree now, the 1978 Constitution enabled the Executive President to concentrate a very wide range of powers. Mr. Premadasa is not the first person to enjoy that constitutional facility. His predecessor, Mr. Jayewardene, provided a rather uncanny example of a monarchical President in a modern republic. However, when the real crunch came closer and the system began to show signs of crumbling, Mr. Jayewardene was on his way out, having completed his second term. Indeed, what the JVP rebellion of post-1987 years indicated among other things was that the Jayewardene Constitution of 1978 had little or no relevance to an intensely mobilized section of this society. Of course, the JVP did not demand the abolition of the Presidential system; they merely asked Mr. Jayewardene's resignation. However, writings on the wall were clear enough to suggest that he was resented not because he was Junius Richard Jayewardene, but because he was viewed as the personification of a highly centralized and authoritarian system of government.

Where Mr. Jayewardene escaped unhurt, stepped in Mr. Premadasa. The powers available to the President under the Constitution were immense and rather tempting to any individual with an agenda of his or her own. It was no mean thing to be the Head of the

Executive, the Head of the State, the Head of the Government, the Head of the Cabinet, Commander-in-Chief of the Armed Forces, and the leader of the ruling party - all at the same time. There were no institutional mechanisms of checks and balances on the presidency either. The President, according to the Constitution, was the repository of the Executive powers of the people. Directly elected by the people, and not being answerable or accountable to the legislative branch of the government, he shared along with Parliament that magical source of authority - the sovereignty of the people.

The problem was then two-fold. Firstly, had Mr. Premadasa exercised powers in excess of those constitutionally available to him? And secondly, had he acted according to his own construction of the Constitution? Even assuming, for the sake of the argument, that the answer to both questions was in the affirmative, the real issue was not just legalistic; it was essentially political. Presidents are impeached, or de-impeached, not on legal, but on political grounds; the legal reasoning and procedures are mere formalities grounded on political imperatives.

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It is perhaps pertinent to note that the present Constitution, particularly when it comes to the powers of the President, leaves wide room for flexibility. A curiously formed mis-match of Anglo-French constitutional traditions, it enables an activist President to change the emphasis of inter-institutional relations of the state by introducing a personal imprint to the spirit of the Constitution itself. Perhaps, Mr. Premadasa had his own construction of the fundamental law of the land, yet well-within its boundaries. A clear indication of the Premadasa construction of the 1978 Constitution and the 'role' of the Executive President can be found in his very first address to the Cabinet of Ministers. Making what one may call a Presidential policy

speech on 18 February 1989, he outlined his own agenda. He also told the Ministers that it was their task to implement the policies of a President elected by the people on a mandate.

Fair enough. The tricky issue, however, was a little more subtle one. Mr. Premadasa went on to say that the Ministers were responsible to him (the President) and through him to the people. Those constitutional lawyers in the Cabinet may have held their breath with amazement. According to the Constitution, the Ministers were responsible to Parliament, and through Parliament to the people. Although largely unnoticed at the time, this was a potentially controversial mix-up of constitutional models.

It is indeed in that speech that Mr. Premadasa asserted the autonomy of the office of the President vis a vis Parliament. He surely acted on the belief that Presidential autonomy was imperative to implement his programmes. Under him, the Cabinet was turned into an implementation, not even advisory, body charged with the task of carrying out the Premadasa agenda. If Mr. Jayewardene had fused the Westminster model of Cabinet government with the French Gaullist system, still maintaining the trappings of the former, Mr. Premadasa appeared to think differently. Perhaps, he had been forging an uneasy fusion of the Gaullist and American systems of President-Cabinet relations.

The new mix-up was not a go-it-easy affair. Unlike in the French and American models, here the Ministers were still members of Parliament. They have electoral constituencies of their own, not to mention ambitions of some to reach still greater heights in politics. Mr. Premadasa's new policy of annual hiring of Ministers, and even of the Prime Minister, was extremely innovative in its potential to sow seeds of insecurity among senior and established parliamentarians of the ruling party. When party veterans with Prime Ministerial and even Presidential dreams were appointed to cabinet positions with the warning that the job was only for one year and the extension conditional, there was probably very little room for collegiality and collective decision making. The demand of unstinted personal loyalty to the



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President from his Ministerial subordinates on the basis of a 'hire-and-fire' formula could have perhaps been better assured in the American Presidential system where cabinet members had no electoral bases or legislative constituencies.

Meanwhile, President Premadasa projected the image of a statesman committed to consultation, compromise and consensus. In abstract, this was an excellent formula of governance for a conflict-ridden, fragmented and beleaguered polity. Despite the oft-repeated assertions with regard to his three 'C's, Mr. Premadasa made a cardinal error by presenting himself as the cornerstone of the consensus project. To put it plainly, he did not build adequate institutional mechanisms to facilitate compromise and work out consensus. The All Party Conference, which could have evolved into a theatre of compromise and multi-party consensus, failed to bring into its fold important parliamentary parties. When a partial APC continued to function, sans the parliamentary opposition led by the SLFP, it appeared as though parliament had no major role to play in the political goings on.

With marginal sensitivity to the need of compromise-seeking institutions, the President could reiterate, "Trust me, I am your President." Yet, in a fragmented polity like ours, what really mattered for political compromise and consensus was not just the personal trust placed on the Head of the State, but the availability of tangible and lasting institutions to mediate among competing and conflicting interests. If politics is the art of making compromises, governance is the science of inventing mediatory institutions.

This is where the question of checks-and-balances came to the fore. The vitality of the American Constitution, for example, is largely a result of its separation of powers and intricate mechanisms of checks-and-balances. The latter enables equally ambitious branches of the state - the Executive, the Legislature, and the Judiciary - to consult each other, to bargain, to make compromises and ultimately to reach what would appear to be a consensus. In the words of Madison, one of the Founding Fathers,

'let ambition be counteracted by ambition.' In contrast, neither did the 1978 Constitution nor the styles of governance preferred by Messrs. Jayewardene and Premadasa facilitate institutional and institutionalized checks and balances. Meanwhile, the imbalance between a powerful executive and a subordinate, yet assertive, legislature proved particularly inappropriate in post-1988 years, because the parliament too represented a very significant power bloc or a power elite, having its own, shall we say, corporate interests.

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Was there, then, an element of elite conflict in the present politics crisis? To a certain extent yes, but certainly not in the way that the government spokespersons are trying to portray it. It was liberally argued that the privileged elites that had lost control of power were attempting to overthrow a President who represented the hopes and aspirations of the poor masses. The poor masses are surely in the programmatic baggage of Mr. Premadasa, yet Mr. Premadasa is also the leader of a new power elite as opposed to a variety of other elites that are in politics. The main error in the elite-mass interpretation of the present crisis lay in the assumption that the Sri Lankan power elites were a homogeneous and uniform socio-political entity. In fact, the rise of Mr. Premadasa indicated, among other things, that a new stratum of power elite had come to control the state power. Economically, this elite has consolidated itself during the past decade or so, particularly through state patronage. The economic leaders of this elite were mainly traders, contractors, suppliers, commission agents and speculators whose accumulatory capacity had largely, if not solely, been dependent on the relative accessibility to state power. In terms of social origins, many of them came from urban petty-trading layers, with no particular claims to bourgeois socio-cultural ethos.

Politically, there was nothing intrinsically wrong in any new elite group acquiring the status of a governing stratum. Yet, problems for Mr. Premadasa began to arise whenever there occurred tensions and conflicts among governing as well as non-governing power elites. His formula of three 'C's was obviously not meant to mediate conflicts among power elites. It essentially meant to be a strategy to win over to his side those political forces that remained outside the mainstream and thereby to consolidate the governing position of the new elite group to which he gave leadership. Little did Mr. Premadasa realize that these parallel and traditional power blocs were soundly represented not in the executive but in the legislative branch of the state. To put it in other words, not in the APC - the new consensus mechanism - but in Parliament, the traditional bargaining floor. No wonder Messrs. Athulathmudali and Dissanayake, who in the past were not great lovers of parliamentary sovereignty, quickly found parliament to be the main theatre of opposition to the executive and also the source of solidarity coming from their social equals of non-UNP groupings. If Mr. Premadasa's three 'C's failed, nowhere else was that failure more evident than in his refusal to bring about an elite consensus through compromise.

The positive dimension of Mr. Premadasa's consensus seeking exercise, however, had been his ability to draw in the majority of non-Sinhala ethnic political parties to accept the promise of a political solution to the national question. Except the LTTE and the EPRLF, all the other Tamil and Muslim parties appeared to stand solidly behind him and the Presidential system. The affirmative position taken up by the parties and the intelligentsia of the ethnic minorities on the Presidential system was indeed a surprising bonanza for Mr. Premadasa who found all the Sinhalese political parties, including sections of his own UNP, averse to the 1978 Constitution. When the impeachment crisis reached its peak and the balance of forces took an acutely delicate turn, the minority parties and minority leaders were there to give Mr. Premadasa the much needed helping hand.



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The argument of the ethnic minority parties in favour of the Presidential system was a formidable one: a President elected by the entire country as a single electorate would be more sensitive and responsive to minority demands than would a Prime Minister elected by a micro electorate. And a President, not controlled by or accountable to an ethnically divided Parliament, was in a better position to give a fair deal to minorities, went on the argument.

This 'minority argument' was linked, in a broader sense, to an important dimension of the 1978 Constitution, to which not many have paid sufficient attention. The type of institutional disequilibrium between the very powerful executive and the subordinate legislature had an unmistakably Gaullist spirit. Perhaps, the constitutional Gaullism was not entirely in accordance with the established Westminsterian tradition in Sri Lanka. Nonetheless, Gaullism of the present Constitution had a potential that could have been utilized for positive ends. The President with all his authority and powers could have emerged as the

ultimate mediator and arbiter in national crises.

The role of the ultimate arbiter had to have one fundamental characteristic, that of being non-partisan. In a society which was bitterly fragmented along political party lines as well - a negative feature of excessive politicization of a

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populace - standing above party loyalties and interests was an awesomely difficult task. One could not ideally be an impartial and consensus-seeking umpire, particularly in Sri Lanka, when one was still a leader of a political party which commands the hostility of other parties. Both Messrs. Jayewardene and Premadasa failed to uphold this non-partisan principal as expected from them by the

mediatory spirit of the high office they came to occupy. The President was, to begin with, a UNP President and not necessarily the Sri Lankan President.

Paradoxically, both Presidents Jayewardene and Premadasa sought to establish images of their being well-springs of social justice and authority by resorting to primordial sentiments of state power. Being at the apex of the entire political pantheon, they at varying degrees ritualized the state. Potential Gaullism thus gave way to shades of monarchism. In a society where political power still invoked many trappings of the pre-colonial state, it was too easy to succumb to drives towards paternalistic accumulation of power and dispensation of justice.

A basic issue suggested by the present crisis then is the democratization of constitutional foundations of the Sri Lankan state. It cannot, and should not, be reduced to a dualistic typology of models, Presidential vs. Parliamentary. Such reductionism, as it has already happened, is certain to limit the terms of the debate to which the public, after years of being mere onlookers, have come to participate with vigour and enthusiasm.

The Cosmic Dance

Corpus Delicti

It was the imperial renaissance of Louis Bonaparte that caused Marx to make the oft-quoted statement about history repeating itself. Since Aryanam Kshathra has had more than its share of Bonapartes, it seems only logical that the historical dramas of the past should be recreated here as divine comedy.

Aryanam Kshathra, we are told, is Paradise (or at least only a few leagues from it). A paradise is merely an aristocratic garden of the Achaemenid period. Within the ancient Iranian paradise flourished trees which bore the fruit known to the Latins as *Persicum Malum*, the Persian Apple¹. And so, is it not apt that Indra, the ex-Lord of Hosts, should conspire with Mithra, the ex-Lord of Agreements, to change the Kshayathiyam-Kshayathiya, Akhenaton, into a Persian Apple. For Indra and Mithra had always coveted the Peacock Throne, and wished now to seize it.

In order to transform the Kshayathiyam - Kshayathiya (KK for short, but not to be confused with that other KK, the

Magus of the Bitten Leg, who was now the alter-ego of Akhenaton)² it was found necessary to convoke the Coven of the Immortals to an incantation of a curse consisting of fifteen parts. And it came to pass that Indra forwarded to Shiver, the Convenor of the Immortals, the text of the said curse, and Shiver accepted it.

Such was the strength of the curse that the entire land of Aryanam Kshathra was gripped by a fever, and this was even before the curse had been recited. So great was this fever that the epidemics of Force-speed and Lightning-strike fevers were soon forgotten.

Indeed, the fever was such that Pruthuvi, the goddess of the soil, was able to call upon her followers to forget their eternal squabbles and to gird their loins for a struggle against Akhenaton. "We have always been for the supremacy of the coven," she said, "now those within the pantheon realise their folly in elevating one of their number to be Kshayathiyam Kshayathiya. And she put aside her feud with Soorya, the

