

# Towards Democratic Reforms: The 1<sup>st</sup> *Pravada* Editorial (November 1991)

## Editors' Note:

*To mark the emergence of Polity as an online, open-access journal, the editors have chosen to re-print the first editorial of the journal from November 1991. This Pravada (as it was then known) editorial, was penned in the midst of serious debate over the need for constitutional reform to limit the excess of the executive. The views of those first editors – Charles Abeysekera, Shani Jayawardena, and Jayadeva Uyangoda – are eerily prescient. The relevance of their views and proposals to debates today are also a stinging indictment of the glacial pace at which the process of and discourse on political reform aimed at democratization and greater accountability has shifted over the past 25 years.*

The political debate generated by the impeachment controversy has given rise to discussions on a wide range of issues concerning our political system. At the centre of these discussions are the 1978 Constitution and the executive presidential system that have been in operation in this country for the past thirteen years. Merits of the parliamentary model are also being examined on the assumption that it should replace the presidential system which has led to excessive concentration of powers in the executive branch.

It now appears that many immediate issues of political competition between the ruling party and its opponents and dissidents have come to occupy the centre stage of the debate. As a result, the opportunity opened for a serious public discussion on desirable constitutional changes and political reforms may run the danger of being clouded by partisan and immediate compulsions of power politics.

*Pravada* spoke to a number of individuals concerned about the future of democracy in Sri Lanka. The general consensus which emerged in these discussions is that democratization of our polity should be in the immediate political agenda. A concern was also expressed with regard to the likelihood of any democratic initiative being aborted by the imperatives of populist and ethno-nationalist politics.

It is indeed superfluous to reiterate that the constitutional bases and institutional composition of our system of government need far reaching reforms in the direction of strengthening democracy. While acknowledging that the

1978 Constitution has created an authoritarian system of the Bonapartist mould, it is nonetheless important to assert that all ills of this system cannot be attributed to mere individuals alone, however much they have utilized the anti-democratic opportunities inherent in the Constitution. Parallel with constitutional authoritarianism there have been other disturbing trends in the political process. Greater centralization of state power, the rise in the repressive and interventionist capacity of the state, the decay in democratic institutions, and the erosion of democratic and human rights are some of the key trends which have, during the past few decades, characterized the broad political context for the weakening of democracy in our country. The political context of un-democracy in this country has also been characterized by almost twenty years of Emergency Rule which has kept under suspension many procedures of normal law and made, ironically, the Emergency an 'ordinary' state of affairs.

There are indeed long-term interests of democracy which no reform-minded political constituency should lose sight of. However, greater interests of democracy can in no way be served by delegating the responsibility of constitutional and political reforms to a few legal experts and party caucuses. During the impeachment controversy itself, there were proposals, which one must consider inappropriate, to entrust to a handful of individuals the task of drafting a new constitutional scheme. Two points need to be made clear in this regard. Firstly, in the current political climate in Sri Lanka, constitution-making is too serious a matter to be left to a few professional politicians alone. Informed public opinion and democratic inputs should by no means be left unmarshalled. Secondly, the terms of the constitutional debate should be broadened as to subject to critical scrutiny and interrogation all reform options proposed and desired.

Proposals for constitutional changes should extend beyond a mere choice between the executive presidential system and the parliamentary model. Given the fact that excessive concentration of power can happen under both systems, it is crucial that an effective and innovative system of checks and balances is created so that no branch of the government – whether executive or legislature – is privileged to disregard democratic norms of governance. Even assuming that there is a broad consensus in the country that the parliamentary system should be restored, the question still arises with regard to the possibility of the political executive – the Cabinet –

acting arbitrarily in the name of legislative sovereignty of the people vested with Parliament. Therefore, what Sri Lanka would need is not a parliamentary model as such, but a reformed and more democratic one.

In order to initiate a discussion on a wide range of issues relevant to a democratizing reform effort, *Pravada* wishes to make a series of proposals.

The creation of an effective system of devolution, transcending the limitations of the existing Provincial Councils system, is a major priority in Sri Lanka's political reforms. Federalism would provide the broad framework for such a devolutionary arrangement. It will, in the first place, constitute a useful starting point for working towards a political solution to the ethnic question. Secondly, it will be a most effective deterrent to tendencies for centralization of state power. Moreover, a federalist model will facilitate political pluralism in governance.

A well-defined system of separation of powers between the legislative, executive and judicial branches of the state, supplemented with adequate checks and balances, is a long-felt need for Sri Lanka. Excessive use of state power by both the Legislature and the Executive has been a particularly undesirable trend in Sri Lanka's politics during the past two decades. The practice of Judicial Review of Legislation empowering the Supreme Court to determine the validity of legislation enacted by Parliament is specifically relevant to Sri Lanka's democratic needs. A point that warrants emphasis in this regard is that the notion of legislative supremacy of Parliament needs to be abandoned as being anachronistic with the need to diffuse law-making powers to sub-national units. Citizens should be constitutionally empowered with the right to seek judicial redress if and when the legislative bodies transgress the boundaries of fundamental rights, freedoms and natural justice.

While re-constituting the institutional relations of different branches of the state, it is also necessary that secular foundations of the state are strengthened. Secularism of the state becomes all the more important in view of growing tendencies of ethno-religious fundamentalisms in our society. As we have witnessed in recent times, religio-ritualization of the state is a distinctly disturbing development in modern Sri Lankan politics. The multi-ethnic, multi-religious, and multi-cultural composition of our society necessitates the separation of the state from religion and culture, particularly from that of the majority community, as an essential tenet of political secularism.

The question of fundamental rights has assumed, particularly during the past decade, crucial significance in our state-society relations. Although not quite in parallel with the sheer magnitude of rights violations, the masses have now become increasingly conscious of their fundamental rights and the right to seek judicial redress. Yet, there are still constitutional and procedural impediments to a satisfactory rights regime. To overcome the existing barriers and inadequacies, the Constitution as well as the governmental structure should

extend fundamental rights to the same extent as has been guaranteed by international human rights law under which the government of Sri Lanka has undertaken international obligations. A Bill of Rights should be included in the Constitution as the minimum guarantee of all fundamental rights.

Abuse of political power, corruption in public life, excessive bureaucratization of public affairs, and the arbitrary use of state power by those in office with scant disregard for social accountability are but a few symptoms of a long process that has characterized the institutional decay in our body politic. If our political order today lacks public legitimacy and credibility, it is as much a product of the disintegration of politico-moral bases of governance as an institutional crisis. Worse still, the public outrage about these negative trends is often exploited by political parties solely for partisan political gains. Remedial promises are often forgotten when critics become office-holders. Our society has obviously reached a point in which effective and tangible mechanisms for political accountability have to be built into the constitutional outlines of government. In other words, accountability of the government is no longer epiphenomenal, but central, to any meaningful debate on political reforms.

Freedom of expression and specifically the guarantee of the people's right to receive and disseminate information is a mechanism vital to ensure a democratic polity. Moreover, a media free of state control can also be an effective social check on the abuse of power by those in power. Similarly, media should be made accessible to all sections of opinion.

The introduction of the right of recall in which MPs and all elected officials of the state could be recalled by a process initiated by the voters can be considered a necessary step towards ensuring public accountability.

Elements of direct democracy would be of extreme value to supplement the existing institutions of representative democracy which paradoxically have lost, to a considerable degree, their democratic bearings. This is all the more important in the context of the existing constitutional provision for referendum belying its plebiscitary spirit. Mechanisms for direct democracy can be fruitfully utilized in a system of diffused legislative power where people's participation in provincial, municipal, and rural administration is secured through plebiscitary initiatives.

Our electoral system too needs reforms. While recognizing that Proportional Representation is more democratic than the first-past-the-post mechanism, particularly to a plural society like ours, the undemocratic elements of the PR system presently in operation in our country should be removed. It should be changed to ensure better relations between the electors and the elected. Similarly, the present system of the political party constitution prohibiting the freedom of MPs in parliament should be abolished.