

Managing Ethnic Conflict in Sri Lanka through Constitutional Arrangements

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Abstract

Marginalization causes conflicts; they may be political, social, or economic. A careful contemplation over the history of Sri Lanka reveals that the sentiments of being marginalized have been present — in one (ethnic) group or the other — in the island right from its independence. When the majority ethnic group, i.e., the Sinhala, was in a position of power, it manipulated the constitution of the country to safeguard its own interests. This widened the rift among different ethnic and religious groups, especially between the Sinhala and the Tamil. This structural marginalization resulted in a civil war, starting in 1983, that lasted for 26 years. However, the ethnic conflict did not resolve even after the end of the civil war and continues to exist in the form of a political struggle between the Tamil and Sinhala. The Tamil demand for federation, autonomy, inclusion, and self-determination can only be achieved through constitutional means. Therefore, this research evaluates the post-Civil War constitutional development and amendment processes that were, at a point in time, more pluralistic and liberal, and contributing well to managing the ethnic conflict in the country. It was expected that the ethnic conflict would be permanently resolved through the constitutional arrangements, which Sri Lanka was already heading. However, the majority (Sinhala) reversed the progress through a new (20th) amendment to the constitution. Against this backdrop, this article argues that all segments of the society can be accommodated in the political sphere of the state through political liberalization which is possible only through constitutional arrangements.

Keywords

Ethnic conflict, conflict management, political liberalization, Sri Lanka, constitutional arrangements

Introduction

Conflict may be defined, in the most generic sense, as a process that begins when one party perceives that another party has either already adversely affected or is about to negatively affect something important for the former (Putnam, 2006). In this backdrop, an ethnic conflict may be referred to as the struggle for power between or among ethnicities which are located within specific (shared) geographical boundaries

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(Caselli & Coleman, 2012). An ethnic conflict may manifest itself in violence or remain non-violent where an ethnic group tries to control and dominate the other ethnicity politically and/or economically. However, the ethnic conflict may not always be evident and may exist in the form of a covert conflict which is marked by a covert struggle for dominance over the counterpart (Woods, Schertzer, & Kaufmann, 2011). In such a struggle, when an ethnic group gains control of the state (political power), it tends to transfer the important assets to its own (ethnic) community (Coleman et al., 2012). Additionally, in multi-ethnic societies, political leaders may also use ethnic identities to attract political support and collect votes from the masses to get power in a specific region.

Research has shown that economy and resource distribution are among the major causes of an ethnic conflict (Caselli & Coleman, 2012). The elites, when they find no way to exploit the resources in a specific territory, mobilize the ethnic identity to gain control of those resources; they sometimes also lit fire to a (violent) ethnic conflict and, through that, exploit the resources in their favor (Caselli & Coleman, 2012). It is important to mention here that some scholars have considered religion inseparable from politics and society (see, e.g., James & Ozdamar, 2005). However, religion is also not interpreted only in one form. For example, Marxists believe that religion is the tool of dominance over the opposing class to achieve political goals and that religion is used to undermine state legitimacy. Religion is also used as a source of (extracting) the individual as well as group identity and, therefore, is also used for political mobilization. The Marxists further add that religion is potentially an important element of ethnicity, and henceforth, ethnic conflicts can also have a religious dimension (James & Ozdamar, 2005; Woods et al., 2011). Woods and colleagues (2011) have argued that violent conflicts are more likely to break out in a state housing multiple nationalities or ethnicities. Other scholars also agree with their assertion. It is further asserted that in the contemporary era, adornment for nationalism is on its rise, creating the problem of fit between nations and states (Woods et al., 2011; see also Stewart, 2009).

Understanding the fundamental causes of ethnic conflicts and their models can better enable one to comprehend the dynamics of the ethnic conflict in Sri Lanka. Religion and economic resources played a vital role in initiating (and sustaining) the ethnic conflict on the island, which ultimately led to the civil war in 1983. To better acquaint with the contextual dynamics of the case under discussion, it is important to understand the root causes of the conflict. And for that, it is necessary to keep the demographic construction of Sri Lanka under consideration. The 21.92 million population living on the island (World Bank, 2020) represents great ethnic and religious diversity. The prominent ethnic groups among these are Sinhala (75%), Tamil (11%), More (9%), Indian Tamil (4%), and others (0.05%; Index Mundi, 2017). Complementing this, the religious division of the island is as follows; Buddhist (70%), Hindu (13%), Muslim (9.8%), Christian (7%), and other minority religious groups (Deegalle, 2006; Global Religious Futures, 2011). The two (ethnic) identities that are the most noticeable in Sri Lanka are the Sinhalese and Tamil; they are also dominant in the politics and the economy of the island. The religions practiced by these groups are Buddhism and Hinduism, respectively.

In the island's contemporary history, one minority ethnic group (i.e., the Tamil) has been striving for self-determination, autonomy, and recognition while the majority ethnic group (i.e., the Sinhala) has been struggling to sustain its hegemonic rule over the minorities. This research explores the struggle (conflict) among the ethnic groups in Sri Lanka, especially during the civil war, focusing on the

constitutional arrangements. The civil war between the Sinhala-led government and Tamils, starting from 1983, lasted for 26 years and resulted in the defeat of the Liberation Tigers of Tamil Eelam (LTTE). Even the end of the civil war could not mark the end of the ethnic conflict and the struggle for self-determination and inclusion. In a transformed form (political and non-violent), this struggle was then continued by the Tamil National Alliance (TNA), which is a unified group of all Tamil political parties. With this brief introduction, the following section sheds light on what situations and settings along with the factors contributed to the birth and nurturing of the ethnic conflict in Sri Lanka.

The Genesis of Ethnic Conflict in Sri Lanka

Revisiting the pre-colonial era, when the Portuguese (1505-1657) and Dutch (1658-1796) ruled the island, Sri Lanka was divided into two sovereign administrative regions: the Sinhala region in the South and the Tamil region in the North. However, the two regions did not have strictly carved political and administrative borders (Fernando, 2015). However, this administrative division could not continue to persist during the British Ceylon period (1815-1948), when the then colonial administration (1833) united these regions under a unitary structure for strategic reasons. In this process, the British initiated social engineering; this led the majority of Sinhala to consider themselves as the (only) original inhabitants of the island, maintaining that all other nations (ethnicities) were invaders. This, subsequently, contributed to fostering the conception amongst them that they were superior to the Tamil (Fernando, 2015). Nevertheless, after the independence in 1948, Sri Lanka was ruled by 'Anglicized' elites who included Sinhalese as well as Tamils (Rampton, 2011). These elites, the majority of whom was from the Tamil community, sidelined all ethnicities irrespective of their majority or minority and primarily sought their personal interests (Dharmawardhane, 2013).

Kumari Jayawardhana (1987), a feminist activist and a known academician in Sri Lanka, is of the view that "the history of ethnic conflict in Sri Lanka is the history of the emergence of consciousness among the majority community, the Sinhala, which defined the Sri Lanka society as Sinhala-Buddhist, thus denying its multi-ethnic character" (para. 4). It can further be argued that when, within a state, the interests of a majority ethnic group are threatened by a minority, the majority subsequently tries to control and sustain its power and discourse which leads to that majority becoming hegemonic (Rampton, 2011). Something similar was observed in Sri Lanka when, in 1960, Sirimavo Bandaranaike became the leader of the Sri Lanka Freedom Party (SLFP); he aggressively followed the 'Sinhala-Only' policy (Dharmawardhane, 2013). Later, in the mid-1960s, a group named 'Janatha Vimukthi Peramuna' (JVP or People's Liberation Front), separated from the Ceylon Communist Party, emerged with the Sinhala-nationalist motto. The cadres of JVP were vernacular-educated youth from universities and those from the rural areas that had suffered from political, cultural, and socio-economic marginalization in the post-colonial Sri Lanka, which was then (being) ruled by the Anglicized elites (Rampton, 2011). The slogan of Sinhalese nationalism was used to attract the segment of the population from the cities that belonged to the lower-middle socio-economic status and resulted in the movement gradually getting urbanized. Thus, the number of its supporters increased rapidly towards the beginning of the 1970s.

The Sinhala nationalists believed the non-Sinhalese residing in the island served as the barriers to the political, social, and economic advancement of the former

(Jayawardhana, 1987). One of the major segments of the non-Sinhalese comprised the 'plantation workers', who were brought by the British to Sri Lanka, from Tamil-Nadu (in India), during their colonial regime for working in the rubber, coconut, and tea industry (CBSL, 1974). With respect to ethnicity, these Plantation workers were Tamils and have always been referred to as the 'Indian Tamils' (Deegalle, 2006). The workers, who were brought from India to post-colonial Sri Lanka, were experts in their fields and, therefore, were able to gain control over the major economic resources pertaining to the aforementioned industries. The Sinhalese felt equally threatened by the Indian Tamils as they did from the Sri Lankan Tamils, as JVP considered both the (unjust) occupiers of the Sinhala economy. And so, one of the major reasons for the dramatic increase in the JVP membership was the 'Sinhala nationalism' rhetoric, accompanied by opposition to the plantation workers (Dharmawardhane, 2013).

The Sinhala opposition to the plantation workers also resulted in the movement 'Panti Paha' [five classes] in 1971 — preaching traditional peasant economy and discouraging plantation economy; and another movement, Dharmapala's disciplinary code ('Gihī Vinaya') that promoted simplicity in daily life (Rampton, 2011). The primary purpose of these movements was to discourage the plantation economy and, consequently, reduce the dominance of Tamils in the economy of the country. Furthermore, in 1972, a new republican constitution was enacted in the country, through which the (ethnic) majority (i.e., the Sinhalese) 'Sinhalized' the constitutional structures (Rampton, 2011).

Though the struggle between Tamil and Sinhala started in the 1950s, it greatly transformed over time. In the first phase, the Tamils dominated the economic and political culture of the country till the mid of 1960s. But to bring the Tamils down, the Sinhalese started an active opposition against the former by subjecting them to discrimination (Rampton, 2011). However, it is important to mention here that before 1970, Tamils did try to seek a political solution to the discriminative behavior of the Sinhalese (including JVP and some other nationalists' groups) but failed to achieve any solution through political means. Therefore, the growing intensity and opposition of JVP to the Tamils resulted in the formation of a counter-hegemonic movement, in 1972, with the name Tamil New Tigers (TNT; Jayawardhana, 1987; Rampton, 2011). It was founded by Velupillai Prabhakaran, with the motto of self-determination for Tamils and to create a separate state, with the name Tamil Eelam, in the northern and eastern parts of Sri Lanka. Following this, in the same decade as its formation, TNT was (re)named as Liberation Tigers of Tamil Eelam (LTTE) and was also referred to as Tamil Tigers in short (Fernando, 2015; Waduge, 2016).

The developments in the island also resulted in Tamil United Liberation Front (TULF) formation in 1976, uniting all the Tamil political groups under one name. For the elections of 1977, a separate homeland (Tamil Eelam) was made a part of the manifesto of TULF with complete support of the Tamil Tigers as well as the Tamils residing in the north and east of the country (Kearney, 1985). In consequence, TULF swept the 1977 elections in both these regions (Fernando, 2015). This mandate facilitated LTTE in forming a de facto state in the northern and eastern provinces of the island, which greatly altered the relations between the (central) government of Sri Lanka and the Tamils in the region (Fernando, 2015). By the mid of 1980s, LTTE had already gained complete control over the other (small and local) Tamil militant groups, brought them all under its umbrella, and assimilated all the other dissenting voices present within Tamils (Deegalle, 2006).

To sum up the above discussion that attempted to introduce the readers to the ethnic conflict in Sri Lanka and the context of (the onset of) the civil war, it can be concluded that political, cultural, and socio-economic marginalization or relative deprivation of the Sinhalese led to the formation of JVP which stood in opposition to the (post-)colonial elites, and the neo-liberal and globalizing forces. However, the 'problem of fit' started to reemerge (in a rather transformed manner) in Sri Lanka after enacting the 'Sinhalese' Constitution in 1972. These developments in the island subsequently contributed to the Tamils raising their voices in favor of self-determination, nationhood, and a separate homeland, and the movement also acquired a violent color through the Tamil Tigers or LTTE. By the end of 1970s, both the two major ethnicities (Sinhala and Tamil) had occupied specific territories in the Sri Lankan Island. The north-eastern region was occupied by Tamil (which was also a de facto state of the Tamils), while the south-western region was occupied by Sinhala (Fernando, 2015). Iromi Dharmawardhane² (2013) has described the military tactics and strength of LTTE in these words,

The LTTE was the only guerrilla-cum-terrorist group in the world which had an infantry ("Military", which included an elite fighting wing and the "Black Tigers" suicide commando unit), a maritime wing with a shipping fleet ("Sea Tigers"), an air wing ("Air Tigers"), a highly secretive intelligence group ("Snow Tigers", as well as international political and procurement offices (para. 5).

Nonetheless, the formation of LTTE, in a way, strengthened the Sinhala nationalist cause, as it was announced to be an Indian proxy to sabotage the solidarity and integrity of Sri Lanka (Waduge, 2016). It is to note here that the politics of JVP has always been anti-Indian and has always been opposing any Indian intervention pertaining to the affairs of the island since the Indians were considered the ancestors of Tamils. This was also why the former conducted violent demonstrations against the Indo-Lanka accord that authorized the Indian Peacekeeping Force to operate in Sri Lanka in 1987 (Rampton, 2011).

In the mid-1970s, demonstrations, strikes, and violent attacks were carried out from both JVP and LTTE. The state machinery was Sinhalized by the nationalists Sinhala and the Tamils were territorialized. The catastrophic war between the Sinhala-led government and LTTE erupted in July 1983 (Deegalle, 2006), when a Tamil mob killed 13 Sinhalese policemen in Jaffna and, as a reaction, Sinhala-nationalists killed hundreds of Tamils in Colombo (Dharmawardhane, 2013). The LTTE became very powerful in the areas that it dominated. Besides direct attacks, both JVP and LTTE had adopted guerilla warfare strategy; improvised explosive devices (IEDs), suicide attacks, and targeted killings were the dominant tactics. None of the warring parties dominated the other when the Indian peacekeeping forces intervened in 1987 (Jayawardhana, 1987). In addition to India, some other international actors also tried to resolve this civil war in Sri Lanka, which is discussed in brief in the succeeding part.

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Peacemaking Processes

The Indo-Lankan accord of 1987 can be regarded as the first initiative in this regard. The agreement encompassed the following: equal status for the Tamil language, devolution of powers, and ceasefire between the Sri Lankan government and LTTE (Amrutkar, 2012). The Indo-Lanka Accord also paved the way for setting up Provincial Councils; powers of which were quite limited, but promises were made at the highest levels that this would be improved with time (Tamil National Alliance, 2015). The accord was aggressively rejected by the Sinhala-nationalist political parties and was regarded as the Indian imposed accord. Furthermore, they did not want any negotiations with LTTE as they considered it a terrorist group that was not the representative of all the Tamils living on the island.

Later, after almost two decades of the onset of the civil war in Sri Lanka, a ceasefire agreement between the government and LTTE came into effect in February 2002. The Norwegian government had played a major role in this agreement (Fernando, 2015). However, Mark Salter (2015), an American consultant, has (in his book) critically evaluated the Norwegian efforts in the Sri Lanka peace processes. He has asserted that the initiators of the peace processes, in which the ceasefire agreement was the pillar, were the parties to the conflict, i.e., the Government of Ranil Wickremesinghe and LTTE, and was not actually a 'Norwegian peace initiative' even though these peace processes were wholeheartedly supported and mediated by Norway. JVP, combined with the Sri Lanka Freedom Party (SLFP) and National Heritage Party (JHU), rejected the ceasefire agreement and the Wickremesinghe's liberal peace approach and his proposal to devolve the powers to the provinces. But this devolution proposal of Wickremesinghe made him strong enough to sustain the ceasefire agreement and the peace process initiatives from 2002 till 2005 (Rampton, 2011).

Nevertheless, JVP interpreted all the efforts to peacemaking, including the accords and the 13th amendment to the constitution (which is briefly described in the later part), as the 'Indian imposed' solutions. Any liberal process to peacemaking was perceived, by JVP or nationalist Sinhalese, as an external conspiracy of balkanization of Sri Lanka (Rampton, 2011). Therefore, during the ceasefire period, JVP mobilized support from the grassroots for the presidential elections in 2005. Its candidate was Mahinda Rajapaksa, whose manifesto was the preservation of the Sri Lankan sovereignty, integrity and its unitary status, and opposition to any foreign interference in the political processes of the island (Rampton, 2013). Rajapaksa won the 2005 elections and suspended the ceasefire agreement along with all the accords and negotiations with LTTE in 2007. The primary reason behind this was that he believed in a military solution to the conflict (Rampton, 2013). However, even before the suspension of the ceasefire agreement (i.e., during 2002–2007), it was violated multiple times by both the parties, and therefore, violence persisted during this period. The violent conflict (or the civil war) came to an end when the Sri Lankan security forces killed the LTTE leadership in May 2009 (DeVotta, 2009).

The Post-Civil War Situation

The civil war ended in 2009 with the defeat of LTTE, declared by the Sri Lankan government as a terrorist organization and not representative of all the Tamils residing on the island. The Tamil National Alliance (TNA) was regarded as the representative of the Tamils which had already contested the 2005 elections with the motto of self-determination for the Tamils. It is important to highlight here that the

end of the violent conflict (in the form of the civil war) did not mark the end of the ethnic conflict in Sri Lanka; instead, it continued to persist in the form of a political struggle between the two groups. This article argues that the constitution of the country can serve as necessary means to manage such conflicts. The post-civil war phase is generally expected to be a transitional phase in which the old governance structure is transformed to lay the foundations of a new liberal, democratic, and more pluralistic society. The transitional period predominantly includes constitutional reforms, overall institutionalization, reconstruction, and other peacebuilding processes. The purpose of transition is to establish an environment characterized by 'being united', where the different ethnicities are united for future nation-building (Janzen, 2014).

However, with the defeat of LTTE in 2009, the country was, once again, fully hegemonized by the Sinhala nationalist political power; Rajapaksa remained the President till 2014. During this period, the Tamil nationalists better organized themselves in political terms while being united under the banner of TNA. TNA, an umbrella organization of four Tamil political parties or groups, included Tamil nationalists and LTTE members. It was founded prior to the 2001 elections and its initial manifesto was a separate state for the Tamils (Tamil Eelam), Tamil's self-determination, and support for negotiations with LTTE to resolve the (violent) conflict. However, after the civil war, this manifesto of TNA changed when campaigning for the provincial councils' elections in 2013; it opted for reconciliation instead (Tamil National Alliance, 2017).

In all these circumstances, the constitutional arrangements were considered of prime importance in Sri Lanka for effective management of the ethnic conflict. It is to note here that the Westminster parliamentary government administered the country till 1972 when the country enacted its first constitution known as the 1st Republic (Vasanthakumar & Abeyratne, 2015). The constitution of 1972 was replaced with the 2nd Republic in 1978; it ensured a strong executive and the centralization of powers. Both these constitutions (the first and second republics) were majorly Sinhala centric. Nonetheless, in 1987, the accord between the governments of Sri Lanka and India paved the way for the 13th amendment, and in the same year, the amendment was made to the Second Republic in which the powers were devolved to the provinces through the provincial councils. In addition, through this amendment, both the Sinhala and Tamil languages were recognized as the national languages (Vasanthakumar & Abeyratne, 2015).

After the 13th amendment, the 17th amendment to the constitution of Sri Lanka was the one that grabbed much attention because it mainly aimed to depoliticize the National Public Service Commission and the National Police Commission. Previously, the appointments related to these commissions were under the President's authority (Saravanamuttu, 2006). The constitutional council was also introduced through this amendment and was considered to voice the population's concerns in matters such as constitutional development. The constitutional council, under the 17th amendment, included the prime minister, the speaker, the leader of the opposition, and "seven unelected members nominated as follows — one by the President, five by the prime minister and the leader of the opposition, and one by those parties in Parliament not already represented in the Council" (Samratne, 2020, para. 6). The constitutional arrangements, till this point, engendered hope in the multi-ethnic society of Sri Lanka as these amendments were providing devolution of powers to the provinces and a reduction in the powers of the executive. However, the defeat

of LTTE in 2009 made President Rajapaksa bold enough to reverse the previous amendments to the constitution with the introduction of the 18th amendment.

The 18th Amendment and the Widening Gap between Sinhala and Tamil

The 18th amendment to the Second Republic was enacted in September 2010. The amendment was Sinhala-centric as the 2010 parliamentary elections resulted in the victory of a coalition of twelve Sinhala-nationalist political parties — United People's Freedom Alliance (UPFA) — (again) under the leadership of Mahinda Rajapaksa who had already been elected (once again) as the President of the country (Ashraf, 2010). Announcing his victory in the parliament, the immediate response of President Rajapaksa was,

The assured majority in Parliament given by the voters encourages the Government to proceed with its policies for the strengthening of peace and reconciliation, reconstruction, greater infrastructure development, increased investment in identified areas of growth, and the overall development of the country to make it the center of economic and social progress in South Asia (IBNS, 2015, para. 2).

This time also, Rajapaksa had contested the elections with the same manifesto as that of the 2005 elections: unitary government, sovereignty and integrity of the island, and rejection of any external interference in the politics of Sri Lanka (Reddy, 2010). He had expressed something similar before too, during his first term, after LTTE was defeated in May 2009 — marking the end of the civil war:

This is our country. This is our mother land. We should live in this country as children of one mother. No differences of race, caste and religion should prevail here. Our aim was to liberate our Tamil people from the clutches of the LTTE. Protecting the Tamil speaking people of this country is my responsibility (IBNS, 2015, para. 2).

These repeated victories of President Rajapaksa in the Presidential elections of 2005 and 2010 and the victory of his party in the Parliamentary General elections of 2010 made him bold enough to amend the constitution according to his will. The major changes brought to the constitution through the 18th amendment included giving President the power to call re-elections at any point in time; the replacement of the constitutional council with the parliamentary council — enabling the President to attend the parliamentary session once every three months; and bringing the independent commission for appointment of public servants at important positions under the control of the President (Sri Lankan Parliament, 2010). In short, this amendment was “all about arming the President with absolute power” (Sultana, 2010, p. 2).

The Transforming Approach of TNA and the Formation of Coalition Government

In the post-civil war scenario, the Tamil political leaders had furiously been criticizing the unitary structure of the constitution and demanding a federal one. In an interview, one of the Tamil leaders from Northern Province, C.V. Wigneswaran, said, “One of the primary things that we are mentioning to the government is that the

structure of the constitution is faulty. If you have a unitary constitution, the power will be in the hands of one community,” (ColomboPage, 2016, para. 3). He further added that a discrepancy in the constitution lacked a proper mechanism of ‘separation of powers’. Thus, it can be argued that federalism — with the bicameral legislature at the center — has the potential to address the issue; as it would provide the country with a system in which all ethnic groups (including Sinhalese, Tamils, and Moors) would have their fair representation. It is anticipated that ‘federation’ can bring an end to the ethnic issues in the island as it is expected to protect the interests of all the ethnic groups in the country (Weerasekera, 2016).

However, in September 2013, TNA denounced its Tamil self-determination and separatism motto and accepted the unitary structure and united Sri Lanka for all communities. In the 2014 provincial elections in northern and eastern provinces, the alliance against the ruling party swept the elections by securing 28 out of the total 38 seats. These provincial elections were held with Mahinda Rajapaksa as the President of the country. Having such an (unfavorable) outcome of the elections, he called for early presidential elections — for January 2015 (BBC, 2014). In opposition to this decision of President Rajapaksa, many prominent members from the Sri Lankan Freedom Party (SLFP) and other coalition groups left the party; including Maithripala Sirisena, who then joined the opposition front. The liberal-democratic parties united against the nationalists under the New Democratic Front (NDF) umbrella for the forthcoming presidential elections. Sirisena was made the President of NDF and also became a presidential candidate for the January 2015 elections (IBNS, 2015). TNA also fully supported Sirisena in these elections.

As a result, Maithripala Sirisena was elected as the country President, heading the new coalition government. The new government consisted of liberal-democratic parties, including the United National Front (UNF) and TNA. This government, unlike its predecessor, favored reconciliation and negotiations over adopting violent means. This led to the expectations that TNA, while being a part of the coalition government, would be able to play its role in safeguarding its community — the Tamils — as well as in the overall development of the country (USAID, 2015).

In a press conference, the President declared that it was time to formulate a new constitution to replace the 1978 constitution (the 2nd Republic). The new government also announced to devolve powers to the provinces. On January 9, 2016, then Prime Minister Ranil Wickremesinghe presented a resolution to initiate the process for crafting the new constitution. For that purpose, a Constitutional Assembly, consisting of all members of the parliament, was formed (South Asia Terrorism Portal, 2017). The moderate and inclusive approach of this government led to the 19th amendment to the constitution. Furthermore, the manifesto of TNA for the 2015 parliamentary elections stated,

[The] present constitutional arrangements in this regard have proved to be inadequate and unsatisfactory. They favor the majority and impose majoritarian hegemony on the Tamil People. Democracy in a plural society cannot function effectively without a constitutional framework that provides for equity, equality, justice, peace, and security. It is in this context that we face the forthcoming Parliamentary Election (Colombo Telegraph, 2015, para. 2).

The manifesto of TNA was an overt message to the coalition government that there should be some constitutional arrangements to end the ethnic conflict and for which it was necessary to amend the constitution. The ruling party, NDF, was also in favor of amending the constitution. Therefore, the ruling party came up with the 19th amendment to the second Republic to reverse the totalitarian 18th amendment. President Sirisena had already promised the 19th amendment during his presidential campaign in 2015.

The 19th and 20th Amendment

The 19th amendment, brought to the constitution in 2015, repealed the extreme (authoritative) powers of the President, restored many components of the 17th amendment (i.e., de-politicization of the National Public Service Commission and the National Police Commission), incorporated provincial autonomy, and brought a balance between the powers of the President and the Prime Minister (Krishnamohan, 2021). This new amendment also came up with a new electoral system based on a mix of the 'First Past the Post System' and the 'Proportional Representation System' (Bandara, 2017). Through this amendment, the possibility of the same individual being elected as the country's President was limited to two times in contrast to not being subjected to any limit before. The President's tenure in his office was also reduced to five years from the previous six years of a single term. Furthermore, the amendment also established a non-political Constitutional Council to suggest the President on appointments for high-level posts (GoSI, 2015; Welikala, 2015). However, the 19th amendment could not remain functional in the country for long. With the parliamentary elections in August 2020, the new government of SLFP was formed by the coalition of the Sinhalese nationalist political parties. Under the leadership of the then President Mahinda Rajapaksa, this government came up with a new amendment to the constitution which directed the constitutional structures in yet another direction.

The victory of his party in the 2019 parliamentary elections gave further strength to the then President Mahinda Rajapaksa. In his inaugural address to the new parliament, the President mentioned,

As the people have given us the mandate we wanted for a constitutional amendment, our first task will be to remove the 19th Amendment to the Constitution. After that, all of us will get together to formulate a new Constitution suitable for the country (Srinivasan, 2020, para. 2).

He further added that the new constitution would prioritize "one country, one law for all the people" (Srinivasan, 2020, para. 2). In contrast to the 19th amendment, the 20th amendment (re)empowered the President. The Constitutional Council has also been replaced, through this amendment, with the Parliamentary Council. In the former, members — from outside the parliament — proposed and investigated any amendment to the constitution and suggested to the executive on high appointments (such as the judges of the Supreme Court). This Constitutional Council was introduced in 2001 through the 17th amendment. On the other hand, for the same purpose as that of the Constitutional Council, the Parliamentary Council (with members only from the parliament) was introduced through the 18th amendment. It was replaced with the Constitutional Council through the 19th amendment and has once again been reintroduced through the 20th amendment (Samraratne, 2020).

Another striking provision in the 20th amendment is the reintroduction of the authority of the President to pass 'urgent' bills, except those that amend the constitution. This amendment, concisely, (re)equipped the President with the authority that was lost because of the 19th amendment (Samraratne, 2020).

Discussion

Ethnic conflicts, in any state, can very well be diffused through constitutional arrangements. Several scholars believe that among other structural arrangements, federation, provincial autonomy, and inclusion are fundamental to accommodate different ethnic groups in a state (Fessha, 2012; Gahi, 2000). With the formation of the new government in January 2015, then-President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe jointly initiated the process of democratization in the island through the 19th amendment. With this amendment, the powers of the President were curtailed, parliamentary democracy was reintroduced, and the cabinet ministers received the executive powers (Wijenayake, 2016). However, the efforts for democratization and liberalization were greatly undone through the 20th amendment. Therefore, it invited much criticism from many junctions; from liberal-democrats, civil societies, human rights organizations, and the international community. One of the criticisms, especially pertaining to the pandemic (Covid-19) situation, was that the government should have drafted a policy to effectively manage the Covid-19 situation instead of paving the way for dictatorship and halting democracy (Ramachandran, 2020). The opposition, in the parliament, has criticized the amendment for being a tool to facilitate one 'Rajapaksa' family to rule over the country (Uyangoda, 2020). In addition, civil society and academia view the replacement of the constitutional council with the parliamentary council as a blow to constitutional democracy, which was achieved, to some extent, after a long struggle (Samraratne, 2020).

The historical evaluation of the ethnic conflict in Sri Lanka reveals that federalism that recognizes all ethnic groups is a better solution to (perpetually) end this ethnic conflict. In the post-civil war situation, the landslide victory of the liberal-democrats — who accommodated representation from all ethnic groups living in the country — reveals that the overall political culture dominantly favored federation, provincial autonomy, and proportional representation. Only these are expected to bring about a permanent solution to the ethnic conflict in Sri Lanka. With this same manifesto, the liberal democrats were able to unite the Tamils and other ethnic-based political parties under the umbrella of NDF which won the elections in 2015 and formed the government. It appeared as if the constitutional arrangements in the post-civil war era were moving to accommodate all ethnic groups on the island. Nevertheless, the situation was reverted, and what could have been an exemplary strategy for ethnic conflict management through constitutional arrangements could not be realized in the way it was expected to. The re-gaining of power by SLFP under the leadership of Mahinda Rajapaksa, in the 2020 parliamentary elections, reversed the struggles for democracy, federation, and provincial autonomy.

It may be argued that democracy, autonomy, inclusion, freedom, equality, and recognition of every ethnic group residing in a specific territory are important to establish and maintain lasting peace in any state. The 20th amendment, in this regard, was a severe blow to the (democratic) progress in Sri Lanka and is argued to favor the dictatorship of one family and discriminative dominancy of one (majority) ethnic group. The centralization and exercising of powers of one family and hegemony of the majority will not resolve the prolonged ethnic conflict in Sri Lanka. This makes

one believe that the ongoing political non-violent conflict between the majority (Sinhalese) and the minority (Tamils) might escalate to a violent conflict if the voices of the minority ethnic groups will not be accommodated in the national politics.

Conclusion

It is agreed that multi-ethnic states are more prone to violent conflicts. Therefore, such situations demand greater attention to the political structures and processes so that the states may be better equipped to curtail any such conflicts (Woods et al., 2011). For similar reasons, multi-ethnic states require a strong institutional design that guarantees the protection of different sub-entities within a state (Wolff, 2011). In this perspective, Sri Lanka has been facing constitutional crises since its independence. Though, during the civil war, some efforts were made through the 13th and the 17th amendments to include different segments of the population, the Sinhala (being the majority group) tried to maintain their control and hegemony, for which they attempted to use the constitution in their favor. Hence, it can be said that what was done was also undone in a way and the constitution, instead of only progressing towards liberalization, was on a path with many twists and turns. The 19th amendment was an appreciable attempt to include different (ethnic) groups in the system but was, once again, reversed by the majority group through the 20th amendment. Hence, this last amendment to the constitution is considered a serious blow to the constitutional development and democracy in the country. Nonetheless, constitutional arrangements are the only way forward to avoid any violent (ethnic) conflicts in Sri Lanka by curbing the covert conflicts before they manifest in an overt (violent) form.

What brings optimism in the contemporary politics of Sri Lanka is the transformed stance of TNA and its moderate approach in the post-civil wartime which is proving beneficial for the Tamils as a community as well as for the whole island. The accommodation of the different ethnicities in a single state is not an easy job; therefore, it requires the political activists, policymakers, academia, and other stakeholders to pay close and serious attention to the matter. The Policymakers should favor a highly institutionalized system of power sharing in which all the ethno-national parties can get their fair share of benefits. This again presents a challenge to the policymakers, especially when considering how to overcome the majority nationalist powers in Sri Lanka and make the island a federation inclusive for all ethnic groups. There is a need to revisit the coalition government regime (2015-2019) where different ethnic groups were part of the government. The future arrangements can only be led in the right direction when paying close attention to the past and learning from the experiences; only then Sri Lanka can come up with the constitution that is inclusive for all the (ethnic) segments of the population.

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