

‘Executive Authoritarianism’ as Sri Lanka’s New Political Normal since COVID19*

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The ways in which countries from the global north to the global south have politically managed the unprecedented public health emergency situation brought about by the COVID19 pandemic, which has both national and global dimensions, have given rise to much anxiety among democratic communities across the world. In fact, these anxieties came to be expressed as soon as governments began their policy responses through exclusively Executive action.

Such Executive responses have had two components: (a) assigning to the political and bureaucratic Executive the sole responsibility to design and implement strategies and policies to control not only the sudden public health challenge, but also the social and economic aspects of the pandemic condition, while side-lining the role of the Legislature; and (b) the use of a generalised state of emergency to impose on society, Executive actions that were largely independent of the Legislature, while relying on the police and armed forces for their rapid implementation; and also restricting civil and political rights of citizens through emergency law and rhetoric, while using enhanced surveillance for contact-tracing.

It appears that a new and hitherto unfamiliar ‘state of emergency’ has begun to immediately project the political character of the novel coronavirus as a possible source of threat to democracy. A Freedom House report in October 2020, begins with the following observation:

The COVID-19 Pandemic has fuelled a crisis for democracy around the world. Since the coronavirus outbreak began, the condition of democracy and human rights has grown worse in 80 countries. Governments have responded by engaging in abuses of power, silencing their critics, and weakening or shuttering important

institutions, often undermining the very systems of accountability, needed to protect public health (Repucci and Slipowitz 2020: 1).

In the same vein, Youngs and Panchulidze, for the International Institute for Democracy and Electoral Assistance (IDEA), note that in an effort to contain the virus, governments across the world have enacted diverse emergency powers to enforce lockdowns and other measures.

While in many cases these restrictive measures were proportionate and justified for the imperatives of protecting lives, some governments have used them disingenuously to restrict democratic activities and silence critical voices. Emergency measures ... in many places have undercut civil liberties. Some weak democracies and autocracies have suffered a particularly serious lurch towards more centralised power and repression with probable long-term ramifications. Even if new risks to democracy are not present in all countries, they are pervasive enough to be of serious concern (2020: 4).

One of the dilemmas in assessing the political – and social – outcomes of states of emergency is about the relationship between necessity and excess: that is, the necessity to take emergency action to save life and citizens; and excesses in the exercise of power and authority given to the government under emergency justification. This dilemma is present in the COVID19-induced emergency responses by governments.

In their review of how countries with different levels of democracy have managed their emergency responses, Young and Panchulidze make an observation relevant to the experience of South Asia as well: “Most democracies have kept emergency measures largely within constitutional limits, and have kept parliaments

open. Data suggest that those countries already suffering democratic repression have been at a higher risk of further repression due to Covid-19” (2020: 9).

The authors identify several “areas of particular worry” that highlight instances where regimes have utilised emergency provisions “in ways unrelated to the health emergency” and “that undercut constitutional principles of freedom of expression, good electoral practices, formal institutional checks and balances, non-discrimination, and media independence” (2020: 9). Among those areas listed in this global review are:

- Excessive violence by security forces (The Philippines, South Africa, Uganda, Kenya, Nigeria, Iran).
- Interrupted elections and election integrity challenges (61 countries have postponed altogether 106 elections).
- Clampdowns on political opponents (Bangladesh, Thailand, Hong Kong, Cambodia, Iraq, Algeria, Lebanon, the Balkans, Kazakhstan, Belarus, Bolivia, Venezuela).
- Censorship and threats to independent media (Bolivia, Bangladesh, Russia, Ghana, Nigeria, Senegal, Montenegro, Serbia, Sierra Leone, China, Thailand, Egypt, Ethiopia, Turkey).
- Increased disinformation (many countries, and prominently China).
- Misuse of digital information for surveillance (many countries).
- Rights violations of minorities and vulnerable groups (India, France, Germany, Spain, Arab countries, United Kingdom, Canada, Argentina, Singapore).
- Technocratic governance.
- Public sector corruption.

In the above list of the key signposts of global democratic backsliding, we need to add two developments under appropriate headings.

The first is the emergence of a coalition between the Executive branch of the government, political Executive of the President/Prime Minister, and the administrative and security apparatuses, as the new centre of state power – pushing to the background the Parliament and even the cabinet of ministers in some instances.

The second is the rise of the surveillance state, with legitimacy and justification, in almost all countries through the casting of a vast state surveillance net over all citizens that began to be employed for contact tracing,

and can be utilised for national security purposes too. What is novel in this situation is the total surrender of the idea of individual privacy of citizens and their civil rights, ostensibly to ensure the ‘health security’ of fellow citizens, thereby initiating a redefinition of public health as a national security issue.

In this context, the main question which this paper explores is the following: What has COVID19 done to an already weak democracy in Sri Lanka? The answer that is suggested and explored is that the pandemic has hastened a transition of a weak democracy into a new political order which can be described as ‘Executive Authoritarianism’.

Retreat and Rise of Executive Authoritarianism

Sri Lanka falls within the global pattern of democratic backsliding, of course with country-specific contexts and trends. Sri Lanka’s governance crisis during the COVID19 pandemic has been characterised by the rapid rise of Executive Authoritarianism, which has to be situated within a relatively long experience of democratic governance, the instability of the democratic system as a whole, and the institutional erosion of democratic governance, along with the rise of authoritarian alternatives to democracy.

Sri Lanka has a long history of Executive Authoritarianism which goes back to 1978 when an ‘Executive’ presidential system was created by J.R. Jayewardene, the United National Party’s (UNP) Prime Minister at the time. The new system created an all-powerful office of ‘Executive President’ with a Parliament with diminished powers and status. While the President centralised both Executive and Legislative authority, the system of checks and balances associated with parliamentary government was removed. The Judiciary was also brought under the control and influence of the President, the head of the Executive.

This Constitution still operates in Sri Lanka with reductions of Presidential powers effected twice, in 2015 and 2017. One of the key challenges that emerged in Sri Lanka, almost simultaneously, is the inadequacy of conventional avenues of constitutional jurisprudence to even examine the consequences of Executive actions with negative consequences for citizens’ freedom, rule of law, and democracy during the early months of the COVID19 pandemic. This has manifested most visibly in the relationship between the President and Parliament.

When the novel coronavirus pandemic slowly began to arrive in Sri Lanka in March 2020, a showdown had already begun between a newly elected President

– Gotabaya Rajapaksa – and a sitting Parliament. Rajapaksa won a six-year term as new President on November 16, 2019. The incumbent Parliament, elected in August 2015, had its term valid till August 2020, with a majority held by the former ruling coalition (United National Front).

Despite the fact that the new President's party did not have a parliamentary majority, he persuaded the former Prime Minister (Ranil Wickremesinghe) and his cabinet to resign and appointed his brother (and former President) Mahinda Rajapaksa as the new Prime Minister of a minority government. A new Cabinet was also sworn in within five days of the new President taking over power. In the absence of a parliamentary majority and unsure of the stability of the government, President Rajapaksa prorogued the Parliament, which had an Opposition majority, on December 02, 2019 for a month.

Sri Lanka's first COVID19 patient was reported on January 27, 2020 and the spread of the virus in and around Colombo began during early February. By this time, the power struggle between the President and his cabinet on one side and the Opposition-majority Parliament on the other, continued with a war of attrition between the two sides until the President dissolved Parliament on March 02, although the Parliament's term was valid till August.

The new parliamentary election was fixed by the Election Commission for late April. Not unexpectedly, the dissolution of Parliament created conditions favourable to the President to take entirely into his hands the emergency pandemic management operations, with the participation of the military, which he believed, in line with a global pattern, was more efficient than the Parliament or even the cabinet to handle the emergency.

Meanwhile, the rapid spread of the pandemic created doubts about the feasibility of holding parliamentary election on the scheduled day of April 25, 2020 resulting in a political debate between the President, the Election Commission, and the Opposition. While the President wanted the elections held, the Election Commission was reluctant because of the health risks to the voters. Then, a new controversy developed in March as to who had the legal authority to postpone the election and decide on a new date, the Election Commission or the President.

While the controversy was raging, the Opposition parties requested the President to summon the dissolved Parliament in order to give legal effect through parliamentary sanction to lockdowns, curfew, new regulations, and other steps taken by the various 'Task

Forces' appointed by the President under the leadership of the Army Commander, and with the participation of officials attached to the Presidential Secretariat. While the President took a position strongly against summoning the dissolved Parliament, a new date, August 05, was set by the Election Commission for the parliamentary election. The election was duly held under strictly enforced health precautions on that day.

Although the parliamentary election process was interrupted in Sri Lanka only very briefly, the fact that Parliament remained dissolved for six months from March 02 to August 05, paradoxically saw a political process that ensured the weakening of Parliament and the rise of the office of the President, totally independent of Parliament and with the support of the military and the intelligence apparatus of the state. With the Parliament dissolved and power struggle between the President and opposition parties intensified, the President asserted a wide range of powers that were not entitled to him under the Constitution's 19th Amendment.

Under the Constitution, if Parliament remained in office, the President's actual powers were very limited, and almost all powers of running the government were vested with the Parliament and the Cabinet of Ministers headed by the Prime Minister. Once the Parliament was dissolved, the President began to exercise dual power as head of the government and head of State, on the argument that as head of the Executive, elected directly by the people, it had become a 'necessity' to manage the emergency caused by the COVID19 pandemic.

A key constitutional question that became controversial was whether the President had the authority to spend public money without parliamentary approval when there was no valid Vote on Account sanctioned by Parliament. When a few citizens and opposition politicians filed fundamental rights petitions seeking judicial clarification on this constitutionally uncertain situation, the Supreme Court dismissed the petitions after preliminary hearings, without giving reasons. Thus, the unilateral assertion of a wide range of Executive powers by the President without constitutional clarity, on questionable legal advice, and with the Judiciary's reluctance to examine the validity of such Executive action, created a new political normality in Sri Lanka amidst the emergency of the COVID19 pandemic.

The general election held on August 05, 2020 that gave a near two-thirds majority in Parliament to the Sri Lanka Podujana Peramuna-led alliance, provided popular legitimacy to the new President's agenda for an early shift – through a constitutional amendment – to a fully-fledged presidential system of government.

The extraordinary success achieved by the President and his 'Task Forces', with no accountability to Parliament and solely by means of Executive action, in controlling the COVID19 pandemic in its first phase between March and September, 2020, also enjoyed much popular backing.

'A President, backed by the army and not obstructed by a Parliament of corrupt politicians' was a slogan popularised through a campaign over social media and word-of-mouth during and after the parliamentary election. Ironically, the President and his party also appealed to the voters during the election campaign to give him a two-thirds majority in Parliament in order to establish 'a strong government headed by a strong leader', without being shackled by an independent Parliament, or by institutions of checks and balances such as the Judiciary or independent accountability commissions.

Sri Lanka's transition from being a parliamentary democracy to a new presidential authoritarian model that began in March 2020, at the beginning of the COVID19 pandemic, took concrete form in September of that year when the President unveiled the proposed 20th Amendment to the Constitution.

There are two key features of the 20th Amendment: (a) transforming the office of President into the central institution of State power, with no checks and balances and independent of Parliament, the Judiciary, or any other accountability institution; and (b) transforming Parliament into a nominal legislative body, which should function under the control of the President. Thus, Sri Lanka's passage from the 19th to the 20th Amendment to the 1978 Constitution encapsulates a huge political irony – swift transition from a weak democracy to an Executive-led authoritarian political order.

Conclusion

As the discussion in this paper shows, when COVID19 began to strike the world in early 2020, politics in many countries, including Sri Lanka, had already entered diverse paths of post-democratic transition. What the pandemic seems to have contributed to that process is its facilitation to take concrete shape with relative ease, and within a brief period of six months, and that political

shape can be described as 'governments of Executive Authoritarianism'. As this case of Sri Lanka shows, that process does not seem to be limited to transforming the nature of regimes. More significantly, it also embodies a transformation of the state, state-society relations, and politics as a whole.

This political model of Executive Authoritarianism will also co-exist with the existing framework of parliamentary and cabinet government, yet with a diminished role allocated to them in the hierarchy of political institutions. The subordinate role that is likely to be played by the higher Judiciary, acknowledging the pre-eminence of the Executive branch of the state – political, administrative, and security – in the institutional hierarchy of the governance structure, will also be a new feature that will certainly redefine the nature of emerging state-society relations.

The global phenomenon of democratic backsliding under COVID19 has of course met with resistance in many countries, giving rise in some instances to coordinated civil society efforts to ensure that rights of citizens and vulnerable communities are not violated, taking counter measures against disinformation, and mobilisation of concerned citizens groups, and instituting open, transparent, and humane policy responses. In Sri Lanka, some resistance to Executive Authoritarianism is also becoming discernible.

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