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## Towards Democratic Reforms

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 may have utilized



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It is clear that inter-state relations in South Asia have again reached a stage akin to semi-anarchy. As particularly illustrated in Indo-Sri Lanka and Indo-Pakistan relations, even the language of communication between leading policy makers has been, at times, anything but diplomatic. Meanwhile, the SAARC charter disallows bilateral issues being raised at its deliberations. Yet, South Asia lacks any mechanism for mediation in bilateral disputes. Can an inter-fragmented grouping of states successfully pretend to have reached the point of integrated cooperation? An unkind, yet brutally frank question which we in South Asia can no longer disregard.

Sharp economic competition among the majority of SAARC countries is very likely to characterize the future inter-state relations in South Asia. The New International Economic Order, the ideology of external economic relations prescribed at various Third World forums in the previous decade, has

ceased to be an effective doctrine. Moreover, the South Asian countries - particularly India, Pakistan, Sri Lanka and Bangladesh - have now clearly abandoned the strategies of autarchic economic development. Relative isolation from the capitalist world market and international capital has become a thing of the past. Domestic economies are being opened up for private foreign capital. South Asia's new phase of rapid integration with world capitalism is taking place in a new direction. Capital originating from, and markets located in, Southeast and East Asia are crucial for the kind of new industrialization strategies that India and her immediate neighbours have already launched.

This makes economic cooperation within SAARC particularly vulnerable to the imperatives of national economic interests of individual member countries. If economic cooperation is to take place at all within SAARC, it is now necessary to acknowledge that the old conceptualization of the regional grouping needs to be recast. An economic division of labour within

the region - to decide who should produce what to be sold in which particular market - should be in the agenda of South Asian regional cooperation. However, the crux of the problem at the moment is that there is no room for such an initiative. Consequently, the mood is set for sharp competition and permissive disregard for mutual interests.

The tasks ahead for SAARC to remain strong are more complicated than they were earlier. Now the movement has fallen into political confusion and the problems are immensely complex and delicate. Bilateral tension and conflicts involving India and her neighbours will, if allowed to grow, make the existing cleavages unbridgeable

Particularly hurt at present is Sri Lanka. As a result, political emotions at the Presidential Secretariat may run adrift. Forming an anti-Indian club in the region may satisfy wounded feelings, but surely runs counter to Sri Lanka's long term interests, particularly economic and political.



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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, 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, terms of the constitutional debate should be so 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 the executive or the 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 fundamentalism 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 separation of the



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Severely tested in the coming months will be the credibility of Sri Lanka's India policy, if there is one. Indo-Sri Lanka relations in the recent past have been subjected to a series of unnecessary strains. Even minor irritants, which could have been easily disregarded under normal circumstances, have assumed exaggerated proportions. The expulsion of Mr. Karuppaswamy, an Indian journalist, from Sri Lanka is a case in point. Even two years after the

last Indian soldier has left Sri Lanka, IPKF - bashing occurs repeatedly when political leaders are compelled to reassert their patriotic virtues. India too views Sri Lanka through a distinctly suspicious eye. Nevertheless, the central problem of Sri Lanka's foreign policy in the coming years will concern India, not Pakistan or Bangladesh. If national interests and interests of the regime are confused, Sri Lanka will never be able to formulate a workable India policy.

There are already some clues emerging to suggest that President Premadasa's

new foreign policy thinking is becoming Gulf-bound. If the cordiality extended to Pakistan, Bangladesh and the Maldives is an indication, the region west of Pakistan can very well be the destination of diplomatic visits to be made very soon by senior foreign ministry officials. Isolated internationally, and pressurized by domestic compulsions, the Premadasa regime may seek greater cooperation in the Arab and Muslim world.

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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, a 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 laws under which the Sri Lankan government 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 the public life, excessive bureaucratization of public affairs and the arbitrary use of state power by those in office with scant regard 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 of 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 to recall in which MPs and all elected officials of the state could be recalled by a

process initiated by the voters can be considered as 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.

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*Statement by the Civil Rights Movement of Sri Lanka on 25 October 1991:*

# HUMAN RIGHTS, SOVEREIGNTY AND DEVOLUTION

When there is criticism of our human rights record from abroad, we hear, all too often, the sentiment expressed that other countries should mind their own business and that what happens here is solely our own affair.

Such a viewpoint, though morally wrong, would have been legally correct some years ago. But today it is legally wrong as well. It is accepted law today that the doctrine of sovereignty of states no longer holds good *so far as a state treats the fundamental rights of its subjects*. The concept of national sovereignty has *in this respect* given way

to the concept of international responsibility. As one expert has lucidly put it:

"Had a well-meaning delegation from abroad called on Chancellor Adolf Hitler in 1936 to complain about the notorious Nuremberg laws, and the manner in which they were being applied to persecute German Jews, the Fuhrer would probably have dismissed such an initiative with the classic phrase of 'an illegitimate interference in the

internal affairs of the sovereign German State', pointing out that these laws had been enacted in full accordance with the provisions of the German Constitution, by an assembly constitutionally and legally competent to enact them, and that neither they nor their application were the concern of any meddling foreigners. And, in international law as it then stood, he would have been perfectly right - and so would Party Secretary-General Josef Stalin have been if a similar

