



Freedom is the emancipation from the arbitrary rule of other men. -Mortimer Adler
When Sri Lanka got political independence in the year 1948 it had a model constitution that had carefully evolved over many years of British rule. Britain had eyed our country to be a model colony and the British gov-

ernment had given a lot of thought towards our constitutional progress. Governor Robert Brownrigg introduced the Colebrooke-Cameron proposals in 1828 which formed the base of Lanka's colonial constitutional framework for many years. The separation of powers between the Legislature, Executive and Judiciary was introduced and a typical colonial model was set up under the aegis of the Governor.

THE CONSTITUTION AT INDEPENDENCE AND OUR SLIDE TO ARBITRARY RULE

In 1931 the Donoughmore Constitution came into force. It was one of the most progressive constitutions prevailing at the time in the vast British Empire. The Donoughmore reforms brought universal franchise to the island ahead of even England where even up to that time women did not have the right to vote. While understandably retaining the core controls for London, the Donoughmore reforms set in motion an admirable Executive Committee system that suited the peculiar genius of our people and ensured every legislator an effective executive

role in government. Sri Lanka's early leaders received their training under this Executive Committee system. The Soulbury proposals were introduced in 1946 just prior to independence and the outcome of that package was to move Sri Lanka into a full-fledged Westminster style parliamentary system. The Constitution in 1948 modified the Soulbury model in order to grant Sri Lanka full independence from British rule. The electoral system tied to the new constitutional order was also the British first-past-the-post system according to which the candidate who received the majority of votes in a particular electorate got elected to Parliament. A legislator (MP) was thus directly linked and accountable to his or her electorate. For one thing, that meant that only someone who had a record of acceptable behaviour could come forward for a parliamentary election. It was the general norm that respected persons of the community alone could stand a chance. The quality of any Parliament to a large extent depends on the men and women who make up that Parliament. MPs had to be seen to behave well and work hard for their electorates if they were to successfully seek re-election. The direct linkage with the electorate kept the MPs on their toes all the time. The competition of political parties meant that newcomers were always trying to gain attention and were tapping at the door. The effort to retain a seat was therefore a work-in-progress. In general terms Sri Lanka worked the parliamentary system bequeathed by its colo-

Civil Servant as Government Agent.

Elections and By-elections were held with visible impartiality.

The key to the rule of law that prevailed was the doctrine of separation of powers which meant that the three main arms of government- executive, judiciary, and legislature were kept detached from each other. This alone blocked any attempts at arbitrary power on the part of the executive cabinet or Prime Minister. The rule of law meant that every citizen- big or small powerful or powerless -generally had equal treatment before the law. An offending citizen was presumed to be innocent until proved otherwise by a court of law.

The constitution introduced in 1972 during the regime of Sirimavo Bandaranaike changed the status of Sri Lanka from a nominal constitutional monarchy represented in the country by the Governor General

to a republic which had a nominal head of state in the office of a non-executive President. Also, the right of appeal to the Privy Council in Britain was abolished. Other provisions of the 1948 constitution remained unchanged.

Right until the time of JR Jayawardena the above constitutional environment did prevail, albeit not perfectly, and Sri Lanka boasted of a vibrant and alert parliament, rule of law and the separation powers- all key characteristics of a modern society. Parliamentary debates took place with dignity and learning of personalities like NM Perera, SA Wickramasinghe, Pieter Keuneman, Colvin R De Silva, Chelvanayakam, Ponnambalam, Dudley Senanayake, MD Banda and numerous other profound leaders.

This order emanated a peace that is based on a collective realization of fair play. Sri Lanka was truly paradise. Great development projects took place- hundreds of colonization schemes that opened up vast arid areas for cultivation and settlement, hundreds of irrigation works, a sound education system right into the provincial and rural constituencies via Maha Vidyalayas and Madya Maha Vidyalayas, tertiary institutions and a proud university in Peradeniya just to name a few.

The first to demolish the above governing system was not JR but Felix Dias Bandaranaike-the power behind Prime Minister Sirimavo Bandarnaike. He set out to abolish the Public Service Commission's powers over the appointments and transfers of Public Servants and brought the latter functions under the cabinet. This was the first blow to an admirably professional and independent Public Service and it paved the path to the politicization of the administration. I remember how at one conference Felix announced that he assesses a Public Servant in the provinces by reference to the

MP!

While Felix pulled out a vital thread in the fabric, it was JR who tore the very fabric of the prevailing system of governance by introducing the Executive Presidential system in 1978. Under JR's constitution the President was above the law and thus cannot be taken

Minister and cabinet to do all the governance.

Mahinda Rajapakse (2005), Sri Lanka's current President has been a great achiever but he brought into his role little self-belief about the nuances of the rule of law, democratic process, or consensus building. He took the

to court. This was the first decisive blow to the rule of law. I believe there was a personal reason for JR's desire for monarchic authority. JR, an undoubtedly able man, had been smarting for numerous years unable to

Constitution to a new height of absolutism by narrowing the democratic space for opposition and concentrating all power within the Presidency. Even JR would have blushed doing that. The 18th Amendment



get what he thought was his due- the position of the Prime Minister. According to my hypothesis JR's new constitution represented his desire to compensate for that personal failure by dressing himself with kingly powers. JR invoked the days of the Kings by reintroducing the Wap Magala ceremony. He was trying a third term when the JVP stymied his efforts.

Premadasa who took over in 1983 was also a considerable leader. He simply enjoyed the powers left to him by JR. My personal experience of Premadasa was that that he had an idealism, a feeling for the downtrodden, a willingness to innovate, and even a self-belief in the rule of law. However, the power of his position intoxicated him with the result that his life ended tragically amidst serious allegations of instigating the assassination of opponents.

The contrasting picture was that of DB Wijetunge (1993) who simply was not impressed by power. DB interpreted his Presidential role in the old non-executive model of Gopallawa. He let the Prime

eroded further the principle of separation of powers which is the cornerstone of modern government. He saw no need for an independent Electoral Commission, an independent Police Commission, an independent Public Service Commission, or an independent Judiciary that can work stress-free from political pressures.

The impact of the new absolutism on the individual citizen can be disastrous as already witnessed on a daily basis. Serious charges of threat, kidnapping, killing, and the arbitrary application of emergency law are being levelled against executive officials of the government.

Only the universal application of the rule of law can ensure universal justice and the freedom of the citizen. Laws cannot be selectively picked, contorted, and applied arbitrarily to suit the whims of the executive- be it the President or any of his officials. Peace and citizen self-respect can reign only when everybody is under the law.



Shyamon Jayasinghe

Council in Britain was abolished. Other provisions of the 1948 constitution remained unchanged.

සුව පහසු කාර්යයක්

EPPING

විශාල අදාළවී බාහිරවී එකක් සහ වෙස් ඉන් වෙස්ට් රෝඩ්

එකක් අති සුව පහසු කාර්යයක්

කාන්තාවකට කුලියට දීමට අත.

පොදු ප්‍රවාහන පහසුකම් අති නැතකි.

සවස 6න් පසු විවෘත

03 9408 6055/0430841 838