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Sri Lankan Crisis: A Jurisprudential Overview

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ABSTRACT

“The old is dying and the new cannot be born; in this interregnum, there arises a great diversity of morbid symptoms.” – Antonio Gramsci, Prison Notebooks

Sri Lanka is now at the edge of a Socio-Economic and Political collapse. The country has descended into its worst financial crisis since independence, with food, fuel, medicine and electricity becoming increasingly scarce. During and after the Covid-19 pandemic situation, mismanagement of the government led the country to chaos. Now, thousands take to the streets to call for the resignation of president Gotabaya Rajapaksa and the entire government. Also, they demand an audit of the wealth of the Rajapaksa family and their henchmen. The people reject and neglect the government as well as the parliament and demand all power to the people.

Keywords – Constitution, Grundnorm, Sovereignty, Sri Lanka.

I. INTRODUCTION

Gotabhaya Rajapaksa became the Executive President of Sri Lanka in the 2019 Presidential Election with 52.25% of the votes. He has two and half more years in his five-year term. After the general election held in 2020, President Rajapaksa's party, *Sri Lanka Podujana Peramuna* (SLPP) won 2/3 majority of the parliament and enacted the 20th amendment to the constitution which strengthen the executive presidency. From the beginning, the new president and his government declared a pro-nationalist agenda before the country.

Government revenue was greatly reduced due to the failure of the authorities to properly manage the Covid 19 pandemic and the granting of Tax relieves to large capital ownerships. Also, the government was alleged for many corruptions even during the pandemic period.

However, this crisis has a history of decades. The volcano was activated by corruption and mismanagement of the government during the last two years. What has emerged today is not an independent or isolated crisis, but a collective representation of many politically and economically interconnected crises. The economic crisis was created by the free market economy after the introduction of the open economy system in 1977, while the present political

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crises were created by the 1978 Second Republican Constitution and the executive presidency. Over the past decade, the Sri Lankan government has borrowed vast sums of money from foreign lenders. Excessive loans which are taken for non-profit development projects sunk the country into a debt crisis. National consumer price inflation has almost tripled, from 6.2% in September 2021 to 17.5% in February 2022, according to the Central Bank of Sri Lanka.² Sri Lanka has to repay about \$4 billion in debt over the rest of this year, including a \$1 billion international sovereign bond that matures in July.³ Now Sri Lanka's economy has faced its worst foreign reserve shortage which is even not enough to import essential goods, foods and medicine.

II. 'ALL POWER TO THE PEOPLE'

According to Article 03 of the present Constitution of Sri Lanka,

*"In the Republic of Sri Lanka sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise."*⁴

Accordingly, the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People,⁵ while the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People and by the People at a Referendum.⁶

Although the president and government have not ended their terms, the people are demanding to return their executive and legislative powers and resign. Under the current constitution, there is a procedure for the president and the government to resign. However, President Rajapaksa and the government have not yet responded to the demands of the people.

Although, the franchise is also a part of people's sovereignty, at the moment the people are not asking for an election. They request to form an interim government to measure and plan to way forward until the crisis will heal. However, the definitive yearning of the people is a complete and systematic change of the way of government.

III. DEMOCRACY IN DIRECT FORM

We now witness the direct practice of Democracy on the ground. For the first time in the history

² <https://www.cbsl.gov.lk/measures-of-consumer-price-inflation>

³ <https://edition.cnn.com/2022/04/05/asia/sri-lanka-economic-crisis-explainer-intl-hnk/index.html>

⁴ Constitution of Sri Lanka, Article 3

⁵ Constitution of Sri Lanka, Article 4(b)

⁶ Constitution of Sri Lanka, Article 4(a)

of Sri Lanka, thousands of people have gathered in front of the Presidential Secretariat and are camping until the head of the government resigns. The most significant aspect of this struggle is that the whole country is now demanding one thing without any kind of leadership from the political parties. Although some have criticized the way and colour of this struggle, Sri Lankans are now writing a new chapter of the political history of their own country and providing a unique example internationally.

IV. AN OPPORTUNITY TO CHANGE THE GRUNDNORM

Grundnorm is a jurisprudential term defined by Hans Kelson (1881 – 1973) in his Pure Theory of Law. He defined the *Grundnorm* as the basic norm, order, or rule which goes on to form the basis for any and every legal system. This can be regarded as the source of the validity of the positive law of that legal system.

Kelson describes that the revolution is the only way that can be changed the *Grundnorm* of a legal system. He had said: "No jurist would maintain that even after a successful revolution the old constitution and the laws based thereupon remain in force."⁷

In 1972, Sri Lanka experienced a constitutional revolution which led to a change of the *Grundnorm*. The Constitution of 1972 was the first republic and 'autochthonous' constitution of Sri Lanka. Dr. Colvin R. De Silva, the chief architect of the 1972 constitution, himself observed that,

"This is not a matter of tinkering with some Constitution. Nor is it a matter of constructing a new superstructure on an existing foundation. We are engaged in the task of laying a new foundation for a new building which the people of this country will occupy."⁸

Accordingly, the first republic constitution of Sri Lanka was able to change the colonial *Grundnorm* remained since 1815.

In the judgment of *Walker & Sons., (U.K.) Ltd Vs. W.P.Gunatilleke* case⁹, the Supreme Court of Sri Lanka stated that 'the decisive criterion of a revolution is that order in force is overthrown and replaced by a new order in a way which the former had not itself anticipated.' In this way, from a legal point of view, the current situation in Sri Lanka can be seen as the threshold of a revolution.

⁷ H.Kelson, *General Theory of Law and State*, p.118

⁸ M.J.A. Cooray, *Judicial Role Under the Constitution of Ceylon/Sri Lanka, An History and Comparative Study*, p. 217

⁹ C.A. (S.C) Application No: 365/76

Accordingly, the people have a great opportunity to change the *Grundnorm* of the legal system of Sri Lanka.

V. CONCLUSION: CHANGING THE HISTORY

Despite Sri Lanka being at the edge of a Socio-Economic and Political crisis, this particular moment marks a significant milestone in history. As once Lenin said, “*There are decades where nothing happens, and there are weeks where decades happen.*” Therefore, in the next few weeks, the entire history of Sri Lanka might be changed. As Antonio Gramsci stated that we are now in an era of ‘*The old is dying and the new cannot be born; in this interregnum, there arises a great diversity of morbid symptoms.*’¹⁰

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¹⁰ Antonio Gramsci, *Selections from the Prison Notebooks* (1971), Oxford Essential Quotations (5 ed.) Edited by: Susan Ratcliffe, (2017)