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Promoting Democracy through Direct Public Engagement: The Sri Lankan Experience

Legal Research Team, Verité Research

1. Introduction

In the contemporary context, democracy is synonymous with a form of government that is reflective and representative of the general will of the people (Wallace 2021). Throughout history, democratic governance has mainly taken two forms: i) directly by the people; and ii) by representatives of the people. When democratic governance is direct, the people participate in the policy formulation and decision-making processes as individuals (Encyclopedia Britannica 2022). In contrast, when democratic governance is representative, policy formulation and decision making are undertaken by representatives who are elected by the people (Haxhiu and Alidemaj 2021). Due to the complexities involved in policy formulation in modern-day states, and the impracticalities involved in obtaining the views of an entire population, modern democracies are premised on representative democracy.

Nevertheless, direct democracy continues to be regarded as the purest form of democracy. As such, certain governance mechanisms that are premised on direct democracy continue to find their place in modern constitutions and legal frameworks. Traditionally, direct democracy has been concerned with formal instruments, such as referenda and recall elections. However, alternative instruments that allow citizens to be directly involved in governance, such as public petitions, have been formalized through law and practice and have come to be accepted as loosely falling within the scope of direct democracy. Thus, for the purpose of this research study, an expansive scope of direct democracy will be considered so as to include both traditional and alternative instruments of citizen engagement.

Sri Lanka has recognized and formalized traditional and alternative instruments that allow citizens to directly engage in policymaking and matters of governance. This research study explores these instruments, which include: i) the referendum; ii) private member bills; iii) public petitions; and iv) parliamentary questions, with a view to assessing the modalities within which they operate and analyzing their efficacy in promoting direct citizen engagement.

This research study is presented in three sections. The first section explores the instruments that enhance the ability of citizens to directly engage with and be involved in governance in Sri Lanka. The second section discusses inherent and structural challenges that undermine the meaningfulness and effectiveness of these instruments. The final section provides conclusions drawn from the preceding analysis and briefly discusses solutions to address the challenges.

2. The Formalized Instruments Recognized Under Sri Lanka's Legal System

2.1. Introduction

The evolution of public participation in Sri Lanka's democratic processes can be traced back to Sri Lanka's colonial period, from which the country inherited its current democratic structure (Cooray 2005). In 1944, a Westminster parliamentary structure was introduced to Sri Lanka. The institutions established under this Westminster-style structure were governed by Commonwealth parliamentary traditions, in addition to the constitution that was in force at the time. Among these traditions was the ability for citizens to directly engage in government through instruments such as private member bills, public petitions, and parliamentary questions (Sixth Report of the Committee on Public Petitions 2016). In 1972, Sri Lanka adopted the First Republican Constitution, which continued the Westminster parliamentary structure of government (Wasanthakumar and Abeyratne 2015).

In 1978, Sri Lanka adopted the Second Republican Constitution, which introduced a semi-presidential system, that is, a combination of a presidential system and a parliamentary system, which was a departure from the previous Westminster parliamentary system. Article 3 of this Constitution recognizes that the sovereignty of the Republic of Sri Lanka is inalienably vested in the people of Sri Lanka. Article 4 formulates the structure of democratic governance in Sri Lanka, establishing that the executive power of the sovereign people shall be exercised by the executive president, the legislative power of the sovereign people shall be exercised by the parliament, and the judicial power of the sovereign people shall be exercised by the parliament through the system of courts (Ratnapala 2021). The sovereign people shall elect the executive president and the members of parliament as their representatives every five years. Governance in Sri Lanka is carried out through this structure of representative democracy.

However, the constitution and laws of Sri Lanka recognize a number of mechanisms and instruments by which the sovereign people can be directly involved in governance. These mechanisms and instruments are twofold: i) referendums; and ii) other formalized instruments of direct engagement.

2.2. The Referendum

The essence of a referendum is that it enables people to directly vote to approve or reject a law or proposal. Articles 85 and 86 of the Constitution empower the executive president to proclaim that any bill or other matter of national importance shall be put to the people for their approval (Manthri.lk 2017). The procedure for carrying out a referendum is prescribed in the Referendum Act No. 7 of 1981. The need for a referendum can also arise in two other instances. The first of these is when a bill proposes the amendment, repeal, or replacement of any of the entrenched articles of the Constitution. The second is when the Supreme Court determines that a proposed bill is inconsistent with an entrenched article of the Constitution.¹

¹ The entrenched articles of the Constitution are set out in Article 83 of the Constitution. They are Article 1 (the name of the state: Sri Lanka), Article 2 (the nature of the state: Unitary), Article 3 (recognizing the inalienable sovereignty of the people), Article 6 (design of the national flag), Article 7 (lyrics and melody of the national anthem), Article 8 (declaration of the national day), Article 9 (granting Buddhism the foremost place), Article 10 (freedom of thought, conscience, and religion), Article 11 (freedom from torture or cruel, inhumane, or degrading treatment or punishment), and Articles 30(2)

There has been only one referendum in Sri Lanka. This referendum took place when the president at the time, J.R. Jayawardena, submitted a proposal to the people to extend the term of the existing parliament for a further six years without conducting a general election (Jayawickrama 2021). On December 22, 1982, the referendum was held and 54.6% of voters approved the proposal, while 45.3% of voters rejected the proposal, thereby effectively extending the term of the then-parliament for a further six years, i.e., to 1989 (Manthri.lk 2016).

However, there are two critical shortcomings in Sri Lanka's framework on referenda that undermine its ability to be used as an instrument of direct democracy. The first is that a referendum can only be called by the president. There is no modality through which the people can mandate a referendum. As such, the calling of a referendum is purely at the discretion of the president. The second shortcoming is that referenda are limited to approving bills at the parliament level and matters of national importance. Accordingly, the referendum framework has no application to matters at the local government level, thereby preventing communities from directly participating in policymaking on matters that are likely to impact them on a day-to-day basis (William Horace Brown 1905). By contrast, in Switzerland, the people can request local government bodies (cantons) to initiate legislative processes and propose amendments to existing laws. Furthermore, citizens of Switzerland are empowered to call for administrative referendums, during which the people are entitled to vote on projects that will incur high levels of public expenditure (Electoral Knowledge Network 2004).

2.3. Other Formalized Instruments

Article 74 of the Constitution empowers parliament to formulate standing orders for the purposes of, among other things, regulating the procedures of parliament. The parliamentary standing orders that are presently in force formalize three instruments that are intended to increase citizen engagement and involvement in governance. These three instruments are: i) private members bills; ii) public petitions; and iii) parliamentary questions.

2.3.1. Private Members Bills

A private members bill is a formal instrument that has the potential to be used by citizens to directly impact legislation and policy formulation.² Standing Orders 52 and 53 state that a private member can present two types of bills to parliament. The first of these types is bills that are intended to affect or benefit a particular person, association, or corporate body. The second is bills that are intended to be in furtherance of the public interest.

Using private members bills is a two-step process. First, a citizen must advocate for and gain the support of a parliamentarian who is a "private member" for the purposes of introducing a bill to parliament. Secondly, said parliamentarian must sponsor the proposed bill in parliament. Once this process is completed, the bill will be deliberated upon in parliament according to generally accepted procedures; that is, the bill is referred to the Attorney General for their opinion, and if the Attorney General deems that the proposed bill is consistent with the Constitution, the bill is published in the

and 62(2) (prescribing the terms of office of the executive president and members of parliament).

² Standing Order 24(3) interprets the term "private member" to mean any parliamentarian who does not hold the office of the Speaker, Deputy Speaker, Deputy Chairperson of Committees, Prime Minister, Cabinet Minister, State Minister, Deputy Minister, Leader of the House of Parliament, Leader of the Opposition in Parliament, Chief Government Whip or Chief Opposition Whip.

Gazette. Members of the public are then given the opportunity to challenge the proposed bill before the Supreme Court for seven days after the publication of the bill in the Gazette (SL Const Article 121(3)). Thereafter, the bill will proceed for deliberation in parliament.

However, data collected by the Manthri.lk, an independent platform monitoring Sri Lanka's parliament, suggests that private members bills are underutilized as an instrument of direct citizen engagement. The data revealed that between August 2015 and October 2021, a total of 209 private member bills were presented in parliament, yet only 12 of these bills concerned matters of public interest (see Table 1). Thus, it is evident that private member bills have been predominantly utilized as an instrument to regulate the affairs of incorporated bodies, rather than an instrument to address issues of public interest.

2.3.2. Public Petitions

Petitioning the parliament is a traditional democratic instrument that was inherited by Sri Lanka through the British Westminster system (Huzzey and Miller 2020). At present, the public petition mechanism enables a citizen “to bring to the notice of parliament the flaws in the administrative machinery of the government and seek redress for grievances suffered” (Wijesekera 2002).

An aggrieved citizen can submit a petition to any parliamentarian requesting that the matters contained in the petition be considered and resolved. The petition is required to be submitted in writing and endorsed by the aggrieved citizen. If the parliamentarian to whom the petition is addressed is satisfied that there is a valid grievance, the parliamentarian can endorse the petition and refer it to the Committee of Public Petitions (Manthri.lk 2018). The Committee of Public Petitions is currently comprised of 15 parliamentarians, representing all of the political parties in parliament. The Committee has the authority to entertain an unlimited number of petitions on an unrestricted range of topics (Parliamentary Standing Order 122). If the Committee on Public Petitions is of the view that a petition reveals an infringement of the citizen's fundamental rights or an injustice caused to the citizen, the Committee may either conduct an inquiry by itself or refer the petition to the Parliamentary Commissioner for Administration (Ombudsman) for consideration and granting of due relief (Parliamentary Standing Order 122(3)).

Statistics published on Manthri.lk revealed that during the tenure of the Eighth Parliament of Sri Lanka (August 2015 to August 2020), a total of 2,401 public petitions were submitted to the Committee on Public Petitions by 181 parliamentarians out of the total of 225 members of the Parliament of Sri Lanka (see Tables 2 and 3).³ As such, 42 parliamentarians did not submit any public petitions to the Committee on Public Petitions. Of the 2,401 petitions, a total of 1,115 petitions, that is, 46% of all petitions, were presented by only 10 parliamentarians (see Table 4). Similarly, during the tenure of the present Parliament of Sri Lanka (September 2020 to date), a total of 712 public petitions were submitted to the Committee on Public Petitions by 138 parliamentarians, indicating that 85 parliamentarians have not yet submitted any public petitions to the Committee (see Tables 5 and 6).

These statistics indicate that public petitions are neither extensively nor uniformly used by the citizenry of Sri Lanka as an instrument for directly engaging with the government and administration.

³ The speaker and the deputy speaker are excluded as members of parliament for the purposes of this computation.

2.3.3. Parliamentary Questions

Parliamentary questions are another instrument that have the potential to enable citizens to directly engage with parliament and policy formulation. Parliamentary questions are, in essence, the posing of oral and written questions by a parliamentarian to the prime minister or any other minister on matters of public affairs (Policy.lk 2020).

In order to utilize this instrument, an individual or a group of individuals must advocate for and obtain the support of a parliamentarian for the purpose of posing questions on their behalf. The posing of parliamentary questions is governed by the parliamentary standing orders, which allow parliamentarians to direct any questions to any minister regarding matters of government policy that fall within the purview of the minister. While questions posed to parliament must generally be placed on the Order Book of Parliament, Standing Order 27(2) allows the leader of the opposition and any party leader to raise questions relating to matters of public importance without requiring the questions to be included in the Order Book of Parliament. Moreover, following the parliamentary tradition of the United Kingdom, from 2018 onwards, parliamentarians are entitled to direct up to four questions to the prime minister pertaining to governmental policies during the prime minister's question time. Accordingly, citizens can urge their representatives to take advantage of the opportunity to ask parliamentary questions for the purpose of voicing the questions that the public has on matters of policy and administration.

Statistics compiled by Manthri.lk revealed that during the tenure of the Eighth Parliament of Sri Lanka, a total of 2,372 questions were raised by 105 parliamentarians (see Table 7). Of these 2,372 questions, a total of 1,324 questions (approximately 56%) were raised by only 10 parliamentarians (see Table 9). Similarly, during the tenure of the present parliament, 10 parliamentarians were responsible for raising 397 questions (approximately 64%) out of a total of 619 parliamentary questions (see Table 10).

Thus, as with private members bills and public petitions, the instrument of parliamentary questions also appears to be inadequately and ineffectively used for the purposes of direct engagement with matters of governance.

3. Challenges to the Use of Formalized Instruments Within the Context of Sri Lanka

Analysis of the frameworks within which the aforementioned formal instruments function reveals three critical challenges that undermine the ability of the people to directly engage in matters of governance: i) the absence of mechanisms to mandate the implementation of instruments of direct engagement; ii) the absence of mechanisms to improve parliamentary accountability; and iii) systematic and structural issues that inhibit access to instruments of direct engagement.

3.1. Absence of Mechanisms to Mandate the Implementation of Instruments of Direct Engagement

Although the parliamentary standing orders provide for the presenting of private members bills, public petitions, and parliamentary questions, the functionality of these instruments is premised solely on the discretion of parliamentarians. This is because a private members bill, public petition, or parliamentary question will be presented only if the parliamentarian who has been approached by a

citizen agrees to submit the matter before parliament. None of the frameworks contain a mechanism by which a citizen or a group of citizens can trigger mandatory action by a parliamentarian. For instance, if a citizen wishes to submit a petition or ask a minister a particular question, the citizen can only do so if a parliamentarian agrees to submit such a petition or ask such a question. There is no way that the citizen can compel the parliamentarian to do so, regardless of the validity of the concerns raised by such a petition or question. This challenge also arises with regards to referendums, as the ability to call a referendum is vested solely in the president and cannot be triggered by the people with respect to matters of national or local importance.

3.2. Inadequacy of Mechanisms to Improve Parliamentary Accountability

Accountability can serve as a critical check against the tyranny of unbridled discretion. Thus, improving mechanisms that hold parliamentarians accountable can serve as a valuable method of ensuring that the discretion afforded to parliamentarians in terms of implementing instruments of direct engagement is exercised fairly and reasonably.

However, Sri Lanka lacks mechanisms that improve and ensure the accountability of parliament. For instance, there is no mechanism through which a petition submitted by a citizen can be tracked. Thus, an aggrieved citizen has no way to monitor the progress of their petition. Moreover, prior to the publication and compilation of statistics on the submission of public petitions and parliamentary questions by Manthri.lk, there were no mainstream platforms that published statistics on parliamentary attendance or how parliamentarians implemented and gave effect to these instruments. Further, Sri Lanka has yet to implement a mechanism requiring parliamentarians to report their progress as a public representative on a monthly or annual basis. These gaps in holding parliamentarians accountable enable them to exercise discretion without sufficient checks, thereby undermining the ability of citizens to fully instrumentalize the frameworks of private member bills, public petitions, and parliamentary questions. The lack of mechanisms to mandate the implementation of these instruments is thereby compounded by the lack of mechanisms to hold parliamentarians to account.

3.3. Systematic Issues Inhibiting Access to Instruments of Direct Engagement

Access to democratic institutions is essential to the meaningful utilization of instruments of direct engagement, but certain systemic issues in Sri Lanka have significantly inhibited access to such institutions and instruments. A few of these issues are explained as follows.

3.3.1. Limited Access to Parliamentary Proceedings

Parliamentary proceedings in Sri Lanka are physically and virtually accessible to the public, and parliamentary proceedings are telecast on national networks. However, this accessibility is limited to the proceedings of the main chamber of parliament. In contrast, the proceedings of the numerous committees and sub-committees of parliament, which also deliberate on matters of public interest, are not accessible to the public.

3.3.2. Gender Gap in Democratic Institutions

Per the 2021 Global Gender Gap Index, Sri Lanka is ranked 116th overall out of 150 countries and 90th in terms of political empowerment of women (Democracy Reporting International 2021). Sri Lanka's rank is predominantly premised on the low presence and participation of women in political organizations, government institutions, and elected offices. Limited female participation in public life has been linked to several causes, including Sri Lanka's patriarchal culture, violence against women, and the negative portrayal of female political candidates in the media and by political rivals. Although Sri Lanka introduced a quota for female politicians at the provincial and local government authority levels, women are still underrepresented in Sri Lanka's representative bodies. This low level of participation in formal politics by women inhibits female citizens from exercising their democratic rights by effectively engaging with the country's democratic institutions.

4. Conclusion and Areas for Improvement

4.1. Conclusion

Two findings can be derived from the above analysis. First, it is clear that Sri Lanka has mechanisms in place that enable citizens to directly engage in matters of governance, administration, and policymaking. In utilizing these mechanisms, ordinary citizens seek to achieve a higher level of involvement in matters that will affect their day-to-day lives. Second, there are challenges to accessing and being able to meaningfully use these mechanisms. These challenges stem from issues inherent to the mechanisms themselves, such as their dependence on the discretion of a representative of the people, as well as systemic issues in Sri Lanka's governance framework, such as inadequate access to parliamentary proceedings.

Thus, in order for citizens to be able to participate more directly and meaningfully in democratic governance, these mechanisms need to be improved on a number of grounds, such as:

i. Expanding the scope of referendums

Although Sri Lanka's Constitution recognizes referendums as a method of direct democracy, the executive president is the only individual with the authority to call for a referendum. Sri Lanka could resolve this problem by adopting a system similar to that of Switzerland, where the people can trigger legislative initiatives and referenda. Sri Lanka should also explore introducing referendums for resolving legislative and policy issues at the local governmental level by allowing citizens to trigger referenda through proposals once they receive endorsements/signatures from a sufficient portion of the constituency.

ii. Introducing mechanisms to increase accountability of public representatives

Although Sri Lanka recognizes private members bills, public petitions, and parliamentary questions as formalized instruments allowing citizens to directly engage with parliament, the successful

implementation of these instruments is contingent on effective implementation and follow-up by parliamentarians. Thus, Sri Lanka should explore the possibility of introducing mechanisms to monitor the use of such instruments by citizens and parliamentarians, while also raising awareness of the utility of such mechanisms among the general public.

iii. Introducing mechanisms to mandate the implementation of formalized instruments

As discussed before, the formal mechanisms of direct engagement currently lack a threshold or trigger that mandates their implementation. Therefore, Sri Lanka should introduce procedures that trigger the automatic implementation of such formalized instruments in specific circumstances, such as when a petition or proposal has been endorsed/signed by a specific number of citizens. ■

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For inquiries:

Jinkyung Baek, Director of the Research Department/Senior Researcher

Tel. 82 2 2277 1683 (ext. 209) j.baek@eai.or.kr

The East Asia Institute
1, Sajik-ro 7-gil, Jongno-gu, Seoul 03028, Republic of Korea
Phone 82 2 2277 1683 Fax 82 2 2277 1697