Key challenges of democratization in post war and post elections Sri Lanka

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1. Introduction:

In May 2009, the Sri Lankan government claimed victory of the three decade old war, winning over territories the government had no control for decades and eliminating the leadership of the rebel Liberation Tigers of Tamil Eelam (LTTE) and capturing thousands of its cadres. The government also claimed victory in a series of elections including the 2010 presidential and parliamentary elections.

It is in this context, that I will try to look beyond the surface and highlight some key challenges of democratization that we face in Sri Lanka today. It is not meant to be an academic thesis on history and present status of democracy in Sri Lanka, but rather, based on my personal experience and work.

On one hand, the perspective I present would be based on what I have seen and heard in regular visits to the war ravaged North and East of Sri Lanka. Where no visit will pass without coming into contact with families of those killed, disappeared, detained and having to listen to tragic tales of those injured, displaced, lost properties, had been detained and tortured. Closer to home in Colombo, my perspectives are influenced by conversations with regular visitors to my office, many of whom are journalists, lawyers, religious leaders, human rights defenders facing repression and their helpless families. Fear of their lives had compelled some of these people to go into hiding, others are trying to flee the country and while some had already fled.

2. Inclusive vs. exclusive democracy – from ancient Greece to modern Sri Lanka:

History of democracy is often traced back to ancient Greece. But what is less well known is that the democracy practiced in Greece excluded majority of its people from participating in governance and politics, including women and slaves. So contrary to the projected image of the will of the majority and popular participation, democracy in ancient Greece was in effect the will of a small privileged group.

Today, there are no slaves in most countries considered democratic. Women vote and also stand for elections (although the number of women in politics remain minimal compared to the female population). This is also true for Sri Lanka.

But like ancient Greece, democracy in Sri Lanka today is far from being inclusive. Like the slaves and women in ancient Greece, minorities and those with dissenting views are at the losing end of the brand of democracy that is being practiced in Sri Lanka today.

3. Elections and majoritarianism in Sri Lanka:
Elections and will of the majority is often considered key benchmarks in a democracy. The Sri Lankan experience today is an example of the inadequacy of elections as a benchmark of a functioning democracy.

From my frequent visits to North and East and interactions with people there, it was clear that elections were way down in their list of priorities.

Killinochi and Mullativu, which was fully controlled by the LTTE for a number of years, were the worst affected districts in the war waged in 2008 – 2009, with its entire people displaced and thousands killed, injured and missing. In presidential and parliamentary elections held in early 2010, the voting percentage in these two districts was around 12%, despite government claims that all arrangements had been made for people to vote in an atmosphere devoid of intimidation and coercion. In most parts of the country outside the North and East war zones, more than 60% voted.

So they the people who bore the brunt of the war, and whom the government claims to have liberated, clearly didn’t think elections were going to solve their problems.

On 8th April, the day of the first post war parliamentary elections, I was in the formerly LTTE controlled districts of Killinochi & Mullativu in the North, and below are some quotes from what people told us:

“Today, I live crying everyday, and searching for my 3rd son. He was injured and taken to a hospital by the armed forces. I heard that he was in Mannar hospital and I went there. I was told by the hospital that the Army had taken him away after getting him discharged. But I couldn’t find the Army officers who had taken him. I can’t find my son also. Who will find my son? There are so many mothers and fathers in this situation. Can those who have elections find our children?”

“This election is being held to destroy Tamil politics. Victory of the both the war an elections will be theirs (meaning the Sinhalese)”

“We have to live as slaves in our own land. Those who made us slaves are having elections. Their cronies are asking for our votes by threatening us. Is this victory? We are a defeated community”

“We lived by believing in us and believing in our sweat. We lived happily and peacefully. Those who grabbed this from us are now having elections and asking for our votes. This is to show the world”

More than two years ago, in February 2008, few weeks prior to the Eastern Provincial Council elections, I was in Batticaloa a prominent town in the Eastern province, which the government claimed it had liberated from the LTTE in 2007. Below is what a mother from Batticaloa had to say to the TMVP, a political party led by former militants, and which was contesting the elections with the ruling party:
“Return my husband you abducted before you ask for my vote”

Another person had this to say before that election:

“If they (TMVP) are genuine about entering democratic politics, why can’t they release all their forced recruits, especially children? Why wait for after elections?”

The last two national level elections, first in post war era, indicated clearly ethnic polarization in Sri Lanka. In the January 2010 Presidential elections, the incumbent President won less than 1/3 of the votes in Tamil dominated North and East, while he won about 2/3 in other parts of Sri Lanka. The Parliamentary elections in April 2010 also showed a similar trend.

Thus, the Tamils who are minority nationally, but majority in the North and East find themselves in a situation where they are governed by a President and political party elected by they (Tamil people) clearly rejected in successive elections.

In an ominous sign of continuing repression of dissent, in the immediate aftermath of the presidential elections, the defeated presidential candidate, who won about 40% of votes, including clear majorities in the North and East, was arrested and detained. While the legitimacy of the arrest and reasons behind this is being argued in the public domain and has been challenged in courts, the timing of the arrest was alarming for those who valued dissent.

4. Respect for minority rights and dissent – key to democracy in Sri Lanka:

It is in this context that I flag respect for minority rights and dissent as two key elements that are essential if Sri Lanka is to move forward as a true democracy today. Indeed, I believe this is valid not just for Sri Lanka, but any country.

4.1 Minority rights and aspirations

Discrimination and harassment of the minority Tamil community was the root cause of the ethnic conflict and brutal war. Peaceful struggles were violently repressed and Tamil youth took up arms and violence, which in turn drew more repression from the Sinhalese dominated government, military and police.

One result of the war had been the brutal clampdown on dissent within the Tamil community by the LTTE, which assassinated several leading Tamil politicians, academics, activists and even other militants. Countless others choose to be silent or flee overseas. Now, after the military defeat of the LTTE, it is expected that there will be more pluralistic political thinking and self criticism within the Tamil community.

However, challenges faced from the Sinhalese dominant government remains.

Although the government claims to have defeated the LTTE, the strongest Tamil armed group and ended the war, Tamil aspirations remain far from being fulfilled. Infact, there are fears that the military and election victories of the government will result in further alienation of Tamil community and strengthen Sinhalese – Buddhist nationalism and domination.

A political restructuring of the state, with a system of power sharing acceptable to the minority Tamil and Muslim communities, as well as the majority Sinhalese is clearly the long term solution to resolve the ethnic conflict in Sri Lanka. Power sharing is also seen as a step towards good governance and popular political participation amongst all communities and provinces. The clear electoral rejection of the President and his party in both presidential and parliamentary elections in 2010 in the Tamil dominated North and East also point towards the need for power sharing and to move away from Colombo based centralized power structure dominated by Sinhalese. The present President and his ruling coalition in parliament, with huge electoral majorities, appear to be in a good position to push through such restructuring. However, from what’s been said and done, restructuring the state and power sharing appear to be far from the agenda of the President and the ruling coalition.

While a political solution is the long term aspiration of the minorities, particularly the Tamils, there are number of short term issues that need to be dealt with to ensure minorities enjoy equal rights and dignity. Below are some such urgent minority issues to be addressed in the short term, without which democracy would be meaningless.

- Acknowledgement and due procedure (at least death certificates and compensation if justice for perpetrators is too much to ask for) in relation to the thousands of Tamil civilians killed in the last five months of the war in the North in 2009
- Dealing with the thousands of missing people, particularly since 2006, the vast majority of whom are Tamils
- Detention of more than 10,000 Tamil youth, for almost a year, without charges and access to lawyers and protection agencies such as ICRC. They are alleged to be ex – LTTE cadres, but majority are those who had been forced by the LTTE to engage in armed conflict and civilian chores of the LTTE
- Detention of thousands of more Tamil youth throughout the country, without any charges, some for more than 10 years, based on the Prevention of Terrorism Act and Emergency regulations
• Speedy resettlement of those displaced by the war in places of their original habitats or places of their choice, with adequate security, livelihood opportunities, access to services such as transport, health and education
• Ensuring land rights for minority communities
• Dispel fears of cultural domination of traditional Tamil (Hindu – Christian) areas through the erection of Buddhist monuments, Sinhalese sign boards etc.
• Destruction of cemeteries of Tamil militants and erection of monuments celebrating military victories

4.2 Tolerance and appreciation of dissent

The second key challenge towards democratization is tolerance and appreciation of dissent.

“Dissent at a time of war amounts to treason” was an ideology promoted at the highest level of government in Sri Lanka, including by the Defense Secretary and brother of the President.2

This is not to be taken lightly.

Since 2005, opposition politicians have been killed, threatened, attacked and interrogated.

Tamil Doctors, who remained in the theater of war to the very end, treating patients and telling the country and the world about the civilians affected by the war, were detained.

Tamil church leaders, who had tried to assist, protect, serve and lend a voice to those affected by the war had been killed, disappeared, detained and threatened. Santha Fernando, a 64 year old church activist was arrested at the airport and detained for several months for carrying images of the effect of the war on civilians. It is more than three years since the disappearance of Rev. Fr. Jim Brown, a Catholic priest who was threatened by the Navy after he had tried to intervene to assist and protect displaced people who took shelter in his church amidst shelling.

Lawyers appearing for victims of torture and those detained as LTTE suspects were labeled traitors by the website of the Ministry of Defense. Amitha Ariyaratne, a human rights lawyer, who represented a torture victim who was subsequently killed, was assaulted inside a police station and his office was burnt. Grenades were thrown at the house of J. C. Weliamuna, a leading human rights lawyer and Executive Director of Transparency International Sri Lankan chapter.

Paikiasothy Saravanamuttu, Executive Director of independent think tank Centre for Policy Alternatives was detained and interrogated at the airport, and received death threats by post.

Authorities then started to hunt down and interrogate concerned citizens who signed and publicized a statement condemning the death threat and expressing solidarity with Saravanamuttu.

Journalist Tissainayagam remains in hiding as he appeals the 20 year conviction for writing two articles highlighting effects of the Eastern war of 2006 on civilians. Consistent government critic and Editor Lasantha Wickramatunga was shot dead close to a major air force base. The paper he edited and exposed numerous corrupt deals and abuses, the Sunday Leader, as well as popular television station “Sirasa” seen as more independent, giving coverage to opposition political parties and exposing police and administrative abuses, were subjected to attacks several times with serious losses to property and equipment. Tamil Editor Vithyatharan, was abducted by unknown persons, but later, it turned out that the “abduction” was actually an arrest and he was in custody of the police. He was subsequently released by courts without any charges being filed due to lack of evidence. But before his release, the Defense Secretary and President’s brother had passed his own judgment that “Vithyatharan is a terrorist. If you try to safeguard him, you will have blood in your hands. He is the person who coordinated LTTE air attacks in Colombo”3

Several employees of state media institutions, who insisted on unbiased coverage of the presidential election campaigns in 2010 based on guidelines issued by the Supreme Court and the Elections Commissioner, were interdicted and sacked from their jobs. Others were assaulted inside the media institutions and some are in hiding due to threats.

Journalist and cartoonist Prageeth Ekneligoda, went missing on 24th January 2010. Todate, there is no news of him.

Many activists and journalists have fled the country in fear. Some temporarily, some permanently.

So it appears that we in Sri Lanka are resigned to a democracy where dissent can entail punishments ranging from assassination, disappearance, assault, arson, detention without charges, 20 year prison sentences etc.

Until dissent is tolerated and appreciated, democracy remains a distant dream for Sri Lanka

5. The way forward: Independent institutions, rule of law and change in popular thinking

Two things would be important in moving towards an inclusive democracy that respects minority rights dissent.

5.1 Independent institutions and rule of law

The Sri Lankan constitution, through its 17th amendment, a rare amendment that was adopted unanimously in parliament, set up the Constitutional Council that is expected play a key role in nominating individuals to key independent commissions such as the National Human Rights Commission, Police Commission, Elections Commission, Judicial Services Commission, Bribery and Corruption Commission. However, all these independent institutions have been paralyzed due to the non implementation of the 17th amendment and thus, we are left with no independent institutions to ensure rule of law and checks and balances on the executive branch of the government.

Repeal of the emergency regulations and prevention of terrorism act must feature high on the agenda, if Sri Lanka is to move towards democracy. These are two draconian pieces of legislation incompatible with a functioning democracy. These laws have taken away safe guards citizens are entitled under Sri Lankan and international law and conferred massive power and even immunity to the defense establishment. These laws have provided legal cover to torture and prolonged periods of detention without judicial supervision and discretion. Amongst the thousands of victims of these laws the majority of are Tamils.

The Sri Lankan government has claimed victory over the LTTE, one of the most brutal and organized rebel groups in the world, which for number years ran a de-facto state in an area spanning more than two districts in northern Sri Lanka.

However, ironically, the same government has failed miserably to ensure justice for large number of killings, disappearances, torture, assaults, threats and variety of other abuses against lawyers, journalists, human rights defenders, religious leaders, opposition politicians and general citizens, particularly Tamils. Until independent institutions in Sri Lanka are able to tackle this wide spread impunity, it is clear Sri Lanka needs international assistance. Wide spread impunity and democracy are certainly not compatible.

5.2 Change of popular thinking

Along with institutional set up that will facilitate rule of law and address impunity, Sri Lankans society, particularly the majority community (Sinhalese Buddhists), and will also need to undergo a paradigm change of respecting minority rights and dissent.

The spectacle of hundreds and perhaps thousands of Sinhalese celebrating in the streets of Colombo and other southern cities at the end of the war in May 2009, while their Tamil brothers and sisters in the north were weeping and mourning for loved ones killed, missing, injured and detained in inhumane conditions, was shameful and certainly doesn’t bode well for a democratic Sri Lanka.

If Sri Lanka is to stay united and prosper as a country, the majority community will have to understand that their wellbeing is closely connected to the wellbeing of minorities and that progress will not be achieved by subjugating minorities through electoral and military victories.
6. Conclusion:

Electoral and war victories have brought about a strange type of democracy to Sri Lanka.

A democracy where executive and legislative power is effectively in the hands of one ethnic community, one party, office of one person, and one family.

A democracy where rights and aspirations of minorities are easily discarded in the guise if separatism.

A democracy where dissent is subjected to brutal repression in the name of national security and treated as treason and criminal act.

A democracy where independent institutions to ensure rule of law and checks and balances on power have collapsed.

A democracy where the majority community doesn’t care about humiliations and indignities heaped on a minority community and goes to the extent of celebrating a war victory that had brought death, destruction and grief to the minorities.

Until and unless we are able to address the above, inclusive and true democracy remains a distant dream in Sri Lanka.

The litmus test for true and lasting democracy is not how rulers treat their allies, partners and the majority community that voted them in, but rather, how minorities and those with dissenting and critical views are treated.