

[Working Paper Series: Pandemic Crisis and Democratic Governance in Asia – Part 2]

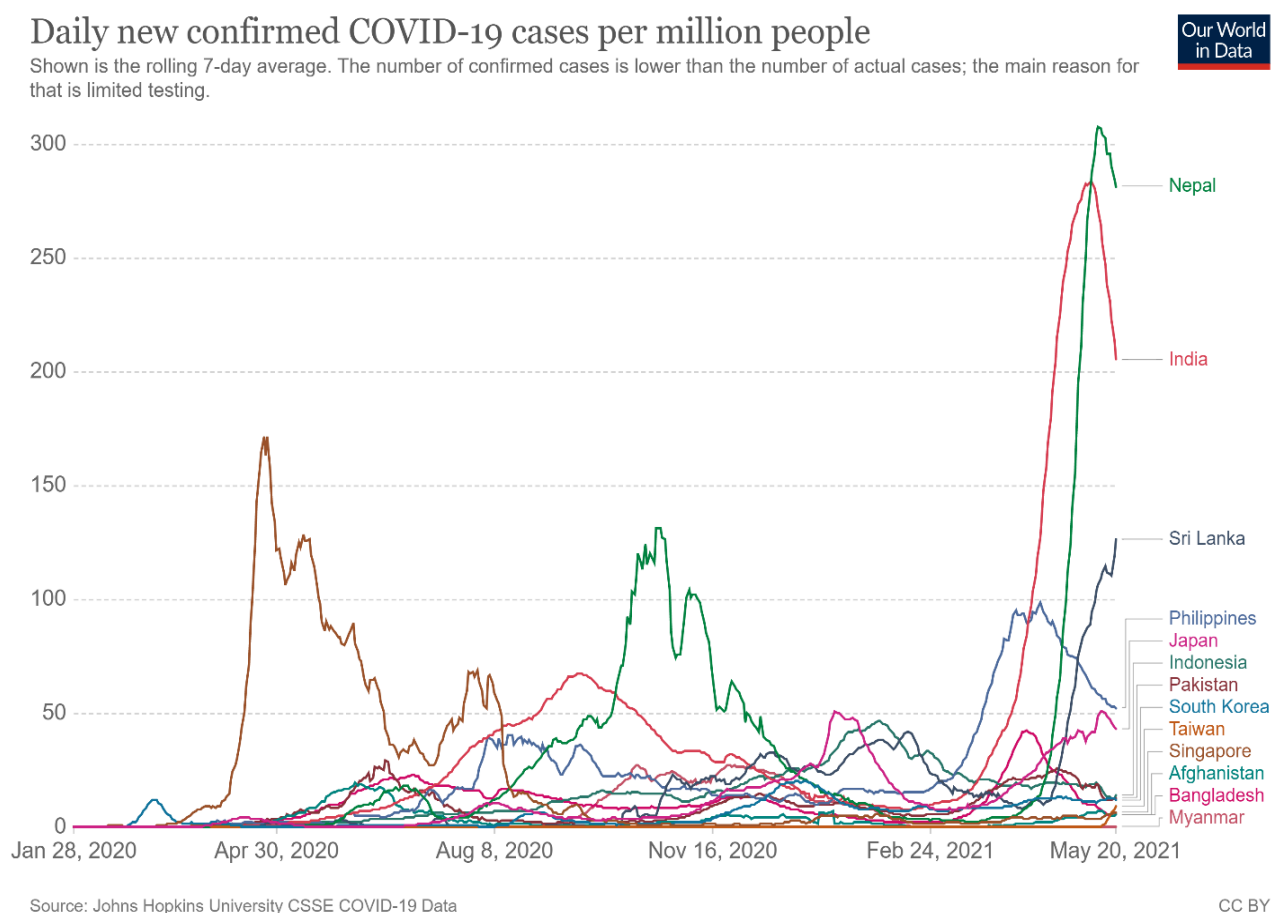
Pandemic Crisis and Democratic Governance in Sri Lanka

Centre for Policy Alternatives

1. Challenges Posed by the Pandemic

The pandemic has posed a number of unprecedented challenges in Sri Lanka, with socio-political effects spanning far beyond the immediate public health and economic crises. Given that the number of issues goes beyond that which can be adequately analyzed in a single article, this working paper will focus primarily on an aspect of the pandemic crisis which is of particular salience in Sri Lanka and from which lessons can be drawn for other countries in the region. Namely, the challenges to democracy that have emerged during the pandemic period. The paper will look at the ways in which the post-COVID-19 political landscape has been a conducive environment for democratic backsliding, focusing on the period between the beginning of the pandemic response in March 2020 until the time of writing in May 2021. It will look, in particular, at how the policy space opened up by the pandemic has created an ideal context for the acceleration of the processes of executive aggrandizement, militarization as well as the infringement of citizens' civil liberties.

Before we enter this discussion of democratic backsliding, we must consider the public health background against which it has taken place. During the first three months of the pandemic, the number of cases was at a relatively manageable level of less than 100 new cases a day. However, this was followed by a second wave in September 2020 and a particularly damaging third wave beginning in April 2021 which has left Sri Lanka reeling. What was initially lauded as a comparatively effective public health response has proven to be rife with miscalculations and short-sightedness. As of May 21, 2021, Sri Lanka had a seven-day average of 2712 new cases per day.

Figure 1. Cumulative Confirmed COVID-19 Cases per Million People

Source: Roser et al. 'Our World in Data' Accessed May 21, 2021¹

While initially, the crisis was more of an economic and political one rather than a crisis of public health (to the extent that these can be separated), the trajectory of increasing cases has brought to the fore the issues in the capacity of the health system. Sri Lanka's case rate per million of the population is now amongst the highest in Asia.

The third wave of the pandemic has recorded the most drastic increase in the number of cases and has resulted in a shortage of resources and infrastructure. The number of ICU beds available for instance has been a matter of great concern. At the time this paper was written 88 percent of hospital beds around the country were in use, with many patients across the country without beds.² Hospitals have also reported shortages of oxygen as well as shortages of healthcare workers to deal with the increasing number of cases.³

In response to this, the Government announced plans to purchase oxygen cylinders and new ICU beds to build temporary facilities to hold COVID-19 patients who are not in a critical condition however acting on this

¹ Roser et al "Coronavirus Pandemic (COVID-19)." OurWorldInData.org, 2021. <https://ourworldindata.org/coronavirus>.

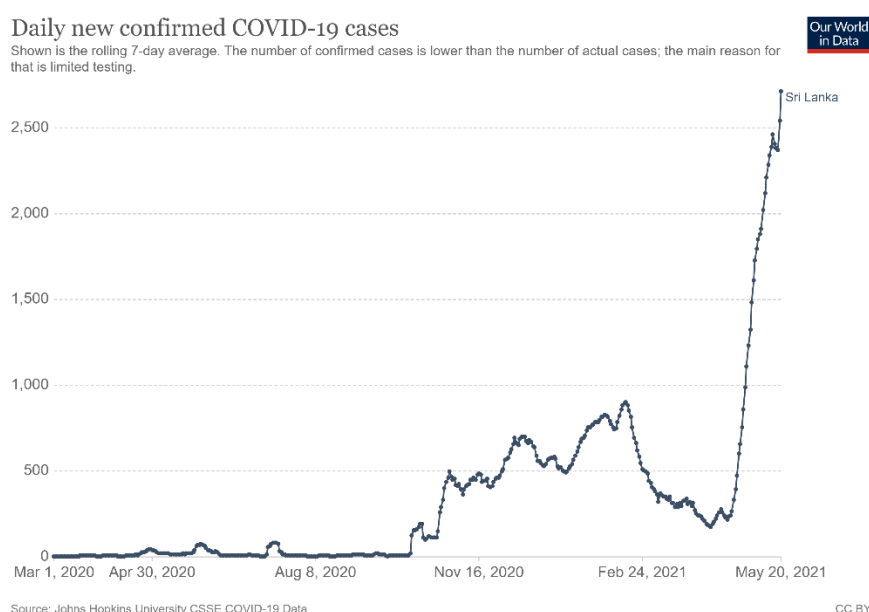
² 'Geneva Palais Briefing Note on COVID-19 in South Asia' UNICEF COVID-19 25th May 2021 <https://www.unicef.org/press-releases/geneva-palais-briefing-note-covid-19-south-asia>

³ 'Rise in Number of COVID-19 Cases Shortage of ICU Beds in Hospitals Islandwide', Daily Mirror Online, 27th April 2021 http://www.dailymirror.lk/print/front_page/Rise-in-number-of-COVID-19-cases-Shortage-of-ICU-beds-in-hospitals-islandwide/238-210658

measure has been slow. As such, several hospitals, such as the National Hospital of Sri Lanka in Colombo, still face resource shortages and have turned to the general public for donations in order to fulfill their resource needs.⁴

Stringent measures such as the imposition of an island-wide lockdown and restrictions on travel and social gathering account for the initial success in dealing with the first wave. However, the Government has been unable to deal with the second and third waves despite the reimposition of the same measures, as indicated by the data in figure 2. Aside from the infection rates, there are a number of policy decisions that account for this failure to contain the second and third waves.

Figure 2. Daily New Confirmed COVID-19 Cases



Source: Roser et al 'Our World in Data' Accessed 21st May 2021⁵

The first reason the government failed to control the virus is that restrictions during the second and particularly the third wave were not implemented immediately and once implemented, were not as stringent as during the first wave. The lockdown implemented to deal with the third wave, for instance, was implemented only once it became clear that there was no other choice, with the government maintaining that no lockdown would be implemented until as late as April 29, 2021.⁶

The second main reason for this has been the failure to test widely throughout the course of the pandemic. The Sri Lanka Government's initial pandemic response focused on rigorous contact tracing but did not prioritize investment in the development of testing capacities. Though this paper will not focus its argument on epidemiological claims, the emerging public health literature on COVID-19 control strongly suggests that high

⁴ 'Patient Management and Hospital Facilities, Is the COVID Picture Portrayed by Authorities Real' Daily Mirror Online, 19th May 2021 <http://www.dailymirror.lk/news-features/Patient-management-and-hospital-facilities%3A-Is-the-COVID-picture-portrayed-by-authorities-real-/131-212244>

⁵ Roser et al "Coronavirus Pandemic (COVID-19)." OurWorldInData.org, 2021. <https://ourworldindata.org/coronavirus>.

⁶ 'No Plans to Enforce Nationwide Lockdown' Daily FT 29th April 2021 <https://www.ft.lk/news/No-plans-to-enforce-nationwide-lockdown-yet-NOCPCO-Head/56-717008>

rates of testing account for the difference between countries that managed to achieve ‘zero COVID-19’ and countries that were unable to do so despite the imposition of lockdowns (Rannan-Eliya et al, 2020).

PCR testing at the initial stages was limited to testing only those who came in contact or were involved in identified case clusters, as opposed to random sampling within the population. This created problems down the line as the virus spread in areas outside the cluster cases and created difficulties in tracing the origin of new cases.

Given the increasingly critical nature of the public health situation and the significant economic costs of lockdown, the efficient vaccination of the population will be a necessary precondition for countering the spread of the virus. The Government has thus far approved Sinopharm, Sputnik V, Pfizer/BioNTech, and Astra Zeneca-Covishield vaccines for use in Sri Lanka. 6.74% of the population have received at least one vaccination and 1.6% percent of the population fully vaccinated. Most of these vaccinations have come from donations of the AstraZeneca-Covishield and Sinopharm vaccines from India and China respectively. Given the increasingly grave situation in India, the government will not be able to rely on their donation of Covishield vaccines. As such, the Government has ordered 13 million doses of the Sputnik V vaccine and 900 000 doses of the Pfizer/BioNTech vaccine.

Thus far over 900,000 have received the first dose of AstraZeneca and 300,000 doses of the second. This was in addition to just under 500,000 receiving their first dose of the Sinopharm vaccine and 2435 receiving the second. Furthermore, around 15,000 have received their first dose of the recently purchased Sputnik V vaccines.⁷

Aside from the efforts required to manage the spread of the virus itself, the main challenge during the pandemic has been in dealing with the second-order effects of the lockdown and the measures put in place to curb the spread of the virus (the details of which shall be discussed in the following section). There has been a 27% decrease in average household income during the pandemic period.⁸ Food consumption has also decreased by 30% during this time.⁹ As such, the need for provisions regarding necessities, protecting employment, and providing financial relief has become a key challenge during the pandemic.

The pandemic has now started to emerge as a public health catastrophe; however, questions of democracy and the effectiveness of the public health response cannot be neatly separated. Some of the reasons for the failure of the pandemic response can be located in the democratizing processes that will be discussed. This paper will explore the political factors which have resulted in the failures of governance leading to this situation, demonstrating the links between these anti-democratic processes and the ineffective governance which has given rise to poor public health outcomes. In addition to highlighting the challenges to democracy, this paper will explore how the political processes of militarization, executive aggrandizement, lack of accountability, and failure to comply with the rule of law, bear upon the state’s inability to enact an effective response.

2. Features of the Pandemic Response and Impacts on Democratic Governance

⁷ ‘Situation Report’ https://www.epid.gov.lk/web/images/pdf/corona_virus_report/sitrep-sl-en-21-05_10_21.pdf
Epidemiology Unit Report May 21st 2021

⁸ Roser et al “Coronavirus Pandemic (COVID-19).” OurWorldInData.org, 2021.
<https://ourworldindata.org/coronavirus..>

⁹ Ibid.

Formation of New Governmental Structures

A key feature of the pandemic response has been the setting up of several new structures in the immediate aftermath of the initial outbreak. The most significant of these new structures was The National Operation Centre for the Prevention of COVID Outbreak (NOCPCO) which was headed by Lieutenant General Shavendra Silva. This was followed by several other ‘Presidential Task Forces’ set up under executive discretion. The mandates of these task forces were unclear, with limited information regarding the scope of their authority and their relationship with existing governmental structures.

Military Involvement

Each of these newly formed structures contained a significant number of military and former military officials. Indeed, the mobilization of the military has been a key feature of the pandemic period with their involvement at various levels of the COVID-19 response; at the level of policy-making through the task forces, as well as at the level of policy implementation, for instance in the running of quarantine centers. Military intelligence has also been used for contact tracing and surveillance.

25 chief coordinators at the district level have been appointed to “facilitate (the) smooth conduct of district-wise quarantine centers, transportation of individuals for quarantining and treatment, supply of medicine, equipment, dry-rations, and other essentials, and all other technical requirements deemed necessary.”¹⁰ These coordinators have significant authority concerning all matters that could be classified as being relevant to the pandemic response. As the primary political concern in the country was COVID-19, this gave them a wide mandate over nearly all matters on district-level public affairs. The military has, as such, gained a great deal of control over the machinery of the state at the expense of public servants during the pandemic period.

Constitutionality and The Rule of Law

The inability to hold elections was another consequence of the lockdown. The repeated postponement of these elections led to a constitutional dilemma with significant implications for the rule of law and an ongoing process of executive aggrandizement in the country.

Elections that were due to be held on April 25 were eventually postponed until August 5. Previous to this, the Parliament had dissolved on March 3, in the expectation that a new parliament would meet on May 14. According to the Sri Lankan constitution, the maximum time between the dissolution of parliament and the sitting of the new parliament is three months. With the postponement of the elections, however, the immediate pandemic response was carried out with a lack of legislative oversight for more than three months, exceeding this constitutionally mandated time limit.¹¹

¹⁰ COVID-19 Control Work to be Further Strengthened with District Coordinating Officers (Sri Lanka Army, January 1, 2021), <https://www.army.lk/news/covid-19-control-work-be-further-strengthened-district-coordinating-officers>.

¹¹ Uvin Dissanayake, “Technocratic Populism and the Pandemic State: Performative Governance in Post-COVID”

The constitution allows for the recall of a dissolved parliament through the rescinding of the dissolution by the President.¹² Petitions were made to the Supreme Court from politicians and civil society organizations calling for the President to rescind this dissolution, arguing that failure to do so represents a violation of constitutional principles. However, the Supreme Court refused leave to hear these petitions and provided no reasons for their decision (there being no judicial duty to give reasons in Sri Lankan law).

The constitutional dilemma detailed above had significant ramifications concerning several aspects of the Government's pandemic response. One of these was concerning the legality of the implementation of an island-wide lockdown.

The Quarantine and Prevention of Disease Ordinance do not provide a legal basis for the implementation of an island-wide curfew. While the Public Security Ordinance does contain provisions allowing for such a curfew, it requires the Parliament to be present in order for the curfews to be implemented.¹³ As a result, the many arrests and detention of individuals on the grounds of failing to adhere to the curfew had no legal basis. This created a worrying situation in which arrests were made on the basis of government proclamations instead of firm legal grounds.¹⁴ Although lockdowns were indeed necessary, the decision to forego proper legal procedure in implementing them and instead relying on a kind of rule by press release is a worrying development.

Minority Rights and Suppression of Dissent

Public health has been used as a pretext to shut down political speech, as was seen when the Inspector General of Police declared that 'strict action' would be taken against those who 'criticize government officials' regarding the pandemic response.

The pandemic response has also resulted in a lack of access to justice whilst providing an opportunity to avoid due process in politically expedient cases. This was apparent in the case of Heejaz Hizbullah, whose arrest failed to meet even the very minimal requirements for due process set out under the Prevention of Terrorism Act.¹⁵ Legal challenges to this arrest were obstructed by closures of the courts during the initial pandemic period and Hizbullah remains in detention over a year from his initial arrest. The hearing of his case in court was, most recently, postponed on the grounds that he had tested positive for COVID-19 while in detention.

The scapegoating of Muslims more generally has been a significant problem during the pandemic. This has been reflected in government policies and the implementation of the pandemic response. The decision to enforce mandatory cremation of those who have died of COVID-19, was a source of significant distress in the Muslim community, as the cremation of bodies is prohibited in the Islamic faith. This policy was implemented

(Centre for Policy Alternatives, 2020), <https://www.cpalanka.org/wp-content/uploads/2020/11/CPA-Report-Technocratic-Populism-and-the-Pandemic-State.pdf>.

¹² Bhavani Fonseka, Luwieg Ganeshathasan, and Asanga Welikala, "Sri Lanka: Pandemic-Catalyzed Democratic Backsliding," in *Covid-19 in Asia: Law and Policy Contexts*, ed. Victor V Ramraj (Oxford: Oxford University Press, 2021).

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Bhavani Fonseka, Luwieg Ganeshathasan, and Asanga Welikala, "Sri Lanka: Pandemic-Catalyzed Democratic Backsliding," in *Covid-19 in Asia: Law and Policy Contexts*, ed. Victor V Ramraj (Oxford: Oxford University Press, 2021).

until its reversal in February 2021 despite WHO guidelines maintaining that burials can be carried out safely.¹⁶ Policy decisions such as this contributed to a broader antagonism between the authorities and the Muslim community which did not bode well for cooperation with the implementation of the public health response.

Prior to the eventual overturning of this policy, an expert committee of virologists and microbiologists appointed by the Ministry of Health released a report on January 2 concluding that burials could be carried out safely. However, the government maintained that it would continue to cremate bodies even despite this finding. In Parliament, Health Minister Pavithra Wanniarachchi claimed that this report had been presented to a separate ‘main committee’. This incident is symptomatic of broader trends both concerning the government's treatment of the Muslim community and the general opacity of the decision-making structure underlying the pandemic response.

A decision was eventually made on February 25, 2021 to allow burials under strict conditions at certain burial sites, following a visit from Prime Minister of Pakistan Imran Khan. This was due to the fact that the resolution on Sri Lanka was being discussed at the UNHRC, where Sri Lanka needed Pakistan's support. The stalling of the government in allowing burials even after medical experts assured its safety, indicates that if not for significant international pressure, it may never have been allowed. Indeed, even though burials are technically allowed at the moment, only certain burial sites have been approved, often resulting in families having to travel great distances to bury their loved ones.

In cases such as this, issues of minority rights, civil liberties, and public health cannot be clearly separated. These incidents may lead members of the Muslim community to be less willing to get tested when showing symptoms or to co-operate with the authorities more broadly when there are religiously salient reasons not to do so.

Opaque Decision-Making Process, Lack of Accountability and Poor Communication

The decision-making process regarding the pandemic response has been opaque. There has been very little information about the reasons for policy choices and who was involved in making these choices. In particular, the prominence of relevant healthcare professionals in the decision-making process is unclear. This was made evident when even Members of Parliament such as Professor Tissa Vitharana noted that there were no virologists in the advisory committees.¹⁷

There is a broader lack of clarity regarding the policy decision-making process as well as who and how experts were chosen to participate. There seemed to be little justification for projects such as the policy that allowed tourists from Ukraine (three of whom were found to be COVID-19 positive) to travel into the country despite the severity of the pandemic in Ukraine. These incidences highlighted the lack of coordination between different agents in the government when making decisions. This policy in particular was conducted without

¹⁶ “Infection Prevention and Control for the Safe Management of a Dead Body in the Context of COVID-19” (World Health Organization, March 24, 2020), https://apps.who.int/iris/bitstream/handle/10665/331538/WHO-COVID-19-IPC_DBMgmt-2020.1-eng.pdf.

¹⁷ ‘There Were No Virologists in Committees Set up’ The Daily Mirror Online, December 9, 2020, <http://www.dailymirror.lk/opinion/There-were-no-virologists-in-the-committees-set-up-Prof-Vitharana/172-201444>

notifying the tourist board. As was the case with the decision to not allow burials, there has been no transparency as to how these decisions were made, nor has there been any clarity regarding the role of specific individuals or institutions in the policy-making process. In addition, new plans are underway to bring in 2500 Russian tourists into the country. This is part of a broader move for Sri Lanka to be used both as a quarantine hub and as a tourism location during the pandemic. There has also been issues concerning the irresponsible exercising of authority by Members of Parliament in ways that have been detrimental to the overall pandemic response. One particularly egregious instance of this was when Minister Gamini Lokuge removed Piliyandala, his constituency, from the lockdown list. The fact that Lokuge was able to do this raises concerning questions regarding the ability of decision-makers within the government to maintain a unified and coherent state response.

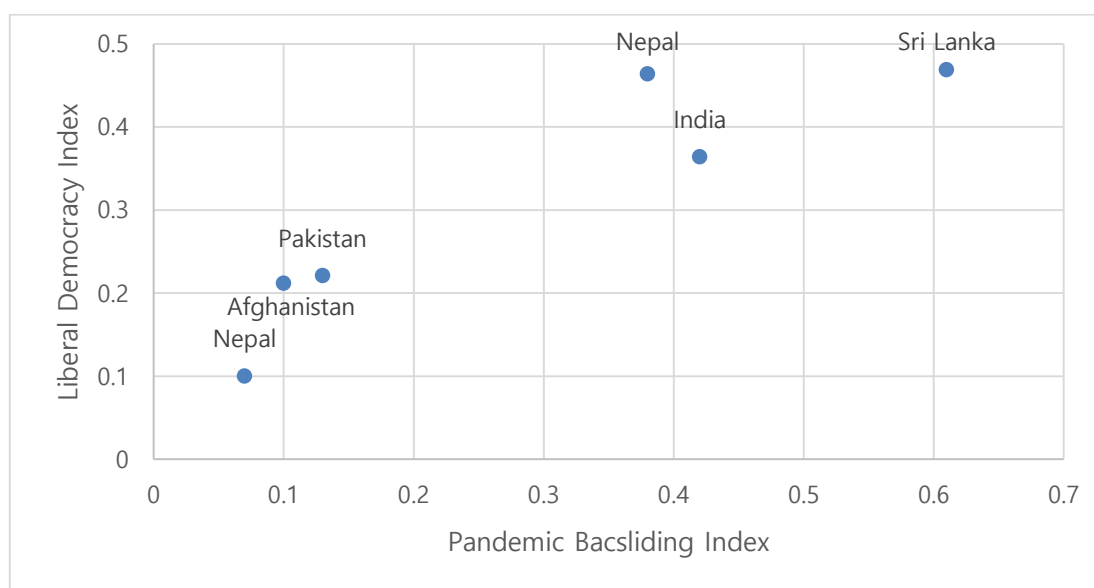
The extent to which the advice of healthcare professionals has been prioritized in the decision-making process is unclear. There has been a series of technical committees appointed to guide pandemic policy on specific issues. As the mandatory cremation issue demonstrated, these committees seem to be appointed and dissolved on an ad hoc basis and the guidance they provide appears to be subordinate to political concerns.

In fact, there has been an active suppression of doctors speaking out against the pandemic policies, as well as the silencing of members of government who have raised concerns with regard to the COVID-19 response. In early May, multiple professional medical bodies such as the Sri Lanka Medical Association (SLMC), Government Medical Officers Association (GMOA), and the Sri Lanka Medical Intercollegiate Committee (SLMIC) called for the implementation of a lockdown. This came in tandem with a statement from State Minister of Health Sudarshini Fernandopulle's calling for the same. However, these statements were followed by a government circular stating that disciplinary action would be taken against Ministry of Health officers who make statements to the media criticizing governmental policies.¹⁸ This lack of transparency and clarity about the decision-making structure and the reasoning behind decisions has resulted in a lack of public trust and cooperation with the pandemic response process.

3. Long Term Implications of the Pandemic Response and Challenges to Democracy

Sri Lanka has been particularly at risk of democratic backsliding during the pandemic compared to other democracies in the region. The COVID-19 response has accelerated certain de-democratizing trends that have been taking place in the country, specifically the processes of executive aggrandizement and militarization. Several aspects of the response highlighted in the previous section added to the challenges to constitutional democracy in Sri Lanka.

¹⁸ 'Health Ministry Issues Circular on Disciplinary Action Against Media Statements' Daily FT, 21st May 2021 <https://www.ft.lk/news/Health-Min-issues-circular-on-disciplinary-action-against-media-statements/56-718203>

Figure 3. Liberal Democracy & Pandemic Backsliding Indices - South Asian Countries

Source: Varieties of Democracy Project Accessed 15th January 2021¹⁹

a) Executive Aggrandizement

Executive aggrandizement was already present prior to the onset of the pandemic. However, the COVID-19 crisis provided an ideal context for its acceleration. The setting up of various task forces and administrative bodies mentioned previously resulted in a de facto shift in power towards the executive. These task forces, having been set up without a formal legal foundation but under the discretion of the executive, represent a parallel administrative structure to the public service and are a vehicle of executive authority. The role of the military has also played into this dynamic of de facto executive aggrandizement, in its position as an institution that is deeply aligned with a President who facilitated their increasing administrative power.

The decision not to recall parliament during the early stages of the pandemic, (resulting in the initial pandemic response presided over by the executive and executive-aligned subsidiaries and institutions) also aligns with the government's broader commitments to the centralization of power. The move to increase executive authority was furthered most significantly by the recent passing of the 20th Amendment which removed several checks on the power of the executive branch that was put into place by the previous 19th Amendment.

The conditions created by COVID-19 accelerated this process, and the initial success of the response played a large role in the landslide victory of Sri Lanka Podujana Peramuna, giving them the 2/3 parliamentary majority required to make the aforementioned constitutional amendment. There has been a significant degree of public support for this move as it promised to bring about efficient administration, a characteristic that was regarded as absent under the previous government. However, this process, insofar as its legitimacy depends on its ability to bring about tangible benefits to voters, may lose credibility if promises of growth and security are not delivered.²⁰ The government's COVID-19 response and the trajectory of the pandemic in Sri Lanka will, therefore, have

¹⁹ Varieties of Democracy Institute, 2020. www.v-dem.net/en/our-work/research-projects/pandemic-backsliding/.

²⁰ Dissanayake, "Technocratic Populism and the Pandemic State: Performative Governance in Post-COVID".

significant bearings on public consent for the government's constitutional project.

b) Militarization

The increase in military involvement in governance during the pandemic represents the heightening of the pre-existing trend towards militarization. Before the pandemic, several current and former military officials were appointed to positions in government in addition to the gazetting of several ministries under the purview of the Ministry of Defence. 39 military officials have leadership positions in various government bodies and agencies in the Intelligence Services, the Ministry of Agriculture, and the Bribery Commission. Against this backdrop, the pandemic response provided new institutional avenues for the military to both operate the machinery of the state, and new ideological justifications for doing so in the eyes of the public.

The reframing of the pandemic response as a security issue has served to justify greater military involvement in governance, presenting the pandemic as a problem that the military has the relevant expertise to solve.²¹ This communicative strategy has been apparent in statements such as that made by Major General Kamal Gunaratne, who has stated that:

“The military has to fight with the enemy that will destroy the entire nation if not properly fought. Therefore, the military is saddled with a huge responsibility to ensure national security whether it is a threat or an attack from terrorists, a pandemic, or natural disaster. Similarly, even in a pandemic the military is tasked to ensure national security.”²²

Such narratives have played significant justificatory roles in the ever-increasing control of the military. In this way, the militarization present during the pandemic has been framed as a necessary feature for an appropriately stringent pandemic response and for the broader transformation of the state to bring about increased efficiency. The possibility of military unsuitability and lack of domain-specific skills required for this role has been overshadowed by the narrative of military incorruptibility and efficiency in contrast to public sector bureaucrats.

The takeover of the state by military officials represents a particularly worrying trend in terms of civilian oversight of the military. This is of particular concern in the context of resolving human rights issues. The interests of human rights advocates and the military are largely opposed to one another, given Sri Lanka's recent history and allegations of human rights violations by the latter. Militarization in the context of the pandemic has also heightened the threat of surveillance. Surveillance carried out by the military during the COVID-19 crisis and the establishment and normalization of surveillance infrastructures represent a significant threat concerning the right to privacy. This has involved the use of military intelligence to locate individuals for the purposes of contact tracing as well as more overt surveillance through the use of drones to identify those who broke lockdown regulations. There is a strong possibility that this surveillance infrastructure may be used to silence critics both

²¹ Ibid.

²² Prompt intervention of military and police reduced impact of COVID-19 -- Defence Sec. Maj. Gen. (Retd) Kamal Gunaratne, Prompt Intervention of Military and Police Reduced Impact of COVID-19 -- Defence Sec. Maj. Gen. (Retd) Kamal Gunaratne (The Sunday Observer, 2020), <http://www.sundayobserver.lk/2020/04/19/opinion/prompt-intervention-military-and-police-reduced-impact-covid-19-defence-sec-maj>.

during and after the pandemic.

4. Suggestions

Action is required to stop the trend of de-democratization and to protect the civil liberties of Sri Lankan citizens during the pandemic. This requires 1) ensuring that individuals civil liberties are not infringed under the pretext of the pandemic response 2) holding the Government accountable with regard to ensuring respect for the rule of law 3) the demilitarization of the pandemic response, to be handled instead by existing administrative structures and public servants with domain-specific experience and expertise and 4) increased transparency and civilian oversight concerning the decisions of the NOCPCO and pandemic response policy formation.

Civil society organizations (CSOs) have an important role to play in this process through the monitoring of rights violations, carrying out public interest litigation to ensure respect for the rule of law, as well as lobbying on behalf of groups who have been adversely affected by government policies. Joint action from civil society organizations, trade unions, political parties, and other groups may allow for the adequate representation of these interests in a context in which parliamentary opposition is weak. Each of these steps will be crucial in ensuring that COVID-19, in addition to the public health and economic damage it has wrought, does not lead to further erosion of democracy in Sri Lanka. ■

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