

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

Pandemic Crisis and Democratic Governance in Sri Lanka

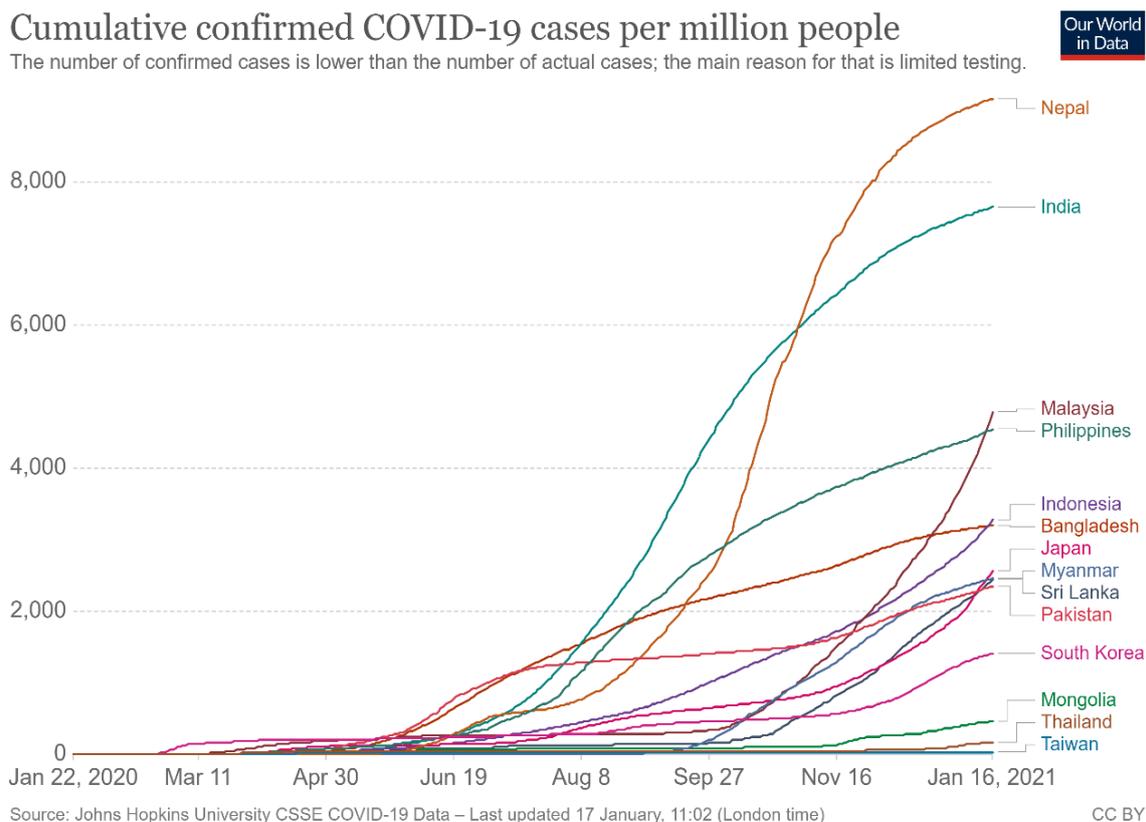
Centre for Policy Alternatives

1. Challenges Posed by the Pandemic¹

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 what can be adequately analyzed in a single article, this working paper will focus primarily on an aspect of the pandemic crisis that has 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 January 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 discussing the democratic backsliding, the public health background against which it has taken place must be taken into consideration. When this paper was written, the number of cases per million of the population was lower in Sri Lanka than those in the rest of the South Asian region. However, the case rate has been rising rapidly since the beginning of the second wave that occurred in late September. As Figure 1 indicates, while Sri Lanka has not endured the kind of public health crises faced by many other countries in the region, the inability to contain the second wave meant that it has not been able to replicate the kind of success achieved by other Asian countries such as Taiwan, Thailand, Mongolia or South Korea.

¹ Throughout the year, ADRN members will publish a total of three versions of the Pandemic Crisis and Democratic Governance in Asia Research to include any changes and updates in order to present timely information. The first and second parts will be publicized as a working paper and the third will be publicized as a special report. This working paper is part I of the research project.

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

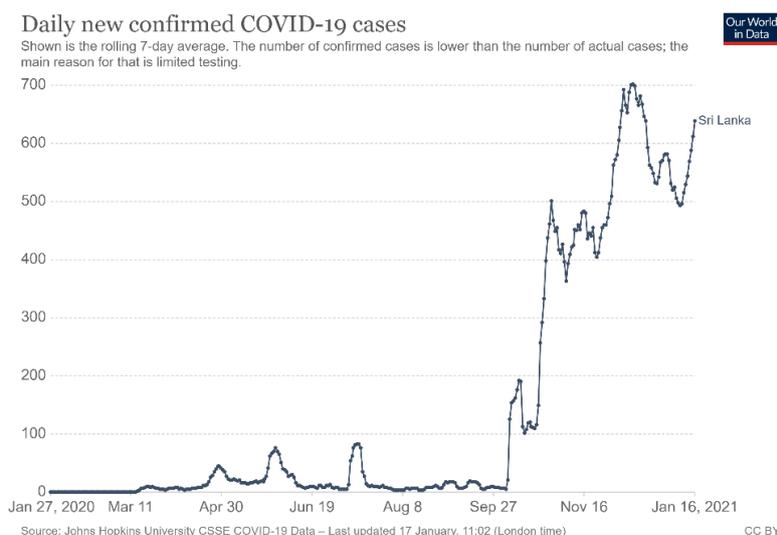
Source: Roser et al. 'Our World in Data' (Accessed January 17, 2021)²

While initially, the crisis was more of an economic and political one rather than a public health crisis (to the extent that these crises can be separated), the trajectory of increasing cases may bring to the fore the issues in the capacity of the health system. With 80-90% of cases being asymptomatic, hospital infrastructure and human resources are able to manage the current caseload. However, if the rapid increase in cases continues, it might mean that further investment in hospital capacity may be required.³

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, these same measures were unable to contain the second wave, as the figures below show.

² Roser et al. "Coronavirus Pandemic (COVID-19)." *OurWorldInData.org*, 2020. <https://ourworldindata.org/coronavirus>.

³ "UN Advisory Paper: Immediate Socio-Economic Response to COVID-19 in Sri Lanka" *United Nations Sri Lanka*, July 2020, https://unsdg.un.org/sites/default/files/2020-07/LKA_Socioeconomic-Response-Plan_2020.pdf.

Figure 2: Daily New Confirmed COVID-19 Cases

Source: Roser et al 'Our World in Data' Accessed 17th January 2021⁴

The Sri Lanka Government attempted to follow the Chinese model for its pandemic response by focusing on rigorous contact testing but did not prioritize the investment of developing testing capacities. For instance, PCR testing at the initial stages was limited to only test 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 for tracing the origin of new cases.

In addition to 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.⁵ Food consumption has also decreased by 30% during this time.⁶ As such, the need for the provision of necessities, protecting employment, and providing financial relief has become a key challenge during the pandemic.

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

Formation of New Governmental Structures

A key feature of the pandemic response has been the setting up of several new structures during 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.

⁴ Roser et al "Coronavirus Pandemic (COVID-19)." OurWorldInData.org, 2020. <https://ourworldindata.org/coronavirus>.

⁵ Ibid.

⁶ Ibid.

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 their involvement in 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.

More recently, 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.”⁷ These coordinators have significant authority concerning all matters that could be classed as relevant to the pandemic response. As the primary political concern in the country was COVID-19, this gave the military a wide mandate that covered 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.

Postponing of Elections

The inability to hold elections was another consequence of the lockdown and other COVID-19 responses. 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 the 25th of April were eventually postponed until the 5th of August. Previous to this, the Parliament had been dissolved on March 3rd, 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 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.⁸

The constitution allows for the recall of a dissolved parliament through the rescinding of the dissolution by the President.⁹ 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, with no reasons provided for their decision (there being no judicial duty to give reasons in Sri Lankan law).

Lockdown

The constitutional dilemma mentioned above led to significant ramifications concerning several aspects of the Government’s pandemic response. The legality of the implementation of an island-wide lockdown is just one

⁷ 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>.

⁸ Uvin Dissanayake, “Technocratic Populism and the Pandemic State: Performative Governance in Post-COVID” (Centre for Policy Alternatives, 2020), <https://www.cpalanka.org/wp-content/uploads/2020/11/CPA-Report-Technocratic-Populism-and-the-Pandemic-State.pdf>.

⁹ Bhavani Fonseka, Luwie 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).

example. The Quarantine and Prevention of Disease Ordinance did not provide a legal basis for the implementation of an island-wide curfew. While the Public Security Ordinance contained provisions allowing for such a curfew, it required the Parliament to be present in order for the curfews to be implemented.¹⁰ 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 based on government proclamations instead of firm legal grounds.¹¹

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.¹² Legal challenges to this arrest were obstructed by closures of the courts during the initial pandemic period and Hizbullah remains in detention 9 months 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 has been a source of significant distress in the Muslim community, as the cremation of bodies is prohibited in the Islamic faith. This policy has been implemented although WHO guidelines maintaining that burial can be carried out safely.¹³

Amid this controversy, an expert committee of virologists and microbiologists appointed by the Ministry of Health released a report on the 2nd of January concluding that burials could be carried out safely. However, the Government maintained that it would continue to cremate bodies even despite this finding. Health Minister Pavithra Wanniarachchi claimed in Parliament that this report had been presented to a separate ‘main committee’ (the membership of which is unknown) whose decision the Government is awaiting. 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.

Opaque Decision-Making Process and Lack of Accountability

The decision-making process regarding the pandemic response has been opaque. Very little information was given 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 from the Government such as Professor Tissa Vitharana noted that there were no

¹⁰ Dissanayake, “Technocratic Populism and the Pandemic State: Performative Governance in Post-COVID”.

¹¹ Fonseka et al, “Sri Lanka: Pandemic-Catalyzed Democratic Backsliding”.

¹² Ibid.

¹³ “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.

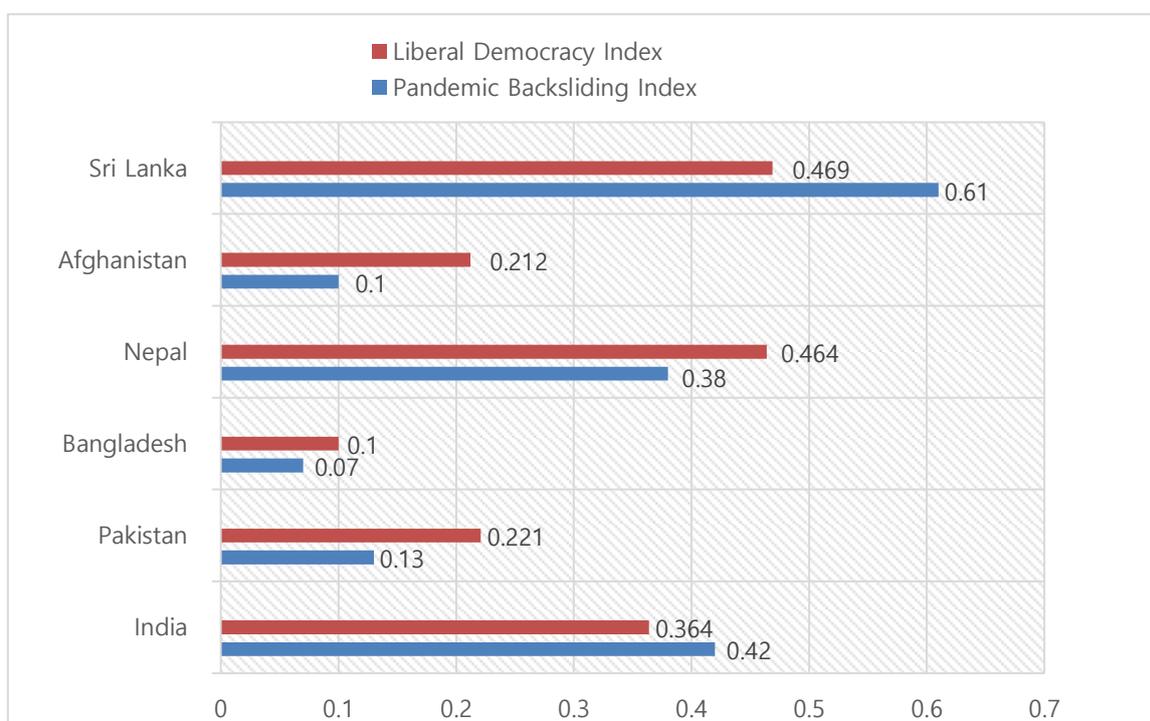
virologists in the advisory committees.¹⁴

There is a broader lack of clarity regarding the policy decision-making process as well as which and whose expertise was considered in making the decisions. There seemed to be little justification for projects such as the policy which 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 in making decisions. This project in particular was conducted without the prior knowledge of 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.

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.

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



Source: Varieties of Democracy Project (Accessed: January 15, 2021)¹⁵

¹⁴ The Daily Mirror Online, *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>.

¹⁵ Varieties of Democracy Institute, 2020. www.v-dem.net/en/our-work/research-projects/pandemic-backsliding/.

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.¹⁶ The Government's COVID-19 response and the trajectory of the pandemic in Sri Lanka will, therefore, have 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 a 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 the Intelligence Services, the Ministry of Agriculture, and the Bribery Commission. Against this background, the pandemic response provided both new institutional avenues for the military to 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.¹⁷ 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

¹⁶ Dissanayake, “Technocratic Populism and the Pandemic State: Performative Governance in Post-COVID”.

¹⁷ Ibid.

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.”¹⁸

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. This was made possible due to the high esteem the military has been held in among the Sinhala community in the post-war context.

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. There is a strong possibility that this surveillance infrastructure may be used to silence critics both during and after the pandemic.

4. Suggestions

Action is required to stop the trend of de-democratization and protect the civil liberties of Sri Lankan citizens during the pandemic. This requires 1) the ending of the policy of forced cremation within a broader framework of protecting minority rights 2) holding the Government accountable to ensure 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 consequences in eroding democracy in Sri Lanka. ■

¹⁸ 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> .

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