

# **Totalitarianism in Sri Lanka: A Study of Law and Cultural Industry**

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## **Introduction**

The present study is about totalitarian trends in Sri Lanka. The basic premise of the study holds that the present or emerging trend of totalitarian practices in the country are legal for there is law and rule by law behind the complex web of social control which is observable in every totalitarian regime. Sri Lanka was considered a model democracy immediately after bestowing dominion status on her. In that context, some have wondered as to why Sri Lanka has headed towards totalitarian regimes after 1978 with the enactment of second republican constitution. The present study explores the legal basis behind the totalitarian practices in the country.

The emerging totalitarianism in Sri Lanka differs significantly from other types of totalitarian regimes in South Asia and elsewhere for Sri Lankan totalitarianism has sought the help of law and law enforcing authorities to obtain legitimacy to totalitarian politics in and around the president of the country. It is a constitutional invention (**Perera,2013**) The Sri Lankan totalitarian regimes make use of newly invented social control mechanisms supported and invented by law and law enforcing agencies. Law and law enforcing agencies have acted to discourage Sri Lankans in imagining alternatives and better future. The complex web of social control creates unjust inequality and limit human potential when it is based on law and supported by law enforcing authorities in a political system. There are little studies on the role of law and law enforcing authorities' as instruments of totalitarian regimes with reference to Sri Lanka. The special focus on rule by law marks the departure point of the present study from the rest of the studies.

The intellectual motivation for the present study is to understand how totalitarianism operates in Sri Lanka with the help of law, judiciary and other law enforcing agencies of the political system that are designed and meant for democratic governance in the country.

**Methodology of the study**

The methodology of the study is based on observation and critical reflections on politically significant events that took place within Judiciary, Attorneys General Department and the Police Department. It also be noted that the present study has drawn inspiration from the tradition of 'critical theory'. The study is divided into three sections. The first section is a recollection of concepts relevant to totalitarianism and its modus operandi extensively drawn from critical theory. The second sections deals with the Sri Lankan case by way of critical reflections on how Post 1978 Sri Lanka headed and is heading towards a totalitarian regime. The third sections deals with possible conclusion with an eye on possible alternatives in imagining a better future.

**Conceptual Framework**

Totalitarianism is defined as the political regime in which all forms of social control is centralized in and around one person or one institution using the logic of instrumental rationality (Buechler, 2008, 36). The instrumental rationality emerged with the effort of applying techniques of natural sciences to the study of social phenomenon and heading towards progress with social engineering. The 'scientism' applied to social reality emphasizes that society could be studied as done in the natural sciences and such knowledge could be used as means to achieve goals. However as How explained the instrumentalism associated with such efforts neglects thinking about the rationality of the ends (2003). The major demerit of scientism when applied to social situation is the over-emphasis on 'What is' at the cost of 'what ought to be'. Such an approach leads to naturalize the social world by denying the possibility of alternatives. The critical theorists argue that studying society is impossible and nor desirable without values. Neglecting the role of value leads to naturalize the social world and endorses the status quo, denies the validity of alternatives, embraces the false objectivity, presents itself as the only valid form of knowledge. Ultimately, this form of knowledge results in scientific domination of knowledge and thereby compose one significant strand in the web of domination in modern society (Ibid. Buechler ,36). Critical theorists hold that instrumental rationality is partial and limit the human capacity for reason. It reduces reason to a mere instrument or technique that can be applied to any goal whatsoever. They have pointed to out that highly rational means can be used to highly unreasonable goals. In this process, the reason get limited to the choice of means and not extended to goals themselves, and then a society can simultaneously become more instrumentally rational and less socially reasonable. A case in point is the recent Sri Lankan Government development projects such as Hambantota Harbour and Mattala Air Port. The crux of the argument is that modern age is concerned much with the perfection of means and confusion of ends (Einsstein, 1979). The important insight of this

argument is that it torches dark sides of domination in society. Instrumental use of reason concerns only with how to do things while stifling debate about whether it is reasonable to do them at the first place. When used to instrumental rationality, militarization, centralization of power and even cult of personality etc are accepted as unquestioned necessities. Instrumental rationality becomes domination by enhancing social control over ordinary people. For instance, in economics, unquestioned goal of profitability brought the assembly line which achieved greater efficiency while also granting managers much greater control over work and workers. In politics, the unquestioned goal of power has promoted bureaucratic control and executive privilege that consolidate power for elite decision makers. The eye opening case in point is the industrial forms of genocides practiced by many despots and religious fundamentalists.

There is one another important insight that can be drawn from the critical theory literature. It is that the form of state capitalism and its role in dominating the people and totalizing tendency of power under the cooperation of big business and state bureaucracies. Although the critical theorists basically agree to Marxist thesis that capitalism exploits the workers, they are skeptical of the thesis of subordination of small business to the market. They have pointed out that big business monopolize and subordinate the market and the very same subordination of market by big businesses lead to bureaucracies and cooperation between business and state ultimately both working for the domination of the few over the majority of people and it lead to totally administered society.

The other significant contribution of critical theory to the understanding of totalitarianism is contribution towards understanding the bureaucratic expansion and militarism. The bureaus are created in the name of public interest and ultimately result in exploitation of the resources meant for public service and a form of social and political control. A classic Sri Lankan case in point is the Samurdhi Development Programme. The Samurdhi Authority which is created to implement the project consumes large amount of funds and keep poor under control of the political regime and invented a new form of domination by making the poor to police the poor by the poor (Abeyrathne 2011, Abeyrathne 2008). Militarism is justified on the ground of patriotism and it leads to false consciousness.

Another important insight that can be gleaned from critical theory is the idea that domination grow 'outside' as well as 'inside' the people. Modern social being is modeled to conform to external authority and unable to resist social pressures. In the words of the C. Wright Mills, modern individual is a "Cheerful Robot" (1959). The family and other social agents instill such over-conformity. Patriarchy and religion etc. raise future generation of the society excessively attuned to authority, comfortable in hierarchical relations. These complex mechanisms predispose to reproduce authoritarian relations. When molded in this way, people favours rigid thinking and tend to think and see the world in simplistic categories such as black/white, good/bad or right and wrong. Such persons embrace prejudices and scapegoating and blaming outsiders for problem. Another important insight that could be drawn from the critical theory literature is the link between mass culture and culture industry. This school holds that culture is the medium through which people create meanings, maintain

tradition, sustain identities and integrate groups. It is also the creative sphere of human activity and it is way people express hope for better society. However, in modern societies culture has become an industry which means resulting of standardized methods of instrumental rationality. The linking of culture with industry made the creative activity of human turns it into a commodity produced with efficiency, calculability, predictability and control ultimately turning it into another form of domination. The critical theorists have argued that in the process of converting culture into a commodity, creativity and artistry are pushed into the margins as culture industry packages products into familiar genre and styles. The critical theorist have pointed out people tend to think their role is to consume products and forget that they have become product because the goal of mass media is to sell audiences to advertisers. Content become irrelevant as long as it creates audiences for sale. They have pointed out at present media is not just entertainment and it is a form of domination for culture industry has reduced people to passive spectators and consumers of culture rather than participants in its creation (Habermas, 1989). If critically reflected on this dimension one can observe the close link with private capital and state apparatus and how they work together to produce silent audiences in the arena of politics and rule by the law syndrome characteristic feature of totalitarianism. Another important form of domination that goes hand-in-hand with the culture industry is the colonization of free time left to human after the physiological need for rest and the economic compulsion to work. However, modern mass media has made free time or leisure a time for reflection and relaxation and it is a market place. Heavy indulgence in mass media trained people to take things for granted and disables them of envisioning any alternatives. When people become disabling of envisioning alternatives domination is accomplished.

### **Totalitarian Mechanisms in Operation**

As pointed out earlier in the study, Sri Lankan totalitarianism is a one which is legalized and established by the fundamental law of the country. It is supported by culture industry in an unprecedented scale at present with the help of legal mechanism. What follows is a discussion of the two dimensions of totalitarianism which works as auxiliary to each other.

### **Legalized Totalitarianism**

According to learned authorities on constitutional law and politics, the country has become virtually a constitutionally established dictatorship after the enacting of Second Republican Constitution (Perera,). The framers of the Second Republican Constitution have extensively drawn from American, British and French Traditions not to make Sri Lanka more democratic but to strengthen the hold and control over the rest of the governing organ by the President. At glance, Sri Lankan constitution seems to be following the principle of Separation of Powers

which was thought of preventing arbitrary rule. However, the provisions in the constitution, in essence, have negated the very same principle and made legislature and judiciary subordinate to the fancies and whims of the executive president who is elected in a separate election.

The constitution has laid provisions for hybrid system of presidential cum cabinet form of government. The president is the head of the state, government and the executive. However, president is not answerable to the legislature even though he is the head of the government. In case of successful no confidence motion in parliament, defeat of annual budget or policy speech of the government, president remains in office while the rest of his colleagues in the cabinet have to vacate their posts while the leader of the cabinet remains in power. In fact, there is a provision that the president is answerable to the parliament which works as only a constitutional decoration. The cumulative effect is removal of the principle of collective responsibility which is the cardinal norm under the Cabinet Form of Government. The establishment of executive president with un-controlled powers by powers has laid the foundation for a legally established totalitarian regime which could use law to make use of culture and culture industry for the purpose of further and further totalizing of power.

Under the new set-up of the government, the president is not a part of the legislature. But he could dissolve it at his will subjected to the condition that the president cannot dissolve a new parliament until it passes a one year period. Further, the constitution has made provision for a president to become a legislative rival to the national parliament of the country. If legislature rejects a proposed law, president can get it enacted through a referendum.

Judges to the Supreme Court, appeal court and high court is appointed by him without any check and balances by other organs of government. There are occasions, juniors with notorious track record of behavior have been appointed, promoted to the courts and made them worked extra professional works such as members of presidential commissions which aimed at silencing democratic dissent. The un-fetched power given to president in appointing judges to the higher court and control of the lower courts by the supreme court headed by a chief judge who is politically appointed has resulted in making judges more political. Certain decisions given by them have resulted in loss of faith in the judiciary and ultimately leading people to think it is useless to resort to judiciary even in the cases of gross violation of constitutionally guaranteed fundamental rights by executive acts (Discussion with eminent lawyer and parliamentarian on 12<sup>th</sup> September 2014). Deciding of the constitutionality of proposed laws and interpretations of the constitutions is vested in the supreme court of the country. The judges to the Supreme Court are appointed by the president without any supervision by any other organ of the government. The above situation has lead to develop unholy marriage between president and the judges. It is revealed that the president and recently impeached chief justice and their families had very warm person to person relationship and her husband is patronized by the president. After damaging their personal relationship, a few cases decided by the Supreme Court benches under her chairmanship have made president and his

family upset and ultimately had lead to the impeachment fiasco in the parliament (“Lanka’14 September 2014. It is a pro-left Weekend New Paper in Sinhala). The patron client relationship between the president and Supreme Court judges has got firmly rooted in Sri Lankan politics. The point is substantiated by the views expressed by eminent lawyers, ex- judges and many others. They have raised the issue whether supreme court could interpret the constitution objectively and reasonable and substantively in the cases that involves the interests of patron president by the patronized judges at bar (Ravaya, September 2014). The records of the working style of the previous presidents and present presidents substantiate the fact that even the ceremonial powers given to the head of a democratic state has been misused to curry favour criminals, drug traffickers and, smugglers who have contributed to campaign of presidential election etc in different manners. The mechanism of impeachment is the only controlling tool available to the parliament. It is a very difficult task for it requires 2/3 majority member support in the parliament twice and backing of the Supreme Court. When President Premadasa was charged on all account for an impeachment, he has effectively used the ceremonial power of proroguing the sessions of parliament and it is said members who signed the impeachment petition were bribed and patronized from the of public pocket. The discussion so far suggests that the constitution and other laws of the country are instrumental in totalizing power in and around the executive power of the president. It is pertinent to discuss how culture industry has worked as a supplement and auxiliary to the constitutionally established totalitarianism through law at the cost of rule of law. The selective application of law to discriminate among supporters and ordinary people is a characteristic feature of totalitarian regimes throughout the world. In this context, agencies meant for democratic rule and rule of law become instruments of totalitarian rule. The executive president has taken the Attorney General Department under his control and it is used to strengthen his grip of power through selective and malicious prosecution of political opponents. The police have taken adjudicating power to its hands and attorney general prosecutes persons selectively.

### **Culture Industry and Politics**

There are little studies on how culture is used to maintain status quo or politics as domination in the context of Sri Lanka. The identities of people of a country are constructed and maintain through mediated means according to insights of the critical theory. The construction and maintenance of polarized ethnic identities is very beneficial for totalitarian political regimes in “state nation” where a big majority ethnic group is available. In Sri Lanka, ethnic Sinhalese are more than 70% of the total population of the country. Strengthening “we they” mentality is instrumental for totalitarian regimes where democratic rituals such as elections and referendum and plebiscite are available to harness the undemocratic rule of single individual or extended political families. This is true, particularly, of countries in South Asia. The link between culture industry, media and capital becomes very

significant in this context. Media is the main tool of culture industry and it is extensively used by totalitarian regimes in contemporary world. Mass media of Sri Lanka is of two types, i.e. Public and private. The public sector media has always acted in favour of the group who hold the governmental power. For instance, the two authors of the present study have observed since 1978, gradual decline of even news bulletins of electronic media owned by the state. 60% of news broadcasting after 2005, is devoted to portrait the image of the president by way of extensively showing benevolent acts of president such as continuous alms giving to pilgrims who arrived at the holy city of Anuradhapura and gestures of paternal love towards small kids by way of caressing them at development showing public ceremonies etc. The media is highly used to seduce people in developmentalism of the oppressive projects. The balance sheet of development efforts raises the issue whether they have benefited the rank-and-file of the society because Sri Lanka is heading towards from an egalitarian society to un-egalitarian one with mega development projects(.....R) The express ways and other development projects have resulted in envelopment rather than development. However, mega projects which do not benefits the worse off sections of the society such as Hambantota Harbour and express ways are presented as essential for development of the poor and they are being directed to get imagined as symbols of society's march towards prosperous and bright future even though those development projects lack any immediate impact on the betterment of lives of many people while increasing the burden of living through indirect taxes (Abeyrathne.....). The people are invited to become passive development viewers and people are given opportunity to taste the development benefits before the ceremonial limitation of benefits of infrastructure development projects to the better off few in the society. The express ways are a classic example in this regard. People are been given time to walk in the express ways and even the president take part in these activities with people. An impartial observer can identify that there are chosen and trained mouth pieces to speak of imaginary benefits and necessity of such projects. Electronic media is directed to give wide circulation of points of view with the objective of creating false consciousness of the goodness of the ruler and needs of infrastructure projects which do not have any immediacy on the lives of the people. The leisure time of the people which is meant for enjoyment of aesthetic arts works etc. are been converted to political propaganda of the ruling ideology. The Kopi Kade ( It Is a serial telecasted in the Independent Television Network( ITN) which promotes the image of the ruling ideology and persons in power and it is used to disgrace politically opposing views to the dominant ideology. The very objective of such broadcasting and telecasting is to hallucinate the people. There are very few people who dare to question the rationality of the ends of development projects perused by the political regime.

There is a well and pre-planned mechanism to label those who question the ethnic chauvinism and benefits that accrue to the society through development projects of recent time as "Betrayers of Mother Sri Lanka" and sometimes mob are mobilized to humiliate them. Both public and private media is used in this strategic move of silencing dissent. Media is used to make people enjoy cruelties meted upon dissenting personalities to the ruling regime. Both

public and private media justifies and gives wider publicity to cruelties meted upon such persons.

In the foregone section of the study, the controlling the law enforcing authorities has brought into light. The specificity of the media and culture industry is that justification of extra-judicial judgments, killing, etc as essential to maintain an ordered society. The culture industry has successful for there is a general acceptance that it is correct police and army punishing the ethnic others and criminals among the rank-and-file of the society. Media to a certain extend portrays such incidence as unavoidable and necessary for a developing nation. The media justifies such incidences as something done for the law and order and conducive for development and good society. The Pasuvadana of Independent Television Network is a sufficient case to substantiate the above situation. Other arts forms such as tele-dramas (like *Kopi Kade* and seemingly intellectual discussions and dialogue such as *Satveni Paya* and *Doramadalawa: Obegedarata Sarasaviyak* etc are used to promote the status apparatus of the totalitarian regime and they have aimed at promoting, propagating and inculcating archaic, outdated and hierarchy friendly values such un-questioned belief in the goodness of the kings of ancient Sri Lanka and their benevolent acts and resemblances of the present regime with that of ancient political order by pseudo pundits who are paid out of public pocket through the power given to government by law. The law enforcing authorities have become the judges and suspects are shot dead and they are been justified by the media (See Rivira News on murder and rape case of a young girl and the death of the suspect on 20<sup>th</sup> September 2014) and even by the judges. Sometimes judges decide the case based on the prejudices created by media<sup>10</sup> Remaining 40% of the news bulletin is devoted to educate and socialized people towards ethic others through broadcasting and telecasting events in chronological order done by the ethnic others and their agents during protracted war since 1983 while paying scant attention to international news of democratic importance and the rest of the time is allocated to sport news etc.

### **Nexus among Legalized Totalitarianism and Culture Industry**

Sri Lanka has inherited the liberal democratic tradition from British Colonial Rule and there emerged political elite which is educated in democratic ideals as well as socialist traditions of many variants. The democratic transition of power from one ruling group to another and high level of electoral turn outs in each and every general election since granting dominion status on her led many to conceive it as an ideal type third world democracy. However, events and incidences in post 1978 politics in Sri Lanka raises the issue whether the country is worthy of considering as democratic at all. A careful observation of politics in Sri Lanka would help to identify two broad mechanism of domination which resulted in autocratic totalitarian and oppressive political regime in Sri Lanka. The first has to do with the institutional framework of

the country and the second is related to domination carried out through culture industry, mass media etc.

The authors of the present study also have noticed an unprecedented trend of uncritical leaning towards the regime in power by the private media institutions since 2005. There is a complex mechanism of subjugating media. The mechanism is comprised of two elements. The first is law itself. The second has to do with mechanism of patronizing and terrifying. The government of Sri Lanka has ventured to an open economic policy after 1977 which allowed greater role for private capital in the market. Open market implies that there are many and varied service providers who function on a competitive basis. The role of the government in this context has become that of a facilitator and regulator of the private sector competition. Post 1978 regimes have used facilitative role to patronized media institutions that engage in culture industry and to terrify others who adopt a critical stance on government policies and personalities. A good case in point is the blocking of certain news services and telecasting and broadcasting agencies through Sri Lanka Telecommunication Regulatory Commission. Some News papers are patronized through government advertisement and others are terrified through paramilitary openly and secretly.

There is mushrooming of tele-dramas and other culturally significant programmes that attune to the chauvinist forces and they have intended at creation, maintenance and recreation of cultural enemy other which portrays ethnic minorities as invaders and as someone who exploit the true owners of the country. The specificity of those cultural artifacts is that they are based on mythologies and legends rather than on objective realities. What is important to note is that free time of the ordinary people to rest and leisure is colonized by many programmes in the electronic media and even in cinema. The teledramas, movies and other forms of arts are patronized or control by state institutions.

Rule by law refers to a situation where oppressive totalitarian regime totalizes power by legal means and with the help of law enforcing institutions. As we have already pointed out present executive presidency is not against the fundamental law of the country. It is a product of the law itself. In the words of A.J. Wilson, the constitution is tailor made to the interests and desires of him and his party who were the founding fathers of the constitution(R). The constitution has granted immunity to the real executive president. However, legal Immunity is granted only to nominal executive elsewhere in the world. Granting of legal immunity to an executive president is totally incongruent with the principle of separation of powers which is the cardinal principle followed in establishing executive presidential system. The power granted to president has made him/her a rival of the legislature while making him the patron of the judges of the high court, appeal court and Supreme Court of the country. The dissolving, proroguing and summoning of its sessions were ceremonial powers enjoyed by nominal executives under a Cabinet System of government. What took place in Sri Lanka is giving them to an executive president. The experience of Sri Lankans is that all the presidents in Sri Lanka have used those ceremonial powers strengthen his/her grip over power. When

Parliament attempted to control the totalitarian desires of late President Ranasinghe Premadasa he used the power to prorogue legislature while engaging discussion behind the curtain and ultimately winning the battle through extra legal means in his favour. What need to be highlighted here is that extra legal means is made possible by the law itself.

Further, it need to be emphasized the hybrid nature of the executive established by the constitution of 1978. It has provided for an executive president as well as cabinet of ministers chosen from among the members of the parliament at his will. President also can keep important portfolios under his control. There is no prescribed number of ministries that shall be under his control. The secretaries to the ministries are appointed by him. The cumulative effect of all those provision is the capacity of president to control even ministers through secretaries to the ministries.

There are 18 constitutional amendments to the present constitution of the country. 16 of them have intended to totalize power rather than democratized the government. The serious question is how this was possible.

The discussion so far reveals all totalitarianism in Sri Lanka is made possible through rule by law approach to government. Presently, the institutions that are thought to be independent in a democratic society are under the direct influence of president. The judges are going after him to get promotions and other positions after retirement. Chairman of the Commission to investigate bribe and corruption is retired supreme court judge and is charged with cases that involve misuse of power when he was a judge. The judges who have got track records of misbehaviour have been appointed to the judiciary and promoted in the hierarchy without respecting democratic principles. There are certain occasions that they have delivered judgment favouring the president and government and ordinary people are in the habit of predicting the nature and content of their decision before the court decide the case (Ravaya,06<sup>th</sup> September 2014).

The political regime has engage in developmentalist projects and people have been hallucinated to believe in a prosperous future that embraces the all the imagined glorious history. However, people experience difficulties of many variants for government is not following neither open market economic nor closed economic policy. The post 1978 governments in Sri Lanka has implemented many and varied infrastructure development projects which facilitate the capital owning classes of global scale. Government has extensively borrowed from local and foreign sources and debt serving and interest payment is made to be borne by rank-and-file of the society while giving tax holidays etc to the capital owning classes. The income gap among different layers of the society has been increased and thus government has become a burden distributor rather than social benefit distributor through increasing the indirect taxes (Upul Abyrathne,2011 )

In fact, Sri Lankan constitution has provided for human rights and fundamental rights for its citizens. However, people are reluctant to see legal remedies through the Supreme Court

because they believe that politically appointed judges are not impartial and it is better to be silent rather than vocal of injustice.

## **Conclusion**

The objective of the present study was to understand the significant element of law in totalitarian practices of the Present Sri Lanka. The study belongs to the tradition of critical theory and observation of the two authors has been employed in analyzing the phenomenon. The first section of the study has dealt with the insights offered by Critical Theorist in understanding the totalitarianism and it was followed by a discussion on the mechanism in operation for totalizing power. In that discussion, it was possible to identify two key elements in the mechanism of power i.e. rule by law and culture industry. Those dimensions have been extensively discussed in the context of the experience of the two authors of the study. It was followed by a discussion on the nexus among legalized totalitarianism. The discussion on the nexus between totalitarianism and culture industry has highlighted the followings:

1. The totalitarianism in Sri Lanka has to do with the legal and political background set-up under the constitution itself,
2. The legal immunity given to president is instrumental in totalizing the power,
3. The specific provisions in the constitution has resulted in creating other organs of the government subordinate to the executive president,
4. The supremacy offered to the president in the process of governing has resulted in erosion of democratic values such as independent judiciary and independence of Attorney General Department and Police,
5. The ability patronize and threaten media has resulted in culture industry is extensively used for totalizing power project,
6. The media has worked effectively to discourage people in imagining the better future for them,
7. Well planned media campaign helps people to get hallucinated in developmentalism and ethnic hatred in political community that comprised of a big ethnic majority group, and
8. People have lost the faith in judiciary as an impartial body that could adjudicate disputes among them and between the government and them.

Taken as a whole, the legally established totalitarian political set up and culture have resulted in apolitical community and it contributes to further and further strengthening of totalitarian tendencies in the country. The way out of the dilemma lies in simultaneous transformation of governing structure of the country and movement of politics not as domination but as

empowerment in the sphere of culture is the requirement of the movement.

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