

Local Democracy: The Reality of the Electoral System of Local Authorities in Sri Lanka

Selvaraj Puwanitha¹

¹ Department of Public and International Law, Faculty of Law, University of Colombo
Corresponding author; <puwanitha@law.cmb.ac.lk>

Abstract— *This study critiques the reality of the overall nature, content and scope of the Local Authorities Elections (Amendment) Act no 22 of 2012 and the subsequent amendments thereto, in light of the concept of local-level democracy. The quality of democracy at the initiative level depends not only on the strength and the coherence of the parties, and the party system but also on the quality of the elections themselves. Therefore, this article aims to analyse the extent to which the provisions of the Act and the system of election complies with the requirements of democracy. This research is conducted as a literature review based on secondary sources using an interpretative approach to support the arguments on theoretical and doctrinal concepts. Moreover, the author followed a qualitative approach to explain her stance in this regard. In order to address the research question, the author critically analyses the provisions of the relevant Acts and its application in reality, which are lacking or seems to be lacking in adherence to the concept of democracy. As a result, the author finds that the system experimented in the last local authorities election(2018) delineate the delinquency of tenaciousness to the said requirements to perpetuate a democratic society and therefore, comes up with a proposal on how to shape up the legislation to vouch for accountability at the local level of governance to enhance the local democracy.*

Keywords— **Local Authorities, Electoral System, Democracy, Accountability and Governance.**

I. INTRODUCTION

“Anti-intellectualism has been a constant thread winding its way through our political and cultural life, nurtured by the false notion that democracy means that ‘my ignorance is just as good as your knowledge.’” (Isaac Asimov.(1980) Column in Newsweek. Available at: <https://www.goodreads.com/quotes/84250-anti-intellectualism-has-been-a-constant-thread-winding-its-way-through> [Accessed 25.04.2019]).

Democracy is a universal value. For Schmitter and Karl, “modern political democracy is a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives”(Larry Diamond and Marc F.Plattner(2009),

Introduction. In: Larry Diamond and Marc F.Plattner (eds.) DEMOCRACY: A Reader.Baltimore: the Johns Hopkins university press, p.XIV). The system followed in electing the representatives and the influence of citizens in the decision-making process in between such elections is the yardstick to measure the standard of democracy. Especially, the quality of democracy at the initiative level depends not only on the strength and the coherence of the parties, and the party system but also on the quality of the elections themselves. (Larry Diamond and Marc F.Plattner(2009), Introduction. In: Larry Diamond and Marc F.Plattner (eds.) DEMOCRACY: A Reader. Baltimore: the Johns Hopkins university press, p.XIV). This article seeks to critically analyse the amended election system experimented at the local authorities election held in last February 2018. The Local Authorities Election (Amendment) Act introduced not only a hybrid system known as ‘the Mixed Member Proportional Representation System’ to elect members for the local authorities but also a quota system for women and youth as well. However, some of the technical errors in the Act defeats the core objectives of such amendments to the Act, which are discussed in depth throughout this article. Therefore, the first part of the article briefly discusses and demonstrates the history of local-level governance and the changes made up-to-date to the electoral system to elect members to the local authorities in Sri Lanka. The second part critically analyses the deficiencies found in the Act and its adverse effects on the whole system of governance at its application stage. The third part comes up with a proposal on the approach of switching to a satisfactory electoral system and also discusses further recommendation briefly. Finally, the conclusion sums up the article in brief.

This research is conducted as a literature review based on secondary sources. An interpretative approach is used to support and justify the argument of theoretical and doctrinal concepts. Moreover, the author followed a qualitative approach to explain her stance.

1. HISTORY OF LOCAL AUTHORITIES

The system of local government has evolved from the archaic practice, dating to the 4th century BC. According to ‘Mahavamsa’, village boards were functioned as the dispute settlement body at the earlier stage by the Sinhalese kings as a unit of administration in villages. Then, the village councils, which were known as ‘gam sabhas’ administered independently in each village to settle minor disputes. Moreover, Village Councils administrated the

local affairs and addressed the complaints of the people. Sri Lanka was continued to follow both mechanisms for centuries. After the British colonialism, there was a variety of Committees and Councils introduced such as village councils, village committees, sanitary boards *etc.* and gradually generated financial and administrative issues therewith subsequently compelled the government to abolish most of them.

After the independence of Sri Lanka in 1948, the local authorities were aligned to a structure based on the socio-economic developments built until then. Accordingly, at the time of independence, the local authorities were comprised of Municipal Councils, Urban Councils, Town Councils and Village Councils. Initially, the Local Authorities Enlargement of Powers Act No. 8 of 1952 transmitted fewer powers from the national government to local authorities. Thereafter, local authorities were designated with more powers through further amendments to the respective Acts during the past seventy years of a journey after gaining independence.

Currently, there are three levels of governments identified in Sri Lanka to govern the people at different levels. The National government is the level of government which has been placed at the first and highest position in the hierarchy. Then, the Provincial Councils placed next to the formerly said, and finally, the local authorities are placed at the third and lowest level in the said hierarchy.

Currently, there are three types of local authorities as of February 2018 respectively, Municipal Councils, Urban Councils and Divisional Councils. Local authorities are, therefore, officially responsible for a variety of public services including roads, libraries, sanitation, drains *etc.* It is the government closer to the people, which enable them the easy participation in both the government's decision-making process and policy formulation progress. Moreover, local authorities are at the grass-root level which serves as a bidirectional channel between the apex of government and the local communities and also ensure the adequate formulation of policies and programmes to satisfy and fulfil the needs and wants of the rural habitats.

1.1. LOCAL AUTHORITIES TODAY

Before 1987 local authorities were elected through the first-past-the-post (FPTP) system and then the system was altered to be an open listed Proportional Representation (PR) system by the Local Authorities (Amendment) Act Nos. 20 and 24 of 1987. The Local Authorities Elections (Amendments) Act No 22 of 2012 further altered the electoral system from Proportional Representation to Mixed Member Proportional Representation System (MMP) whereby 70% of the electorates will be elected through the FPTP system while the rest 30% will be elected through the closed PR system. The significant feature to be highlighted is that the total number of members in the local authorities have been increased significantly from 4,500 to 8,000 after the introduction to the MMP system.

2. LOCAL-LEVEL DEMOCRACY

According to Schumpeter the eighteenth-century philosophy of democracy had couched in the following definition: the democratic method is that institutional arrangement for arriving at decisions which realises the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will. (*Knutsen, C. H. (2010). Measuring Effective Democracy. International Political Science Review, 31(2)*) This definition is suitable for any level of governance. Accordingly, nevertheless, the enacted legislation which introduced a new electoral system for local authorities in Sri Lanka addressed the diversity of representatives to be sponged up to a legislative institution, unfortunately, failed to vouch for the certainty of such inclusion in practice for sure.

The recent election for the local authorities was held on February 2018 following the amended system of MMP. However, the pre and post-election processes taken by the respective authorities are condemnable to an extent, as these political practices have caused a smirch to the concept of democracy at the local level.

The 'Delimitation Committee' appointed by the Minister of local authorities and provincial councils to demarcate the wards to the local authorities, after a much delay, handed over the report recommending to increase the number of electorates elected through FPTP system. Soon after the publication detailing the wards in the Gazette, the government received more than a thousand complaints from different corners of the country challenging such demarcation of wards. As a response, 'The Delimitation Appeals Investigation Committee' was appointed by the government to review the complaints received and soon after the reviewing process, the revised list of wards was gazetted in 2017. Meanwhile, small parties representing minor communities complained that the ratio adopted in the MMP system placed them at risk of lower representation in local authorities. As a result of such continuous request for a re-consultation of such ratio, it was amended to 60:40 by a subsequent amendment to the Local Authorities Elections (Amendment) Act No 22 of 2012 (*amended by No 16 of 2017*). After much stumbling blocks, the local authorities election was held on the 10th of February, 2018.

A democratic electoral process should ensure a representative legislative institution through making elections accessible even for the voters from blind corners. The participation as voters in decision-making process alleviates and helps to cement an efficient government. Moreover, an electoral system should also mandate the representatives to be accountable to the highest degree as far as possible. The existence of a stronger opposition keeps mindful of the realistic position of the financial and administrative capacity of the government which in-turn contributes to an accountable government as well.

Choosing of an electoral system which enhances the efficiency, accountability, viability etc. is one of the main features to cultivate such a stronger government as well as an opposition in a country. Therefore, to put in a nutshell, it is clear that the key concepts of accountability, stronger opposition and electoral system, depend on one another to realise their maximum of its utilisation.

On the other hand, there is no compulsion to follow 'one size fits all' approach. The National Government and/or Provincial Councils and/or local authorities may follow a different type of electoral system from the other to match with the size of the territory, population, socio-economic factors of the area etc. Accordingly, as already mentioned above, local authorities are the lower level of government which is very closer to the people compared to the other two. Therefore, it is essential to pick a suitable electoral process which pays attention to the contextual and temporal factors to maximise voters influence. However, it is also essential to highlight the fact that Sri Lanka had already experimented the FPTP system earlier and because of the unproductive results experienced, Sri Lanka have then decided to switch to the PR system. Switching back partially to the FPTP system, literally delineates that the government has not looked at the previous experiences of governance and also it failed to study the social structure of the country in-depth which also plays a major role indirectly as a hindering factor to successfully with the adopted electoral system. Thus, this partial implementation of the same FPTP system once again will lead to the same ineffective result at the local level.

An undue delay in the election is another stigma to the democratic electoral process. One of the principal promises in the system of representative democracy is to hold elections at a fixed interval. Only elections allow each citizen to express either satisfaction or dissatisfaction towards the ruling political party. Moreover, there is no single provision provides to hold a by-election in between the period of holding the office, which is, on the one hand, fold people blind to check the extent of favourableness toward the ruling party while on the other hand, stigmatised the sense of menace for the government. Therefore, the delay in holding an election in respect of the local authorities in a due interval is obviously inexcusable. However, the relevant authorities were trying to justify the delay by delineating the progress towards developing a new electoral system, which was not the actual fact that had taken place. Moreover, unfocused and hurried amendments to the Local Authorities Elections Act several times dragged the time further. The right to vote of the people is the only way to exercise their sovereignty. Therefore, the government could have conversely held the election using the same old system for that moment and could have worked on the progress of amending the electoral system with an idea to implement it for the upcoming election. Besides, this could have saved the time to work on the output for a fruitful

legislation and avoided several amendments to it in future too.

Another factor to be highlighted is that the defaults in the legislation which made a real impact on the proportionality of the representatives elected. It is important to look at both the vote-seat relationship and level of the wasted votes to evaluate an electoral system. According to section 28 of the Local government election ordinance amended by No. 22 of 2012 and No 16 of 2017, requires to provide the first nomination paper consisting of a list of candidates to be elected through the first-past-the-post (FPTP) system where at least 10% of the candidates should be women and the second nomination paper consisting of a list of candidates to be elected through PR system where a percentage of fifty shall be women . However, the order of the candidates nominated to be elected through PR list can be altered even after the submission of the list to the election commission. This is an undesirable practice as it encourages to alter the decision in a subjective state of mind rather than objective. Moreover, the secretary of each contesting party or leaders of independent groups retain/s the discretion to decide the candidate to be returned from either list. This discretionary power of the relevant authority has the highest chance of getting abused as it has the loophole in the provision which will help the relevant authorities to sponge up the defeated candidates from FPTP system to PR system or on the other way around.

Furthermore, an election is a process to elect the one who wins the majority of the people's heart, and such a person can only be the mirror of the majority of the people in a country. A defeated candidate is a person who has been rejected or voted with the least preference, in other words, who has failed to meet the required minimum number of votes in an electoral area. Moreover, representative democracy should have a consensus between the people and the political elite. Every process of an electoral system should facilitate democracy and ensure a legitimate representation of a legislative institution, and it is also expected to reflect the collective will of the people. Allowing a defeated candidate from FPTP system to hold a legislative office either as a chairman or as a member of such office, will definitely defeat the collective will of the people while on the other hand defeat the core ideology of a representative government. Moreover, the sovereign will of the whole population will be discarded or not genuinely be represented.

Furthermore, every representative has the responsibility to choose an effective electoral system which suits the best depending on the size of the territory, population, socio-economic factors of the area etc. Moreover, It shall be always born in the respective representative's mind that it is the prominent forum for the people to participate in the decision-making process of a government and exercise the sovereign right of them. Moreover, the lessons learnt from 30 years of ethnic war should not be

forgotten and it is the responsibility of the representatives to make sure that there is no lack in numbers of representatives from each heterogeneous society.

Another factor to be highlighted is that if an office of a person becomes vacant in any of the local authority, the person with the next highest number of votes from the FPTP system does not automatically get elected to fill such vacancy. The Local Authorities Elections (Amendment) Act (S 66A(1)(a) amended by s 27(a) of Act 16 of 2017) provides that where the office of a member of a local authority falls vacant under the provisions of the Municipal Councils Ordinance, or Urban Councils Ordinance or the Pradeshiya Sabha Act, as the case may be, the returning officer appointed for the electoral area in which such local authority is situated, shall, where such vacancy is in respect of a member elected for any ward in that electoral area by ballot, request the secretary to the recognized political party or the leader of the independent group, as the case may be, to which such member belongs, to nominate any other candidate of the First Nomination Paper or the Additional Nomination Paper other than the candidates who have been elected or are not disqualified to be a member under the Act, as a member of local authority to fill that vacancy in the ward in which the vacancy has occurred. According to the concept of common will of the people, the person with majority votes in the list next, is the one to be elected automatically. However, the Act is silent in this regard and this gap seems to be a people-unfriendly and politician-friendly approach. Moreover, the discretion of the secretary of each contesting party or leaders of independent groups to decide the candidate to be returned from either list discussed earlier in detail, further encourages the said unfriendly approach.

Another critical defect in the Act (no. 22 of 2012) to be noticed is the reduction of youth quota from 40 to 25 percentage. Earlier, the quota was a mandatory requirement as the provision was constructed using the term 'shall' and now, the term has been altered to 'may' by the subsequent amendment to the Act. This alteration means that now it is an optional requirement as per the statutory interpretation rules provided and followed by SriLankan judiciary for years. On the other hand, disorganisation of 25% women quota has also defeated gender equality indirectly by leaving the final decision on the hands of the Election Commissioner. According to section 65AA of the Local Authorities Election (Amendment) Act (Sec 65AA ins by s 4 of Act 1 of 2016; subs by s 25 of Act 16 of 2017), it is not a mandatory requirement for the Election Commissioner to direct for appointing women in the local authority if there is an overhang or a fact of scoring less than 2 seats in the election. Thus, it is clear that the results will not end up with 25 percent of women in local authorities.

Furthermore, the local government election in 2018 was the largest election held in Sri Lankan history. The present

ruling party, the United Nations Party (UNP) won the presidential election in 2015 with a percentage of 51.28 while, United People's Freedom Alliance (UPFA) left with a percentage of 47.58. Consequently, there is an intricacy in this percentage in the local authorities election held in 2018. Sri Lanka Podujana Peramuna (SLPP) led by the Former President Mahinda Rajapaksha secured the most seats with a percentage of 40.54%; meanwhile, the ruling party UNP received a percentage of 29.41. The decrease in the percentage of the ruling party was inevitable as the people in Sri Lanka continue to complain about the high ratio of cost of living, the shortage in development activities, undemocratic decision-making, unaccountability, and alleged corruptions are some of the factors that have helped to drop-the confidence level of the people. Thus, the result of the local government election clarifies that the support shown in the presidential election has been drastically dropped in recent times.

Another crucial point to be noted is that the UNP owes the majority in national government while SLPP owing the majority in local government. Thus, this difference in governance within the same country at different levels affects the smooth administration and financial/fund flow from central government to a local authority.

Accountability is one of the bedrock of the representative government. It provides a way to check on individuals once got elected. The electoral system and the election campaigns guided the voters to cast their votes for the party and not for the candidates. Therefore, logically, parties will collectively take the responsibility to be accountable and not the individuals who got elected. In this regard, the absence of accountability on the part of each individual who got elected, is a major deficiency in a democratic electoral system.

On the other hand, the undesirable truth to be accepted is that the political parties use their understandings of electoral systems to advance the formats in a way favourable for their own partisan advantage. In reality, the decisions made by them are sort of solutions, handle the situation temporarily and in turn, adversely affects the total political culture of the country concerned. Several subsequent amendments to the Local Authorities Elections Act is the best example of such reckless practice.

Another important factor to be understood is that the increment in the number of members in the local authorities will not upgrade the standard of politics done. Conversely, the demands for a luxury vehicle, fuel allowance and an assistant by the members have increased the expenditures which automatically strike a blow at the country's budget.

3.A PROPOSAL.

The definition for 'the pure theory of democratic representation' by Jayadeva Uyangoda, a political scientist and constitutional expert in Sri Lanka, reads as,

“The liberal conclusion is simple, yet complex: democratic, electoral choice by sovereign citizens is predicted on the presence of multiple political actors in the competitive free market place of politics, unmediated by external stimuli” (Jayadeva Uyangoda, Elections, Representations, and Democracy, A New Electoral System for Sri Lanka. Sri Lanka:Friedrich – Elbert Stiftung publication).

This statement clarifies how real politics have impacted the decision making on selecting an electoral process.

The fundamental complexity relies on the understanding and literacy of the representatives who got elected to make decisions on behalf of the people on choosing an electoral system. Therefore, this article proposes a combined version of a hybrid theory to sort out the said fundamental complexity.

According to Dr.Rohan Edhirisinghe - a Constitutional expert in Sri Lanka - there are four cardinal principles for a proper electoral system. Firstly an electoral system should contribute to the principles of constitutionalism; secondly, the system shall elevate the wills of the people, then the third is that the system should facilitate the deliberative democracy and finally, the system should recognise the freedom of conscience of representatives. (Rohan Edhirisinghe, Essential Features for a New Electoral System, A New Electoral System for Sri Lanka, Sri Lanka: Friedrich – Elbert Stiftung publication) The above discussions clarify that the chosen system - the MMP - on the one hand, is not a conducive and uncomplicated one even for the average literated people who retain the majority in the country, while on the other hand, cannot be considered as an ‘all-inclusive system’ which supports the communal representation along with a special consideration to women and youth representation.

The fourth principle of Rohan Edhirisinghe can be elaborated more by further two key theories. They are,

1. The Free Mandate Theory
2. The Imperative Mandate Theory

The imperative mandate theory provides that the representatives are mandated to act in accordance with the views of the people. This theory mainly relies on the principle of representative democracy.

The free mandate theory states that the elected members of the parliament are free to practice a ‘free mandate’ to contribute to the national interest. There are no restrictions or limits from the parties, policies, and regulations to follow their consciences. In this case, representatives are broadly accepted by the parties to develop their own policies, plan of actions, moderationism, obscurantism and ideas which functions as a mirror of a panorama of others, which they think, is for the vantage of the people. Most liberal countries widely accept this theory. However, it is true that the voters can’t be aware of or guess the mentality of the representative in all

aspects, and it is unfair to reject their ideas in favour of others.

On the whole, the choice of the electoral system is fundamental to structure the manner of politics done. It is essential to study the structure of the society in-depth before forming an electoral system for any level of governance in a country.

Moreover, it is common that the persons of superior intellect and integrity are unlikely to participate in the general elections in Sri Lanka. On the other hand, all the political parties lacking basic knowledge of the technicalities while choosing an electoral system. Thus, the options and the consequences of different electoral systems are under-recognised.

Therefore, this article proposes to combine the fourth principle of Rohan Edhirisinghe with the free mandate theory and form a hybrid theory, - ‘Consultative Mandate theory’ where political parties are required to appoint an advisory committee inscribing experts having superior intellect and integrity in the relevant field from both local and international legal and political sphere and mandates the representatives to have a consultation before making decisions.

This mechanism will help to continue practising the same representative democracy arrangement along with further additional structure of an Advisory Committee. This hybrid mechanism can be not only implemented to choose an electoral system by the central government but also can be used to make decisions at the local authorities as well. Thus, this will improve the rationality of the decisions taken at the lower level of governance which will ultimately help to regain the lost integrity of political culture at both local and international level.

3.1.FURTHER RECOMMENDATION.

Looking at the success stories of other countries with a delineation not to exactly copy and implement it here to our country but to learn the technics and form our own system to cater to the multicultural society will be welcome.

System imposing procedures to enhance efficiency, accountability, viability, elimination of abuse of discretionary power *etc.* such as depending on the approval of a collective body or the advisory committee proposed above, in the Act will solve most of the debates and allegations based on democracy against the Act.

Choosing a different and a suitable electoral system giving prominence to factors like the size of the territory, population, socio-economic factors of the area *etc.* are most important. Moreover, the services provided by the authority and the distance between the authority and the people are also some other factors to be considered. Simply, one size does not fit all. Thus, choosing a system and the procedure thereunder can be differed based on

the factors that are different from the other two levels of government.

The chosen system can be a complexed one as it is designed to cater to a complexed society. However, before commencing the election, it is the responsibility of the state to conduct proper awareness programmes and workshops inclusive of all blind corners of the country, explaining how the system works, how to vote, how the result is calculated, the reliability of the decision etc.

Although the previous enactment pronounces a fixed interval to hold an election, the delay is solely caused by the procedural disorganisation of the government to proceed with an amendment thereto.

Moreover, wisely formulated system of quota for both women and youth will ensure the gender equality and participation of youth in politics at least in future. On the other hand, the formulation of a system which accommodates both gender and communal representation will untangle the problems related to ethnic and women's representation. It is important to highlight that no point of including a quota system into the enactment only for the sake of having it. The quota for both women and youth should be mandated with a certain number or percentage without any reservations and exceptions.

Ensuring a smooth fund flow between the central and the local government even the governing party of the central government is different from the local authority will promote the concept of 'Distributive justice'.

Leaving no space for the representatives to adjust the legislative requirements for their own partisan advantages will also add to increase the standard of democracy.

Another essential factor to be understood is that the increment in the number of members in the local authorities will not upgrade the standard of politics done. Conversely, the demands for a luxury vehicle, fuel allowance and an assistant by the members have increased the expenditures which automatically strike a blow at the country's budget.

Furthermore, considering the factors like automatic nomination of the person who received the highest number of votes in the list next in case of a call for a vacant position, ballot slip that includes the name or a reserved number of the candidate to hold them accountable for the voters, etc., to intensify the belief of the people in the democracy will help to form an effective electoral system.

4. CONCLUSION

Although it is hard to have a pure theory of democracy in an electoral system; it is possible to have the natural flavours of democracy as far as possible. The parts of an electoral system, size of the legislative institution, the frequency of the election, methods of voting and the

relationship between the votes and seats should be coordinated according to the principle of democratic representation. The state has deep-seated issues within it, which acts as driving factors of governance when they make decisions applicable to the whole nation. A decision accepted by all heterogeneous society is impossible. However, formulating an electoral system that can sponge up the majority of the people's demands will lead to a success story.

"We the people are the rightful masters of both Congress and the courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution." (*Adam Lamparello and Cynthia Swann. (2017) The United States Supreme Court's Assault on the Constitution, Democracy, and The Rule of Law. 1st ed. British: Routledge Publication*).

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