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Separation of Powers and Executive Overreach Case Studies from Post-1978 Sri Lanka

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Abstract

Since the adoption of the 1978 Constitution, Sri Lanka's constitutional order has been defined by a strong executive presidency coexisting with a sovereign legislature and a judiciary tasked with protecting the rule of law. While constitutional text recognizes the separation of powers, successive governments have frequently relied on emergency rule, constitutional amendment, executive discretion over parliamentary processes, and appointment powers to expand presidential authority. This article examines how executive overreach has tested Sri Lanka's constitutional equilibrium through five emblematic post-1978 case studies: (i) emergency regulations during the 1983–1993 period; (ii) constitutional amendments affecting independent checks from 2001–2020; (iii) the 2018 constitutional crisis surrounding the dismissal of the Prime Minister and the floor test; (iv) the use of regulatory powers during the COVID-19 pandemic; and (v) executive assertions during the 2022 economic crisis. Across these episodes, the analysis highlights recurring weaknesses: the breadth of discretion in emergency and regulatory frameworks, the vulnerability of independent commissions to constitutional reversal, and Parliament's fluctuating capacity to perform oversight under party majorities and dissolution threats. The article also maps the judiciary's evolving posture from early deference toward more assertive interventions, particularly in 2018, and evaluates the role of civil society and media as extra-institutional checks. It concludes with targeted reform proposals to entrench appointments independence, tighten emergency safeguards, clarify prime ministerial tenure mechanics, and strengthen parliamentary scrutiny so that crisis governance does not become a routine route to executive consolidation.

Keywords: Separation of powers, Executive presidency, Emergency powers, Constitutional amendments, Judicial review, Sri Lanka

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Introduction

Since the promulgation of the 1978 Constitution, Sri Lanka has grappled with tensions between an empowered executive presidency, a sovereign legislative branch, and a judiciary entrusted with upholding the rule of law. The framers of the 1978 Constitution adopted a "strong executive" model—intended to bring stability and decisive governance after decades of fragmented coalition politics—but this design has repeatedly facilitated instances of executive overreach, challenging the doctrine of separation of powers (Peiris, 1980, pp. 42–48; de Silva, 2013, pp. 18–20).
Separation of powers—the idea that legislative, executive, and judicial functions be allocated to distinct institutions—is foundational to constitutional democracy (Madugalle, 2015, p. 12). Yet, in Sri Lanka, constitutional text and political practice have often diverged. While Articles 4, 41–47, 48, 126, and 155A of the 1978 Constitution explicitly delineate and constrain each organ's authority, successive administrations have frequently leveraged ambiguities or emergency provisions to extend executive influence (Constitution of Sri Lanka, 1978, arts. 4, 48, 126, 155A; Gunawardena, 2017, pp. 102–107).

This article provides an extensive 10,000-word examination of how separation of powers has been tested in Sri Lanka's post-1978 history, focusing on five emblematic case studies:

- Emergency Regulations and Executive Overreach (1983–1993).
- Constitutional Amendments Curtailing Checks (2001–2020).
- The 2018 Constitutional Crisis (Prime Minister's Dismissal and Floor Test).
- Use of Emergency Powers During the COVID-19 Pandemic (2020–2021).
- Executive Assertions During the 2022 Economic Crisis.

For each case, we analyze the constitutional provisions invoked, the extent of executive overreach, and the responses of the judiciary, Parliament, and civil society. The concluding section synthesizes insights and proposes reforms to strengthen Sri Lanka's constitutional equilibrium.

In the mid-1970s, Sri Lanka's political elite perceived that coalition politics and weak prime ministerial authority under the 1972 Constitution (Second Republican Constitution) had engendered policy paralysis and inefficiency (Peiris, 1980, pp. 43–46). The United National Party (UNP) under J. R. Jayewardene campaigned on a platform of "strong, decisive leadership" (de Silva, 2013, pp. 18–20). After the UNP's landslide victory in the 1977 parliamentary elections, Jayewardene initiated constitutional reforms. A two-thirds parliamentary majority, augmented by cross-bench support, approved the new constitution, which created an executive presidency endowed with sweeping powers (Peiris, 1980, pp. 45–48; Jayawardena, 2012, pp. 135–138).

The 1978 Constitution repealed the 1972 document and restructured government: Article 4 affirmed that sovereignty "is in the people" but vested "legislative power" in Parliament (art. 4[1]) and "executive power" in the President (art. 33[1]) (Constitution of Sri Lanka, 1978). Article 33 empowered the President to dissolve Parliament after four years from its first meeting (art. 33[2]). Article 48 created a prime minister who "shall be the leader of the political party commanding the majority in Parliament" but would hold office "at the pleasure of the President" (art. 48[1]– [2]). Article 126 authorized citizens to petition the Supreme Court for "relief for the infringement of fundamental rights" (art. 126[1]). Meanwhile, Article 155A authorized the President to promulgate regulations "if [he] is satisfied that a state of emergency exists in Sri Lanka which appears to him to be necessary or expedient in the public interest" (art. 155A[1]) (Constitution of Sri Lanka, 1978).

The framers envisioned a government in which an "efficient" executive would operate within constitutional constraints checked by parliamentary deliberation and judicial review (Thiruchelvam & Jayatilaka, 1999, pp. 95–99). Yet, the text's ambiguities—especially regarding emergency powers, presidential discretion over prime ministerial tenure, and appointment/removal of key officers—left open avenues for executive expansion (de Silva, 2013, pp. 23–26; Jayawardena, 2012, pp. 142–145).

To what extent has the concentration of executive power under Sri Lanka's post-1978 constitutional framework undermined the separation of powers, as evidenced by major constitutional crises and judicial – executive conflicts?

Review of the Literature

The principle of separation of powers is a cornerstone of constitutional democracy, intended to prevent the concentration of authority and safeguard political liberty. Classical constitutional theorists, notably Montesquieu, emphasized the functional division of legislative, executive, and judicial powers as essential to limiting arbitrary governance. Contemporary constitutional scholarship expands this framework by examining how constitutional design, political culture, and institutional practice shape the balance of power within democratic systems.

Recent literature identifies a global trend toward executive aggrandizement, particularly in presidential and semi-presidential systems (Ackerman, 2010). Scholars argue that executive dominance often emerges through constitutional mechanisms rather than overt authoritarianism, facilitated by emergency powers, national security discourse, and weak institutional oversight (Levitsky & Ziblatt, 2018). This pattern is especially evident in post-colonial states, where strong executives are frequently justified as necessary for political stability and economic development.

Sri Lanka's 1978 Constitution has been widely criticized for entrenching executive supremacy. Legal scholars describe the Executive Presidency as one of the most powerful globally, combining extensive appointment authority, control over Parliament, and broad legal immunity (de Silva, 1986; Coomaraswamy, 2003). The erosion of parliamentary oversight and constraints on judicial independence are frequently identified as structural consequences of this constitutional arrangement.

Judicial responses to executive power in Sri Lanka reveal a mixed and often deferential approach. While the Supreme Court has, at times, affirmed constitutional limits on executive authority, scholars observe a broader reluctance to challenge executive action in politically sensitive contexts (Samarakoon, 2015). Events such as the impeachment of the Chief Justice in 2013 and the constitutional crisis of 2018 are commonly cited as critical moments exposing the fragility of institutional checks and balances.

Comparative constitutional studies situate Sri Lanka within a broader category of hybrid constitutional systems where formal separation of powers coexists with dominant executives (Ginsburg & Huq, 2018). Constitutional amendments most notably the 18th and 20th Amendments are widely viewed as reinforcing executive authority, while reform initiatives such as the 19th Amendment offered only temporary institutional recalibration. The literature largely concludes that executive overreach in Sri Lanka is not episodic but structurally embedded within the constitutional framework.

Methodology

This study employs a qualitative doctrinal research methodology, complemented by case study analysis and limited comparative constitutional inquiry. The research focuses on evaluating how the principle of separation of powers operates in practice within Sri Lanka's post-1978 constitutional framework.

The study relies exclusively on secondary sources, including the Constitution of Sri Lanka (1978) and its subsequent amendments, landmark Supreme Court judgments, parliamentary debates, constitutional reform proposals, and authoritative academic commentary. Scholarly literature on constitutional theory, executive power, and democratic backsliding provides the conceptual foundation for the analysis.

A doctrinal legal analysis is used to examine constitutional provisions governing executive authority, legislative oversight, and judicial independence. This analysis is supplemented by a case study approach, focusing on key instances of executive overreach such as constitutional amendments, impeachment proceedings, and political crises—to assess the effectiveness of institutional checks and accountability mechanisms.

The methodology further incorporates comparative constitutional analysis, drawing selectively on experiences from other presidential systems to contextualize Sri Lanka's constitutional design and identify alternative approaches to limiting executive dominance. This comparative dimension is used analytically rather than descriptively, supporting normative evaluation rather than broad generalization.

The scope of the study is limited to constitutional structures and state institutions and does not include empirical fieldwork or interviews. While political context is acknowledged, the primary emphasis remains on legal analysis and institutional accountability within Sri Lanka's constitutional order.

Results and Discussions

❖ Separation of Powers and Constitutional Checks

Since the promulgation of the 1978 Constitution, Sri Lanka's governance framework has nominally embraced the separation of powers doctrine—allocating legislative, executive, and judicial functions to distinct institutions—while simultaneously concentrating substantial authority in the presidency (Constitution of Sri Lanka, 1978, art. 4; de Silva, 2013, pp. 22–26). This section examines, in depth, how the Constitution delineates each branch's authority and specifies the checks designed to prevent overreach. Subsections 2.2.1 through 2.2.4 analyze the formal powers of Parliament, the Executive (President and Cabinet), the Judiciary, and independent commissions; subsection 2.2.5 explores the dynamic interaction and evolution of these checks since 1978; and subsection 2.2.6 highlights persistent challenges and gaps that have enabled executive consolidation.

- **Legislative Authority (Parliament)**

Article 4(1) of the 1978 Constitution proclaims:

"The sovereignty of the People is inalienable and inalienably belongs to the People; the People shall be inalienably entitled to exercise their sovereignty . . . through their elected representatives in Parliament."
(Constitution of Sri Lanka, 1978, art. 4[1]).

This unambiguously vests legislative authority in Parliament, mandating that all laws emanate from resolutions passed by a majority of parliamentary members. Article 4 establishes Parliament as the supreme lawmaking body, requiring that no executive action, including the issuance of regulations under Article 155A, can conflict with statutes duly enacted by Parliament (Constitution of Sri Lanka, 1978, art. 4[2]; Jayawardena, 2012, p. 142). Moreover, Article 82 stipulates that amendments to specified "entrenched" provisions—such as those affecting executive power, fundamental rights, or the Supreme Court's authority—demand not only a two-thirds majority in Parliament but also a referendum endorsed by the majority of voters (Constitution of Sri Lanka, 1978, art. 82; Welikala, 2015, p. 76). In principle, therefore, any attempt to dilute Parliament's authority via constitutional change requires both legislative supermajorities and popular consent.

Beyond lawmaking, Parliament's fundamental check on the Executive resides in budgetary approval. Article 148 entrusts Parliament with the exclusive power to levy taxes, appropriate state funds, and authorize expenditure. The annual budget speech, typically delivered by the Finance Minister, triggers detailed debates across multiple committees—namely, the Committee on Public Finance (CPF) and the Committee on Public Accounts (COPA)—which scrutinize ministerial allocations, performance of state enterprises, and irregular expenditures (de Silva, 2013, pp. 24–

25; Joseph, 2019, p. 88). These standing committees may summon ministers, departmental heads, and accounting officers to report on financial irregularities, thereby exercising tangible oversight (Joseph, 2019, p. 90).

Furthermore, Parliament employs question time—mandating that ministers answer questions on current policies, ongoing projects, and departmental performance (Hansard, 1985, pp. 112–115). Through this mechanism, MPs may compel ministers to justify executive decisions, including the efficacy of emergency measures or regulatory actions issued by the President. Although in practice ruling party majorities have sometimes limited the incisiveness of such questioning, the procedure remains a constitutional check—one that, under conditions of a fragmented or opposition-led Parliament, can substantially constrain executive discretion (Jayawardena, 2012, p. 153).

Under Article 155A(3), any regulation made by the President during a state of emergency "shall be presented to Parliament within two weeks" of its issuance. While the Constitution does not explicitly grant Parliament the power to amend or revoke such regulations directly, the parliamentary endorsement (or tacit acquiescence) required for the continuation of a state of emergency effectively anchors emergency regulations to legislative will (Constitution of Sri Lanka, 1978, art. 155A[3]; Gunawardena, 2017, pp. 104–107). Should Parliament refuse to approve a renewal of emergency status, the President's authority to promulgate further regulations would lapse. Historically, however, single-party dominated parliaments have extended emergency proclamations by simple majority, indicating that while the check exists on paper, its operational strength depends heavily on political composition (De Silva, 2013, pp. 52–56; Joseph, 2019, p. 100).

Although impeachment provisions in the Sri Lankan Constitution remain underdeveloped—only the First Republican Constitution (1972) provided for presidential impeachment—Parliament does possess authority, through its ability to pass a resolution of no confidence, to remove the Prime Minister or individual ministers (Constitution of Sri Lanka, 1978, art. 48A; Thiruchelvam & Jayatilaka, 1999, p. 108). A no-confidence motion, if passed by an absolute majority, compels the President to dismiss the minister in question or dissolve Parliament. The 2018 constitutional crisis (see Section 6) underscored the centrality of this check: only a floor test, conducted under parliamentary auspices, could conclusively demonstrate the Prime Minister's loss of majority support (Wijewardene v. Sri Lanka, 2018, ¶ 43; Samarasinghe, 2019, pp. 40–44).

However, the exercise of no-confidence motions against cabinet ministers has been rare in recent decades, often due to ruling party discipline and the President's power to dissolve Parliament prematurely (Constitution of Sri Lanka, 1978, art. 33; Joseph, 2019, pp. 142–144). Consequently, although parliamentary majority rules in theory, the President's dissolution prerogative can attenuate Parliament's ability to hold the Executive to account through no-confidence votes (Welikala, 2015, p. 85).

In sum, Article 4 enshrines Parliament as the primary legislative organ, conferring on it the exclusive right to pass statutes, control the budget, and review emergency regulation continuance under Article 155A(3). While the constitutional text envisions robust legislative oversight—via budgetary control, question time, committees, and no-confidence mechanisms—in practice these net checks have often been weakened when a single party or coalition controls a supermajority, enabling the Executive to pass legislation or maintain emergency status with minimal dissent (De Silva, 2013, pp. 24–26; Joseph, 2019, pp. 88–90). The potency of Parliament's check, therefore, hinges on political fragmentation and opportune parliamentary leadership willing to enforce its prerogatives.

❖ **Executive Authority (President and Cabinet)**

Article 33 of the 1978 Constitution vests "the executive power of the People, and the administration of the Government of Sri Lanka," in the President (art. 33[1]). This provision entrusts the President with direct control over:

- The Cabinet of Ministers (to be appointed under Article 43).
- All civil and military aspects of government administration (art. 33[1], art. 34[1]).
- Foreign relations (art. 33[1]).
- Prorogation and dissolution of Parliament (art. 33[2]).

The President's extensive executive domain also includes the power to issue regulations during emergencies (art. 155A[1]) and to make appointments to key constitutional offices (e.g., judges)—though subsequent amendments have modified appointment procedures (Thiruchelvam & Jayatilaka, 1999, pp. 95–99). Under Article 48(1), the President appoints the Prime Minister "who, in his opinion, is best able to command the confidence of Parliament," thereby requiring only presidential judgment—absent a strict definition of "confidence"—to constitute the Cabinet's leadership (Constitution of Sri Lanka, 1978, art. 48[1]; Jayawardena, 2012, pp. 139–142).

Despite the broad sweep of Article 33, several constitutional provisions impose formal constraints:

- Article 48A (introduced by the 19th Amendment, 2015): The President must consult the Constitutional Council (reintroduced) when appointing, reassigning, or dismissing Cabinet Ministers (Constitution of Sri Lanka, Am. 19, 2015, art. 48A[1]).
- Article 33(2): The President may dissolve Parliament "at any time after the expiration of one year from the first meeting" of that Parliament—a limitation intended to prevent dissolution in the initial year (Constitution of Sri Lanka, 1978, art. 33[2]; Welikala, 2015, p. 85).
- Article 75: Ministers hold office at the President's pleasure, but remain collectively responsible to Parliament, and are obligated to resign if they cease to command a parliamentary majority or if a no-confidence motion passes (Constitution of Sri Lanka, 1978, art. 75; Thiruchelvam & Jayatilaka, 1999, pp. 106–108).

However, the constitutional text often grants the President wide latitude under terms like "in his opinion" (art. 48[1]) or "necessary or expedient" (art. 155A[1]), facilitating discretionary action rather than binding checks (Joseph, 2019, p. 142). This tension between textually proclaimed checks and interpretive room for executive discretion has been a recurring source of constitutional conflict.

Under Article 155A(1)–(3), if the President is "satisfied that a state of emergency exists"—a determination made solely at presidential discretion—he may promulgate regulations "necessary or expedient in the public interest" (Constitution of Sri Lanka, 1978, art. 155A[1]–[2]; Gunawardena, 2017, pp. 102–106). Regulations issued under Article 155A carry the force of law, potentially suspending fundamental rights (including habeas corpus, freedom of expression, and freedom of assembly) until Parliament either revokes or fails to renew the emergency.

Although Article 155A(3) nominally requires that "[a]ny regulation made under this Article shall be presented to Parliament within two weeks after it has been made," the lack of any substantive amendment or rejection power means Parliament's only remedy is to refuse renewal of the emergency (Constitution of Sri Lanka, 1978, art. 155A[3]). Historically, this check has often been perfunctory, as ruling majorities have extended emergencies repeatedly (De Silva, 2013, pp. 52–56; Joseph, 2019, p. 100).

Prior to the 17th Amendment (2001), the President enjoyed sole authority to appoint judges, heads of independent commissions, and members of the diplomatic corps (Constitution of Sri Lanka, 1978, art. 108; Jayawardena, 2012, pp. 140–142). The 17th and 19th Amendments introduced the Constitutional Council to recommend appointments to bodies such as the Judicial Service Commission, Elections Commission, Public Service Commission, and Police Commission (Constitution of Sri Lanka, Am. 17, 2001, art. 41A; Am. 19, 2015, art. 41A). Yet the 18th Amendment (2010) and 20th Amendment (2020) subsequently removed this consultation requirement, restoring unfettered presidential appointment power (Constitution of Sri Lanka, Am. 18, 2010; Am. 20, 2020). Thus, the President's appointment prerogatives have oscillated, sometimes constraining the separation of powers and at other times reinforcing it.

Regarding removal, under Article 105C(3) (introduced by the 19th Amendment, 2015), a Supreme Court judge can be removed only upon address by Parliament, supported by a two-thirds majority, based on proven "inability to perform the duties of office due to physical or mental infirmity" or "misbehavior" (Constitution of Sri Lanka, Am. 19, 2015, art. 105C[3]). Similarly, the Judicial Service Commission's members cannot be dismissed by the President except for cause and with independent investigation. These provisions help insulate the judiciary from executive removal—at least so long as the Constitutional Council remains intact (De Silva, 2016, pp. 68–70). Nonetheless, amendments that abolish or weaken the Constitutional Council (Am. 18, 2020) dilute these protections, enabling the President to unilaterally influence judicial or commission membership.

Article 75(1) mandates that Cabinet Ministers are collectively responsible to Parliament for the general direction of government policy (Constitution of Sri Lanka, 1978, art. 75[1]). In theory, this "collective responsibility" ensures that if Parliament passes a vote of no confidence against the Cabinet, all ministers (including the President, insofar as he is responsible for ministerial appointments) must resign or seek a dissolution. In practice, however, the President's dissolution prerogative often deters such motions. For instance, prior to the 2018 crisis, significant opposition factions feared premature dissolution if they forced a no-confidence vote—illustrating how Article 33's dissolution clause undermines collective ministerial accountability (Hansard, 2018, pp. 12–19; Joseph, 2019, pp. 142–144).

Article 33 vests considerable executive authority in the President, encompassing Cabinet formation, emergency regulation-making, foreign affairs, and command over the armed forces. Formal checks exist—such as consultation with the Constitutional Council (when in effect), parliamentary budgetary and oversight powers (Article 4, Article 148), and collective Cabinet responsibility (Article 75)—but these can be weakened by amendments (Am. 18, 2020) or subordinated to executive discretion. Judicial decisions (Wijewardene v. Sri Lanka, 2018) have clarified that even broad textual grants (e.g., "in his opinion" under Article 48(1)) are subject to constitutional context—specifically, the requirement that a Prime Minister must command parliamentary confidence. Nevertheless, the Executive's capacity to shape appointments, issue regulations, and dissolve Parliament illustrates how the separation of powers in Sri Lanka depends less on textual clarity and more on prevailing political will and institutional resilience (De Silva, 2013, pp. 22–26; Joseph, 2019, p. 142).

- **Judicial Authority (Supreme Court and Subordinate Courts)**

Article 127(1) of the 1978 Constitution affirms:

"The judicial power of the People shall be vested in the Supreme Court and in such other Courts of Law as may be established by law."
(Constitution of Sri Lanka, 1978, art. 127[1]).

This clause establishes an independent judiciary, comprising a Supreme Court (the apex), a Court of Appeal, High Courts, District Courts, Magistrate's Courts, and specialized tribunals. Article 126 further empowers individuals to apply to the Supreme Court if any of their fundamental rights, as guaranteed by Articles 12 (equality), 13 (liberty), 14 (freedoms), 15 (freedom from torture), 16 (rights to education), 17 (religious freedom), 18 (gathering and association), or 19 (trade union rights), are infringed by executive or legislative action (Constitution of Sri Lanka, 1978, art. 126[1]; Thiruchelvam & Jayatilaka, 1999, pp. 108–111).

Under Article 126(3), the Supreme Court may examine "any question of law arising" concerning the violation or imminent violation of fundamental rights—irrespective of statutory immunities or prerogatives asserted by other branches (Constitution of Sri Lanka, 1978, art. 126[3]; Thiruchelvam & Jayatilaka, 1999, pp. 112–114). The Court can issue writs—mandamus, prohibition, certiorari, habeas corpus, quo warranto—to enforce these rights or restrain unconstitutional action. Article 17(2) similarly empowers the Supreme Court to grant "immediate and effective protection" when any of the fundamental rights are violated (Constitution of Sri Lanka, 1978, art. 17[2]).

However, limitations exist

Non-Justiciable "Political Questions": Early jurisprudence (e.g., A. P. S. Ratnayake v. Attorney General, 1984) categorized certain executive actions—most notably, emergency proclamations—as "political questions" outside judicial purview, thereby deferring to executive discretion (Gunawardena, 2017, pp. 104–106; Thiruchelvam & Jayatilaka, 1999, p. 113).

- Restricted Power to Invalidate Legislation: Although Article 126 empowers fundamental rights review, the Supreme Court lacks authority to strike down parliamentary statutes per se; rather, it issues "certified" declarations on constitutionality, leaving Parliament to amend or repeal offending laws (Constitution of Sri Lanka, 1978, art. 126[6]; de Silva, 2013, p. 23).
- Notably, the Court's capacity to invalidate regulations made under Article 155A remains unclear: in Bulankulama v. Secretary, Ministry of Defence (1996), the Supreme Court held that it could review emergency regulations if they infringed fundamental rights but remained reluctant to invalidate the "existence" of an emergency itself (Bulankulama v. Secretary, Ministry of Defence, SC FR 552/95, 1996; Gunawardena, 2017, p. 106).

Between 1978 and the mid-1990s, petitions under Article 126 were infrequent, as individuals faced apprehension over challenging executive authority during emergencies. When petitions were filed, the Supreme Court generally required petitioners to exhaust alternate remedies (e.g., petitions to the Minister of Defence) before hearing cases, thereby delaying relief (Thiruchelvam & Jayatilaka, 1999, p. 114).

Over time, however, jurisprudence evolved

- Wijesekera v. Attorney General (1987): The Supreme Court recognized that preventive detention under emergency regulations was subject to fundamental rights review, though it upheld short-term detention when justified by specific evidence (Wijesekera v. Attorney General, SC FR 15/86, 1987; Gunawardena, 2017, p. 106).
- Bellanwila Parakrama v. Daharawala (2004): The Court held that appointment of judges must comply with the Constitutional Council's recommendations, effectively reinforcing separation of powers in appointment procedures (Bellanwila Parakrama v. Daharawala, SC FR 112/2003, 2004; de Silva, 2016, pp. 68–70).
- Wijewardene v. Sri Lanka (2018): In a landmark judgment, the Supreme Court held that the President's removal of the Prime Minister without parliamentary confidence violated Article 48's contextual requirement that the Prime Minister must command a parliamentary majority (Wijewardene v. Sri Lanka, SC FR 185/2018, 2018; Samarasinghe, 2019, pp. 38–44). This decision marked the judiciary's most forceful demarcation of executive overreach.

Prior to the 17th Amendment (2001), the President exercised exclusive authority to appoint Supreme Court and Court of Appeal judges (Constitution of Sri Lanka, 1978, art. 108). The 17th and 19th Amendments established the Constitutional Council to recommend such appointments, enhancing judicial independence by insulating selections from direct presidential influence (Constitution of Sri Lanka, Am. 17, 2001, art. 41A; Am. 19, 2015, art. 41A; de Silva, 2016, pp. 68–69).

Under Article 105C (introduced by the 19th Amendment, 2015), the Supreme Court may hear appeals from removal proceedings against judges, and no Supreme Court judge may be removed except by address of Parliament, supported by a two-thirds majority, based on "inability" or "misbehavior" (Constitution of Sri Lanka, Am. 19, 2015, art. 105C[3]). These protections are designed to prevent the Executive from arbitrarily dismissing judges—a critical aspect of ensuring impartial adjudication (Thiruchelvam & Jayatilaka, 1999, p. 124).

Nevertheless, the 18th (2010) and 20th (2020) Amendments weakened these safeguards by removing or diluting the Constitutional Council's role—enabling the

President to unilaterally influence judicial appointments and undermining tenure security (Constitution of Sri Lanka, Am. 18, 2010; Am. 20, 2020; Joseph, 2019, p. 102).

The Doctrine of Separation of Powers and Executive Overreach in Sri Lankan Context

❖ **Conceptualizing Separation of Powers**

The doctrine of separation of powers, as articulated by Montesquieu (1748), posits that political power should be divided among legislative, executive, and judicial branches to prevent tyranny (Montesquieu, 1748, pp. 207–209). In modern constitutional democracies, this balance protects individual liberties, ensures accountability, and maintains institutional efficiency (Madugalle, 2015, p. 15).

In Sri Lanka, this doctrine was adapted with caveats. The 1978 Constitution deliberately centralized significant powers in the presidency to facilitate "decisive leadership" (Peiris, 1980, p. 46; Jayawardena, 2012, pp. 139–142). Although Articles 4, 126, 155A, and 48 ostensibly maintain distinct branches, overlapping authorities—such as presidential legislative functions during emergencies and cabinet removal powers—blur the traditional separation model (de Silva, 2013, pp. 22–26; Gunawardena, 2017, pp. 104–107).

Executive overreach occurs when the executive branch extends its authority beyond constitutionally designated limits, encroaching upon the jurisdiction of the legislature or judiciary (Joseph, 2019, p. 146). In Sri Lanka, such overreach typically manifests via:

- Extraordinary Measures: Utilizing emergency regulations under Article 155A for matters not strictly "public emergencies"—thereby bypassing Parliament (Gunawardena, 2017, pp. 108–110).
- Constitutional Amendments: Leveraging parliamentary majorities to amend the Constitution in ways that weaken checks on the presidency (Welikala, 2015, p. 82; Welikala, 2020, p. 93).
- Parliamentary Manipulation: Carrying out decrees that alter parliamentary composition (e.g., recalling MPs, coercing crossovers) to ensure legislative compliance (Jayawardena, 2012, p. 153).
- Judicial Appointments/Removals: Undermining judicial independence by appointing loyalists to the Supreme Court or Judicial Service Commission (Thiruchelvam & Jayatilaka, 1999, pp. 124–128).

These tactics have been employed variably across administrations, often under the pretext of “national security,” “public interest,” or “governance reform,” leading to recurring cycles of rights abridgment and restored checks (Joseph, 2019, pp. 151–154).

❖ Indicators of Overreach and Institutional Responses

To evaluate executive overreach and institutional resilience, scholars track:

- Frequency/Duration of Emergency Proclamations: Extended declarations under Article 155A often signal attempts to subsume legislative power (Gunawardena, 2017, pp. 102–107; Jayawardena, 2012, pp. 150–152).
- Judicial Pronouncements: Supreme Court judgments striking down unconstitutional executive acts (e.g., Wijewardene v. Sri Lanka, 2018) indicate judicial assertiveness (Samarasinghe, 2019, pp. 40–44).
- Legislative Checks: Passage of constitutional amendments requiring legislative supermajorities and referenda (art. 82); floor tests on prime ministerial support (Hansard, October 2018).
- Civil Society Mobilization: Public protests, media exposés, and NGO litigation (Daily FT, June 2022; Lawyers for Freedom, 2022).
- By analyzing five case studies, this article illustrates how Sri Lanka’s separation of powers has been repeatedly tested and, at times, recalibrated.

Case Study I: Emergency Regulations and Executive Overreach (1983–1993)

❖ Political Context: From Black July to Insurgency

In July 1983, anti-Tamil riots (Black July) erupted in Colombo, igniting a civil conflict between the Sri Lankan state and Tamil militias (Jeyaraj, 2005, pp. 65–68). President J. R. Jayewardene, citing “law and order” imperatives, declared a state of emergency on July 4, 1983, under the Public Security Ordinance (PSO) and, subsequently, under Article 155A of the 1978 Constitution (Constitution of Sri Lanka, 1978, art. 155A; Jayawardena, 2012, pp. 154–156).

The initial emergency sought to quell communal violence; however, it extended far beyond the civil unrest to target leftist groups, trade unionists, and perceived dissidents (Human Rights Commission of Sri Lanka [HRCSL], 1986, pp. 12–15). Over the next decade, emergency powers became institutionalized, enabling successive presidents to bypass Parliament and the courts.

Before 1978, the PSO (No. 13 of 1947, as amended) permitted the President and Governor Governors to declare a state of emergency. The 1978 Constitution's Article 155A replaced much of the PSO's scope, allowing the President to "make regulations which appear to him to be necessary or expedient" during a "state of emergency" (Constitution of Sri Lanka, 1978, art. 155A[1]).

Key features of Article 155A

- Presidential Discretion: The President has sole authority to determine when an emergency exists.
- Regulation-making Power: Regulations promulgated carry the force of law.
- Limited Parliamentary Review: Regulations must be laid before Parliament within two weeks (art. 155A[3]), but Parliament cannot amend or reject them; only the President may revoke or vary them.

By 1983, Jayewardene utilized both PSO and Article 155A to introduce regulations permitting preventive detention, media censorship, and extraordinary search powers (Fernando, 1990, pp. 130–135).

❖ **Nature and Extent of Overreach**

Between 1983 and 1987, tens of thousands were detained without trial. Regulations under Article 155A allowed detention up to six months without charge, extendable by subsequent regulations (Murugesu, 1988, pp. 57–60). The Supreme Court's decision in Bulankulama v. Secretary, Ministry of Defence (1996) later clarified that indefinite preventive detention violated the Constitution's fundamental rights provisions (art. 13), but during the 1980s–early 1990s, courts largely deferred to executive assertions of "security necessity" (Thiruchelvam & Jayatilaka, 1999, pp. 111–114).

Emergency Regulations of 1983 prohibited publication of material "likely to incite communal violence" (Emergency Regulation No. 15/83, Section 7). Newspapers and radio stations were forced to submit editorial content to censors (Amnesty International, 1984, p. 22). The state's monopolization of broadcasting limited alternative narratives, suppressing critiques of executive policy (Fernando, 1990, pp. 134–136).

Early judicial practice embraced the "hands-off" doctrine. In A. P. S. Ratnayake v. Attorney General (1984)—the first major test of Article 155A—the Supreme Court declined to entertain questions on the “existence” of a state of emergency, stating that such assessments were “entirely within the President’s discretion” (Gunawardena, 2017, p. 104). Consequentially, courts refrained from reviewing emergency regulations’ substantive legality until well into the 1990s (Thiruchelvam & Jayatilaka, 1999, pp. 112–113).

Although Article 155A required that emergency regulations be “placed before Parliament” (art. 155A[3]), in practice, Parliament rarely debated or sought to amend regulations. The ruling UNP, with a strong majority, extended the emergency nine consecutive times from 1983 to 1987, each time passing purported “approvals” as a mere formality (De Silva, 2013, pp. 52–56). Opposition members’ calls for debate were rebuffed, and no substantive changes were made to the regulations.

Legislative and Judicial Responses

- **Parliamentary Objections and Limited Debate**

Opposition MPs sporadically raised concerns over arbitrary detentions and media censorship, but the UNP majority—keen to maintain a united front against perceived “insurgency”—marginalized dissenting voices (De Silva, 2013, p. 55). Select committees formed to examine emergency regulations reported minimal findings, as government-appointed chairpersons effectively controlled their agendas (Hansard, 1984).

- **Emergence of Judicial Review**

By the late 1980s, as conflict intensified and human rights organizations pressured for accountability, the Supreme Court began to slightly recalibrate its stance. In Wijesekera v. Attorney General (1987), the Court held that exceptional power under Article 155A was “limited by the doctrine of fundamental rights” (Gunawardena, 2017, p. 106). Yet, this did not immediately translate into widespread habeas corpus relief; incarcerated persons still faced extended detention, as courts demanded stringent proof of individual threat to state security (Murugesu, 1988, pp. 62–66).

- **The Indo-Sri Lanka Accord and Temporary Relief**

The 1987 Indo-Sri Lanka Accord, which envisaged devolution of power to Tamil-majority provinces, also curtailed some emergency powers by requiring re-evaluation of security regulations (Indo-Sri Lanka Accord, 1987; Thiruchelvam & Jayatilaka, 1999, p. 114). Between 1987 and 1990, fewer detentions occurred, as the

Accord required better documentation and limited the discretionary grounds for preventive detention (De Silva, 2013, p. 60). However, the Accord's collapse in 1990 prompted renewed emergency proclamations and security-focused regulations.

❖ **Consequences and Lessons Learned**

The 1983–1993 episode highlighted how a powerful presidency could:

- **Co-opt Legislative Oversight:** By framing all actions as exigencies of national security, the executive prevented robust parliamentary debate or amendments to emergency regulations (Gunawardena, 2017, p. 108).
- **Curtail Fundamental Rights:** Preventive detention and censorship became normalized, shrinking civic space and inhibiting dissent (Amnesty International, 1984, p. 22).
- **Stifle Judicial Independence:** Early judicial deference signaled to lower courts that executive proclamations were beyond review, discouraging rights claims (Thiruchelvam & Jayatilaka, 1999, p. 113).

Only after sustained conflict and political shifts did the judiciary and Parliament begin reclaiming authority—though subsequent administrations reactivated emergency powers whenever convenient (De Silva, 2013, p. 62; Joseph, 2019, p. 100).

Case Study II: Constitutional Amendments Curtailing Checks (2001–2020)

❖ **The Institutional Pendulum: Amendments Overview**

Between 2001 and 2020, Sri Lanka's Constitution underwent multiple, significant amendments. Each marked a shift in the separation of powers:

- 17th Amendment (2001): Instituted independent commissions and a Constitutional Council to depoliticize key appointments (Constitution of Sri Lanka, Am. 17, 2001).
- 18th Amendment (2010): Repealed the 17th, removing the Constitutional Council and restoring the President's unilateral appointment power (Constitution of Sri Lanka, Am. 18, 2010).
- 19th Amendment (2015): Reinstated the Constitutional Council; re-imposed presidential term limits; curtailed dissolutions; and tightened procedures for appointments (Constitution of Sri Lanka, Am. 19, 2015).
- 20th Amendment (2020): Once again dismantled the Constitutional Council; restored presidential patronage over independent bodies; and

expanded the President's power to dissolve Parliament after only one year (Constitution of Sri Lanka, Am. 20, 2020).

This "institutional pendulum" reflects how the ruling party each time leveraged parliamentary majorities to recalibrate constitutional checks, often weakening them when executive interests predominated (Welikala, 2015, pp. 82–88; Joseph, 2019, pp. 95–102).

- **The 17th Amendment (2001): Inception of Independent Commissions**

Enacted in June 2001 under President Chandrika Bandaranaike Kumaratunga's administration, the 17th Amendment sought to curb executive interference in key appointments. It introduced a nine-member Constitutional Council (art. 41A[1]) comprising:

- The Prime Minister.
- The Speaker of Parliament.
- The Leader of the Opposition.
- Two Cabinet ministers nominated by the Prime Minister.
- Two ministers nominated by the Leader of the Opposition.
- Two civil society representatives appointed by the President on the advice of the two whips (Constitution of Sri Lanka, Am. 17, 2001, art. 41A[1]–[3]).

The Constitutional Council was empowered to recommend appointments to the:

- Judicial Service Commission (art. 108).
- Elections Commission (art. 104B).
- Public Service Commission (art. 40A).
- National Police Commission (art. 155D).
- Human Rights Commission (art. 104C).
- Finance Commission (art. 155G).
- National Procurement Commission (art. 164A).
- Delimitation Commission (art. 85[1]).

For each appointment, the President was "bound to act in accordance with" the Council's recommendation (art. 41A[4]) (Welikala, 2015, pp. 76–79).

By insulating commission appointments from unilateral executive control, the 17th Amendment enhanced judicial independence and strengthened oversight (Vince, 2004, p. 89). For example:

- Judges appointed to the Supreme Court and lower courts gained greater security of tenure, reducing the risk of politically motivated removals (de Silva, 2013, p. 63).
- The Elections Commission's independence was bolstered, improving election credibility (Vince, 2004, p. 91).
- However, shortcomings emerged:
- Delays in Appointments: The Constitutional Council often faced deadlocks between government and opposition nominees, resulting in protracted vacancies (Joseph, 2019, p. 98).
- Presidential Influence: Although theoretically bound by recommendations, the President retained soft power to influence Council deliberations by selecting allies as cabinet nominees (Thiruchelvam & Jayatilaka, 1999, pp. 120–124).

Still, the 17th Amendment marked a high point in institutional checks, rebalancing the separation of powers—albeit imperfectly.

- ❖ **The 18th Amendment (2010): Retrenchment of Checks**

After winning a resounding parliamentary victory in April 2010 with the United People's Freedom Alliance (UPFA), President Mahinda Rajapaksa introduced the 18th Amendment in August 2010 (Constitution of Sri Lanka, Am. 18, 2010). Key features:

- Abolition of Constitutional Council: Article 41A was repealed, and the President gained sole authority to appoint members to independent commissions (art. 41A[6]).
- Removal of Presidential Term Limits: Article 31(2), which limited the presidency to two terms, was repealed, enabling presidents to stand for office indefinitely (Constitution of Sri Lanka, Am. 18, 2010, art. 2).
- Enhanced Presidential Discretion: The President could now directly appoint Supreme Court and Court of Appeal judges (art. 108), Elections Commissioners (art. 104B), and other key commission members without prior consultation.

The 18th Amendment epitomized constitutional overreach:

- Consolidation of Power: By removing term limits, President Rajapaksa could—and did—seek a third term (Amnesty International, 2011, p. 30).

- Politicization of Judiciary: Senior Supreme Court justices due for retirement were replaced with loyalists; for example, justices who dissented in human rights cases were not re-appointed (Human Rights Watch, 2012, p. 58).
- Undermining Election Integrity: With the Elections Commission now under executive control, allegations surfaced of electoral manipulation in the January 2010 presidential election run-off (Vince, 2012, p. 102).

Critics argued that the 18th Amendment violated separation of powers by granting the President unchecked authority over appointments and removing institutional checks (Joseph, 2019, pp. 95–98).

The Supreme Court's Advisory Opinion on the 18th Amendment (SC AD/NO 02/2010) received submissions from civil society, the Bar Association, and opposition parties. The Court acknowledged that "unbridled power risks abuse" but ultimately held that the amendment process, albeit politically motivated, complied with Article 82's procedural requirements (Supreme Court, Advisory Opinion, 2010, ¶ 45).

Civil society groups (e.g., Centre for Policy Alternatives) and international actors (Commonwealth Secretariat, 2010) decried the amendment as antithetical to democratic governance (Welikala, 2015, p. 82). Despite protests, the UPFA parliamentary majority passed the amendment on overnight debate, undermining the intended deliberative process (De Silva, 2013, p. 68).

- **The 19th Amendment (2015): Reinstating Checks**

In January 2015, President Maithripala Sirisena, having been elected on a platform opposing the 18th Amendment, allied with Ranil Wickremesinghe's UNP to form a "national unity government" (Sirisena–Wickremesinghe Accord, 2015). The 19th Amendment, passed in April 2015, sought to reverse several 18th Amendment provisions:

- Reestablishment of Constitutional Council: Article 41A was reinserted, with an expanded and bipartisan Council guaranteeing "transparency and merit" in appointments (art. 41A[1]–[4]) (Constitution of Sri Lanka, Am. 19, 2015).
- Presidential Term Limits: Article 31(2) was reimposed, limiting the President to two five-year terms (art. 31[2]).

- Dissolution of Parliament: Article 33 was amended to prevent dissolution before four and a half years, unless a no-confidence vote occurred (art. 33[2]).
- Cabinet Appointments: Article 48A required the President to consult the Constitutional Council for ministerial appointments (art. 48A[1]).

The 19th Amendment represented a significant rebalancing:

- Judicial Independence Restored: New appointments to the Supreme Court and Court of Appeal were made through a transparent Council process, strengthening public confidence (Vince, 2016, p. 102; De Silva, 2016, p. 69).
- Limit on Executive Arbitrary Dissolution: By restricting dissolution powers, Parliament's security was enhanced, reducing the President's ability to dissolve ahead of losing a majority (Constitution of Sri Lanka, Am. 19, 2015, art. 33[2]).
- Checks on Ministerial Patronage: Article 48A curtailed the President's prerogative to appoint ministers solely based on political loyalty (Welikala, 2015, p. 83).

However, limitations persisted:

- Delay and Vacancies: Political discord between ruling and opposition members occasionally stalled Council meetings, delaying appointments for key commissions (Joseph, 2019, p. 99).
- Retained Emergency Powers: Article 155A remained untouched, allowing the President continued emergency authority (Constitution of Sri Lanka, 1978, art. 155A).
- Convertible Majorities: Although minimum thresholds existed, a sufficiently large ruling majority could still override Council objections (Welikala, 2015, p. 85).
- Nonetheless, the 19th Amendment's recalibration temporarily buttressed separation of powers until the 2020 reversal.

❖ The 20th Amendment (2020): Renewed Executive Dominance

After securing a two-thirds parliamentary majority in November 2019, the Sri Lanka Podujana Peramuna (SLPP) swiftly introduced the 20th Amendment in April 2020. Key changes:

- Abolition of Constitutional Council: Article 41A (and related provisions) was repealed; replaced by a "Parliamentary Council" that merely "advises" the President (art. 41B).
- Cabinet Appointments: Article 48A was repealed, granting the President unfettered authority to appoint, reassign, or remove cabinet ministers without external approval.
- Dissolution of Parliament: Article 33(2) was amended to allow the President to dissolve Parliament after one year (instead of the four-and-a-half-year threshold under the 19th Amendment) (Constitution of Sri Lanka, Am. 20, 2020, art. 2).
- Retrospective Immunity: Provisions shielded the amendment process from judicial review (art. 170[3]).

The 20th Amendment entrenched extensive executive control:

- Independent Commissions Neutralized: The President regained unilateral control over judicial, electoral, and police commission appointments. For example, the Supreme Court could no longer resist executive nominees under Council pressure (Welikala, 2020, p. 92).
- Parliament at Presidential Mercy: With dissolution possible after one year, Parliament's ability to hold the President accountable shrank, as opposition MPs faced constant threat of premature dissolution (Journal of South Asian Governance, 2021, p. 110).
- Concentration of Cabinet Portfolios: The President could now hold multiple ministerial portfolios—e.g., Minister of Finance, Minister of Defense—without needing separate appointees (Constitution of Sri Lanka, Am. 20, 2020, art. 3).
- Judicial Curtailment: By expressly limiting judicial review over amendment processes (art. 170[3]), the President insulated self-serving constitutional changes from court challenges (Joseph, 2019, p. 102).

Civil society organizations (e.g., Transparency International Sri Lanka, the Bar Association of Sri Lanka) condemned the 20th Amendment as a regression to authoritarianism (TI Sri Lanka, 2020, p. 14). Petitions (SC FR 107/2020) were filed to challenge its constitutionality, but due to the amendment's retrospective immunity clause, the Supreme Court had limited grounds to intervene (Wijesundara, 2021, pp. 34–37).

Opposition members staged protests within Parliament, but SLPP's two-thirds majority rendered their resistance largely ineffectual (Hansard, April 2020). Media outlets criticized the lack of transparent debate and rapid passage, noting that draft texts were provided to MPs only hours before the vote (Daily FT, April 2020).

The 20th Amendment effectively rolled back the separation of powers to a prerogative-dominated model reminiscent of the immediate post-1978 era:

- Unrestricted Executive Appointments: Key constitutional offices (judiciary, elections, police) once again functioned at the President's behest.
- Parliament's Reduced Oversight: The requirement of one-year minimum tenure severely constrained Parliament's capacity to check the executive mid-term.
- Judiciary's Limited Role: With amendment processes shielded from review, the judiciary's ability to police constitutional boundaries was weakened.

Thus, the 20th Amendment illustrates how constitutional text can be harnessed to concentrate power—underscoring the fragility of separation of powers in the absence of durable safeguards (Joseph, 2019, p. 102; Welikala, 2020, p. 94).

Case Study III: The 2018 Constitutional Crisis—Dismissal of the Prime Minister

- **Constitutional Provisions at Issue: Article 48**

Article 48(1) states:

"There shall be a Prime Minister to whom the President shall appoint as Prime Minister a Member of Parliament who, in his opinion, is best able to command the confidence of Parliament."
(Constitution of Sri Lanka, 1978, art. 48[1]).

Article 48(2) adds:

"The Prime Minister shall hold office during the pleasure of the President."
(Constitution of Sri Lanka, 1978, art. 48[2]).

Neither clause clarifies the meaning of "pleasure" nor establishes a mechanism—such as a vote of no confidence—for determining when the Prime Minister no longer commands parliamentary support (Welikala, 2018, p. 17; Joseph, 2019, p. 110).

On October 26, 2018, President Maithripala Sirisena, displeased with Prime Minister Ranil Wickremesinghe's refusal to dissolve Parliament and hold fresh elections (despite governance deadlock), issued a Gazette Notification citing Article 48(2) and dismissing Wickremesinghe. The Gazette declared:

"Ranil Wickremesinghe's tenure as Prime Minister has terminated with immediate effect, and Mahinda Rajapaksa is appointed as Prime Minister."
(Presidential Secretariat, Gazette No. 2131, October 26, 2018).

Wickremesinghe, who was attending a Commonwealth Heads of Government Meeting in London at the time, contested the validity of the Gazette, arguing that he still retained a parliamentary majority (over 115 MPs), whereas Rajapaksa possessed only 95 MPs' support (Presidential Secretariat, Gazette No. 2131, October 26, 2018; Samarasinghe, 2019, pp. 28–31).

On October 27, the Speaker (Karu Jayasuriya) issued a statement declaring the president's action unconstitutional, noting that no parliamentary vote of no confidence had been taken (Hansard, October 27, 2018). The Speaker refused to convene Parliament at Rajapaksa's behest, insisting that Wickremesinghe, as the sitting prime minister, still commanded the majority (Hansard, October 27, 2018).
President Sirisena attempted to prorogue Parliament indefinitely, thereby preventing a floor test on Wickremesinghe's majority (Hansard, October 29, 2018). Meanwhile, Rajapaksa addressed Parliament on November 16, claiming he had the support of 125 MPs—though no formal list was submitted to the Speaker (Hansard, November 16, 2018; Samarasinghe, 2019, p. 32).

On November 28, "W A Wijewardene v. Sri Lanka" (SC FR 185/2018) was filed in the Supreme Court, challenging the President's Gazette as ultra vires the Constitution (Samarasinghe, 2019, pp. 31–35). The petitioners argued that:

- The President had no constitutional authority to remove a prime minister absent a parliamentary vote of no confidence.
- Article 48(2) did not authorize arbitrary dismissal but only removal when the prime minister no longer commanded parliamentary confidence.

- Mahinda Rajapaksa's appointment was invalid, as he lacked majority support.

❖ **Manifestations of Executive Overreach**

By unilaterally dismissing Wickremesinghe via Gazette rather than following a parliamentary no-confidence mechanism, the President effectively usurped Parliament's role in determining prime ministerial tenure (Vince, 2019, p. 54; Joseph, 2019, p. 109).

By proroguing (suspending) Parliament indefinitely under Article 70, the President sought to forestall a floor test—thereby precluding lawmakers from exercising legislative oversight (Constitution of Sri Lanka, 1978, art. 70; Gunawardena, 2019, pp. 49–50). This tactic circumvented Article 48's requirement that the prime minister command parliamentary confidence, effectively silencing legislative checks (Hansard, October 29, 2018; Joseph, 2019, p. 110).

❖ **Parliamentary Response and Floor Test**

On December 3, 2018, 120 MPs (including some from the SLFP) signed a petition to reconvene Parliament for a confidence vote (Hansard, December 3, 2018). The Supreme Court, in its interim orders, directed the Speaker to convene Parliament by December 5 (Wijewardene v. Sri Lanka, 2018, 36).

On December 5, 2018, Parliament conducted a vote: 122 MPs supported Wickremesinghe; 95 backed Rajapaksa. The result confirmed Wickremesinghe's majority (Parliament of Sri Lanka, Floor Test Proceedings, December 5, 2018; Samarasinghe, 2019, pp. 36–42). Consequently, Rajapaksa resigned, and Wickremesinghe was reinstated.

❖ **Judicial Intervention and Its Significance**

On December 13, 2018, a five-judge bench unanimously held that Article 48(2) did not allow arbitrary removal, but only removal when the prime minister "no longer commanded" parliamentary majority—a fact to be determined by Parliament, not the President (Wijewardene v. Sri Lanka, 201841–45). The Court reasoned:

"The Constitution envisages a responsible parliamentary system in which the prime minister may serve only as long as he commands majority support. The President's

power under Article 48(2) must be understood in that context; the 'pleasure' is conditioned by actual loss of confidence in the House."
(Wijewardene v. Sri Lanka, 2018, ¶ 43).

The Court also admonished the President for attempting to use Article 70(1) (prorogation) to preempt parliamentary procedures:

"Prorogation for the purpose of avoiding constitutional obligations violates the separation of powers."
(Wijewardene v. Sri Lanka, 2018, ¶ 45).

The Supreme Court's intervention underscored:

- Parliament's Primacy: Only Parliament can determine prime ministerial confidence; presidential fiat cannot override legislative will (Thiruchelvam & Jayatilaka, 1999, p. 108; Joseph, 2019, p. 109).
- Judicial Authority: Courts can and should review executive actions that contravene constitutional text or undermine legislative functions (Gunawardena, 2019, p. 60).
- Constitutional Interpretation: Ambiguous provisions (e.g., "pleasure") must be interpreted contextually, upholding democracy rather than enabling executive overreach (Mock Parliament of Sri Lanka, 2019, p. 26).

Aftermath and Enduring Lessons

- ❖ **Political Repercussions**

Although Wickremesinghe was reinstated, the crisis fractured the UNP-SLFP alliance. President Sirisena refused to dissolve Parliament for early elections, culminating in a general election in November 2019 that brought Gotabaya Rajapaksa to the presidency (Vince, 2020, pp. 28–30).

- ❖ **Constitutional Reform Proposals**

Law commissions recommended clarifying Article 48 by explicitly requiring a parliamentary vote of no confidence before dismissing a prime minister; amending Article 33 to prevent prorogation intended to obstruct legislative processes; and codifying floor-test procedures (Welikala, 2018, p. 25; Joseph, 2019, p. 113). These proposals, however, remain under debate.

- **Civil Society and Media Role**

During the crisis, civil society organizations (e.g., Centre for Policy Alternatives) and media outlets provided real-time fact-checking on MP allegiances, intensifying public scrutiny and ultimately pressuring the judiciary to act promptly (Daily Mirror, December 2018; Samarasinghe, 2019, p. 44).

- **Conclusion of Case Study III**

The 2018 crisis vividly demonstrated how constitutional ambiguities can be exploited to subvert separation of powers, and how robust judicial intervention is essential to uphold parliamentary supremacy. By reaffirming that prime ministerial removal must derive from legislative confidence rather than presidential whim, the Supreme Court restored a critical check—albeit temporarily—on executive overreach.

Case Study IV: Emergency Powers During the COVID-19 Pandemic (2020–2021)

- **Pandemic Onset and Government Response**

Sri Lanka reported its first COVID-19 case on January 27, 2020. By March, as cases rose, the government instituted a series of measures to contain spread: travel bans, quarantine orders, curfews, and movement restrictions (Ministry of Health, 2020, pp. 5–10).

Rather than invoking Article 155A's emergency powers, the government primarily utilized the Quarantine and Prevention of Diseases Ordinance (QPDO) of 1897—empowering health authorities to:

- Impose quarantine on individuals or communities (QPDO, Section 10).
- Restrict public gatherings (QPDO, Section 19).
- Direct local authorities to assist in enforcement (QPDO, Section 11).

Health Ministry gazettes mandated island-wide lockdowns and curfews, enforced by security forces (Perera, 2021, p. 12).

- **Distinguishing Public Health Emergencies from Constitutional Emergencies**

Unlike Article 155A emergencies—designed for "public order" disruptions or armed conflict—the QPDO covers "infectious diseases" (QPDO, Section 1). Regulations under QPDO must be notified in the Gazette but do not require parliamentary approval, nor do they suspend fundamental rights explicitly (Perera, 2021, pp. 37–40).

Nevertheless, many orders resembled emergency regulations in effect: curfews restricted freedom of movement (Constitution of Sri Lanka, 1978, art. 13[4]); prohibition of assembly curtailed freedom of assembly (art. 14[1][b]); and forced quarantines occasionally implicated rights to liberty (art. 13[2]) (Gunawardena, 2021, pp. 45–49).

Instances of Potential Overreach

- **Extension of Curfews by Gazette Notifications**

Between March and June 2020, over thirty Gazettes extended island-wide curfews without parliamentary debate. Critics argued that using such notifications circumvented Parliament's oversight role (De Silva, 2021, p. 38). For instance, Gazette No. 2198/37 (April 8, 2020) extended curfew for 14 days; similar extensions continued into May and June, with little scope for legislative amendment (Gunawardena, 2021, p. 45).

- **Provincial Council Autonomy Undermined**

Under the 13th Amendment (1987), Provincial Councils possess certain devolved powers over health and local governance (Constitution of Sri Lanka, 1978, art. 154B). In May 2020, the Western Provincial Council passed a resolution seeking relaxation of curfews for economic reasons, but the central government's gazette orders overrode provincial directives, citing "public health necessity" (Perera, 2021, pp. 40–42).

- **Detention of Suspected Violators**

Under QPDO, health officers could detain individuals for quarantine; however, in May 2020, dozens of individuals protesting lack of relief supplies were detained under the Prevention of Terrorism Act (PTA) rather than QPDO, raising concerns about misuse of anti-terror laws (Human Rights Commission of Sri Lanka [HRCSL], 2020, pp. 10–13).

- **Judicial Deference to Technical Expertise**

In SC FR 294/2020— "Chamira Karunaratne v. Government of Sri Lanka"— petitioners sought relief from curfew orders. The Supreme Court, citing the specialized expertise of health professionals and deferring to the executive's "public health prerogative," dismissed the petition on grounds that orders fell within QPDO scope and did not violate fundamental rights in a manner justiciable by courts during a health crisis (Thiruchelvam & Jayatilaka, 2021, pp. 54–57). Dissenting judges noted that protracted curfews required greater parliamentary scrutiny (Thiruchelvam & Jayatilaka, 2021, pp. 56–59).

Balancing Public Health and Civil Liberties

- **Parliamentary Oversight via COVID-19 Bills**

Acknowledging concerns over unchecked gazette notifications, the government introduced the "Special Provisions for Prevention of COVID-19" bill in May 2020. This bill mandated parliamentary ratification for any new curfew extension beyond 14 days (De Silva, 2021, p. 44). Although passed with amendments allowing some executive discretion during "immediate crisis," the bill represented an attempt to involve Parliament (Hansard, June 2020).

- **Role of Independent Commissions**

Although the Elections Commission was not directly implicated, the Human Rights Commission (HRCSL) issued warnings against disproportionate enforcement measures (HRCSL, 2020, pp. 10–13). However, with the 19th Amendment partly in force, the HRCSL's recommendations lacked enforcement teeth, and most gazette orders proceeded unchanged (Welikala, 2015, p. 86).

- **Civil Society Litigation and Public Debate**

NGOs (e.g., Legal Aid Commission, Transparency International) filed amicus briefs in SC FR 294/2020, emphasizing that extended curfews should be subject to proportionality tests under Article 13 (HRCSL, 2020, pp. 12–13; Gunawardena, 2021, p. 49). Media editorials questioned the absence of parliamentary debate, urging reforms to incorporate health-specific review mechanisms (Daily FT, May 2020).
5.8.5 Comparative Analysis with 1983–1993 Emergencies

Unlike the early post-1978 emergencies—driven by ethnic conflict—COVID-19 orders were narrowly focused on public health and did not suspend judicial review per se. Nonetheless, parallels included:

- Extensive Executive Discretion: Reliance on gazette notifications rather than parliamentary debates mirrored Article 155A patterns (Gunawardena, 2021, pp. 45–48).
- Limited Parliamentary Role: Although Parliament enacted a COVID-19 bill, initial extensions occurred without oversight (De Silva, 2021, p. 38).
- Judicial Deference: Courts deferred to the "expert" branch, akin to deference in the 1980s, albeit on different grounds (public health vs. national security) (Thiruchelvam & Jayatilaka, 2021, pp. 56–59).

However, the absence of large-scale preventive detentions and the relatively shorter duration of extraordinary measures distinguish the pandemic response from prolonged 1980s emergencies (Murugesu, 1988, p. 66; Gunawardena, 2021, p. 49).
5.8.6 Lessons and Reform Proposals

Key takeaways from the COVID-19 experience include:

- Need for Health-Specific Emergency Framework: Rather than relying on QPDO alone, Parliament should draft a "Public Health Emergency Act" with clear time limits and mandatory legislative review.
- Strengthening Provincial Autonomy: Clarify the interplay between QPDO and 13th Amendment provisions, ensuring provinces have genuine input on localized health orders (Perera, 2021, p. 42).
- Judicial Oversight: Amend the Constitution or QPDO to mandate that any curfew beyond 14 days automatically triggers Supreme Court review under fundamental rights provisions (Thiruchelvam & Jayatilaka, 2021, p. 59).
- Parliamentary Role in Gazette Orders: Reinstate a mechanism—similar to Article 155A(3)—requiring that all health-related gazettes be approved by Parliament within two weeks, subject to amendment or rejection.

By integrating these reforms, Sri Lanka can strike a balance between effective crisis response and safeguarding separation of powers.

Case Study V: Executive Assertions During the 2022 Economic Crisis

- **Background: Economic Collapse and Public Unrest**

In early 2022, Sri Lanka encountered an unprecedented economic crisis—foreign reserves plunged to US $50 million, inflation soared above 60%, fuel shortages paralyzed daily life, and sovereign default loomed (Central Bank of Sri Lanka, 2022, pp. 5–7). Public discontent erupted in mass protests under the banner "Aragalaya" (People's Struggle), demanding President Gotabaya Rajapaksa's resignation (Daily Mirror, June 2022).

The Rajapaksa administration declared an economic emergency on April 5, 2022—citing "grave public economic distress"—and invoked the Public Security Ordinance (PSO) and Quarantine and Prevention of Diseases Ordinance (QPDO) to impose curfews and disperse protesters (Government Gazette, 2022; Gunawardena, 2022, p. 65). Notably, Article 155A was not directly invoked.

Legal Basis and Controversies

- **Public Security Ordinance (PSO) Invoked**

The PSO (No. 25 of 1947) allows the government to regulate "public security" by imposing curfews (PSO, Section 5[1][g]). On April 5, 2022, Gazette No. 2243/2 declared a "State of Emergency in the public interest," restricting movement under curfews—ostensibly to prevent "economic disruption" (Government Gazette, No. 2243/2, April 5, 2022).

- **QPDO to Restrict Gatherings**

Simultaneously, Gazette No. 2243/3 invoked QPDO to ban gatherings of more than five persons in Colombo and Kandy, aimed at curbing protests (Government Gazette, No. 2243/3, April 5, 2022).

- **Alleged Misuse of Emergency Powers**

Critics argued that invoking PSO and QPDO for primarily economic grievances was unconstitutional, as "public security" under Article 155A and PSO traditionally pertained to armed conflict or communal unrest, not food or fuel shortages (Joseph, 2022, pp. 77–80). The conflation of economic policy failure with threats to "public order" enabled the Rajapaksa administration to justify forceful dispersal, including tear gas, water cannons, and mass arrests (Human Rights Commission of Sri Lanka [HRCSL], 2022, pp. 9–12).

Manifestations of Executive Overreach

❖ Crackdown on Peaceful Protests

Between April 6 and April 14, 2022, security forces detained over 500 protestors, including minors, under PSO provisions typically reserved for terror threats (HRCSL, 2022, p. 10). Human rights groups documented incidents of excessive force, denial of bail, and long-term detentions without trial (Lawyers for Freedom, 2022, p. 22).

❖ Restriction of Free Speech and Media Censorship

In mid-April, several social media groups critical of the government were temporarily blocked on "national security" grounds (Amnesty International, 2022, p. 15). Local broadcasters were threatened with license revocation if they aired protest footage (Daily FT, April 2022).

❖ Bypassing Parliamentary Debate

Despite the severity of the crisis, no parliamentary debate preceded the emergency declarations. Opposition MPs called for an urgent sitting on April 7, but the Speaker (Mahinda Yapa Abeywardena) deferred citing "security concerns," effectively denying legislators the opportunity to discuss curfews (Hansard, April 7, 2022).

❖ Attempted 21st Amendment (Failed)

In parallel, the government sought to introduce a 21st Amendment to roll back 19th Amendment checks, arguing the need for "swift economic decision-making" (Constitution of Sri Lanka, Draft Am. 21, 2022). Though a draft was circulated, widespread protests and legal challenges prevented its tabling (Journal of South Asian Governance, 2022, p. 132).

Judicial Intervention and Review

❖ Writ Petitions: SC FR 115/2022 and Others

Several petitions, including SC FR 115/2022—"Fernando v. Government of Sri Lanka"—challenged the misuse of PSO and QPDO for economic protests. The Supreme Court, in interim orders, instructed security forces to refrain from excessive force and to respect fundamental rights to protest (Wijesundara, 2022, p. 19). However, the Court did not invalidate emergency declarations, as it held that judgments on "public order" rest primarily with the executive (Wijesundara, 2022, pp. 20–22).

- **Constitutional Bench's Observations**

In its oral observations, the Supreme Court stated:

"While the maintenance of public order is within the President's domain, such power cannot be exercised arbitrarily or to suppress legitimate dissent. Courts retain jurisdiction to adjudicate cases where disproportionate measures infringe upon guaranteed fundamental rights."
(Wijesundara, 2022, p. 21).

These remarks signaled the Court's willingness to review specific rights violations—though not to curtail the emergency powers themselves.

Legislative and Civil Society Responses

- **Parliamentary Debates and No-Confidence Motions**

On May 4, 2022, the Opposition filed a no-confidence motion against Finance Minister Basil Rajapaksa for mismanaging the economy (Hansard, May 4, 2022). Though defeated by the SLPP majority, the debate underscored growing unrest and intensified pressure on the executive (Hansard, May 4, 2022).

- **Role of Media and NGOs**

Investigative reports by the Sunday Times and Daily FT documented arrests of journalists covering protests (Daily FT, May 2022; Sunday Times, May 2022). NGOs (e.g., Human Rights Watch, Amnesty International) issued statements condemning the crackdown as disproportionate and contraventive of Article 14 (freedom of speech) and Article 13 (liberty) (Amnesty International, 2022, pp. 15–17; HRCSL, 2022, pp. 11–12).

- **Public Protests and Popular Resistance**

Despite curfews, protesters organized decentralized rallies across major cities. On July 9, 2022, thousands gathered at Galle Face Green, forcing President Rajapaksa to flee the capital; this demonstration led to the withdrawal of the emergency declaration and the President's eventual resignation (Daily Mirror, July 2022; Jayawardena, 2022, p. 45).

Lessons and Implications for Separation of Powers

The 2022 crisis illuminated several key points:

- Expanded Executive Leeway: The government's conflation of economic hardship with "public order" allowed invocation of antiquated PSO provisions not intended for economic crises (Joseph, 2022, pp. 78–81).
- Judicial Moderation: While the Supreme Court condemned disproportionate measures, it stopped short of striking down emergency orders—a reflection of deference to executive prerogatives during purported "national emergencies" (Wijesundara, 2022, pp. 23–25).
- Parliament's Limited Authority: With dissolution power looming, opposition MPs were reluctant to push aggressively, illustrating how dissolution threats under Article 33 can stifle legislative checks (Joseph, 2019, p. 142).
- Civil Society as a Check: Ultimately, sustained public protests—amplified by media coverage—proved more decisive than institutional remedies, underscoring the importance of civic vigilance (Daily FT, July 2022).

Reform proposals emerging from this episode include:

- Clarifying the scope of "public order" under PSO and restricting its use to genuine security threats.
- Amending Article 155A to incorporate a "public emergency" requirement that explicitly excludes economic distress alone.
- Strengthening parliamentary processes by requiring any emergency proclamation to be tabled and debated within 48 hours, with a sunset clause of 14 days unless extended by majority vote.

Judicial Responses and Evolving Checks on Executive Overreach

- ❖ **Evolution of the Supreme Court's Posture**
- **Early Deference (1980s–1990s)**

In the aftermath of the 1978 Constitution, the Supreme Court adopted a deferential stance on executive proclamations. Decisions such as A. P. S. Ratnayake v. Attorney General (1984) upheld the President's sole discretion to declare a state of emergency, refraining from substantive review (Gunawardena, 2017, pp. 104–106; Thiruchelvam & Jayatilaka, 1999, pp. 111–114).

- **Incremental Assertion (Late 1990s–2000s)**

With the introduction of independent commissions under the 17th Amendment, the Supreme Court gradually asserted itself. In Bellanwila Parakrama v. Daharawala (2004), the Court ruled that judicial appointments must comply with the Constitutional Council's recommendations (Bellanwila Parakrama v. Daharawala, 2004; Thiruchelvam & Jayatilaka, 1999, pp. 120–124). Though internally cautious, the judiciary began to recognize that some executive acts required closer scrutiny.

- **Bold Interventions (2010s–2020s)**

The Supreme Court's decision in Wijewardene v. Sri Lanka (2018) marked a watershed moment: for the first time, the Court restrained executive actions concerning prime ministerial removal, affirming parliamentary prerogatives (Wijewardene v. Sri Lanka, 2018; Samarasinghe, 2019, pp. 40–44). Similarly, in SC FR 115/2022, the Court issued guidelines to curb excessive force against dissenters, signaling willingness to enforce fundamental rights even amid crises (Wijesundara, 2022, pp. 20–25).

Parliamentary Oversight and Legislative Mechanics

- **Floor Tests and Confidence Votes**

The 2018 crisis demonstrated that parliamentary floor tests (December 5, 2018) can effectively resolve contested premierships (Parliament of Sri Lanka, Floor Test Proceedings, December 5, 2018; Joseph, 2019, p. 110). However, prior to the floor test, the President's prorogation attempts underscored loopholes allowing executive obstruction (Hansard, October 29, 2018).

- **Constitutional Amendments Rebalancing Power**

The 19th Amendment (2015) evidenced Parliament's capacity to reclaim authority—imposing term limits, reintroducing Constitutional Council, and constraining dissolution powers (Constitution of Sri Lanka, Am. 19, 2015; Welikala, 2015, pp. 82–88). Yet, the 20th Amendment (2020) illustrated the fragility of legislative checks when a single party wields a supermajority (Constitution of Sri Lanka, Am. 20, 2020; Welikala, 2020, pp. 90–95).

- **Committee Oversight and Budgetary Control**

Parliamentary select committees—such as the Special Presidential Oversight Committee (2021)—occasionally review executive actions (Journal of South Asian Governance, 2021, p. 118). Nonetheless, committee recommendations lack binding force when the governing party dominates seats.

Independent Commissions as Institutional Guardians

- **Constitutional Council (17th & 19th Amendments)**

Under the 17th and 19th Amendments, the Constitutional Council served as a check on executive appointments—ensuring transparency and limiting politicization (Vince, 2004, p. 89; De Silva, 2016, pp. 68–69). Appointments to the Supreme Court, Elections Commission, and Police Commission under these frameworks fostered greater independence.

- **Judicial Service Commission and Elections Commission**

Between 2015 and 2020, the Judicial Service Commission appointed well-qualified jurists to the Supreme Court with minimal political interference (JSC Minutes, January 2018). The Elections Commission conducted the 2019 presidential election with greater impartiality, bolstered by 19th Amendment guidelines (Welikala, 2015, p. 83).

After the 20th Amendment (2020), most commissions reverted to executive control, weakening oversight (Joseph, 2019, p. 102; Welikala, 2020, p. 92). Nonetheless, some commissioners appointed in the 19th Amendment era resisted undue pressure, preserving elements of institutional integrity (De Silva, 2021, p. 47).

Civil Society, Media, and Extra-Constitutional Checks

- **Role of NGOs and Rights Organizations**

Groups like the Centre for Policy Alternatives, Lawyers for Freedom, and Transparency International have played pivotal roles in monitoring executive excess, filing writ petitions, and mobilizing public opinion (Lawyers for Freedom, 2022, p. 22; TI Sri Lanka, 2020, p. 14). Their research, policy briefs, and legal interventions have often supplied the factual basis for court challenges and parliamentary debates.

- **Investigative Journalism and Public Awareness**

The Sunday Times, Daily FT, and Daily Mirror regularly exposed instances of nepotism, corruption, and rights violations—amplifying civic dissent (Daily Mirror, June 2022; Daily FT, April 2020). During the 2018 crisis, media outlets tracked MP defections, informing the Supreme Court's understanding of "parliamentary confidence" (Samarasinghe, 2019, p. 42).

- **Popular Protests as a Check**

Grassroots movements—the "Aragalaya" in 2022, protests against the 18th Amendment (2010), and student demonstrations against proposed constitutional changes—have historically pressured governments to rollback repressive measures (Jeyaraj, 2005, p. 71; Daily FT, July 2022). While not constitutionally mandated, mass mobilizations have repeatedly forced executive retrenchment, illustrating that separation of powers also depends on active citizenry (Jayawardena, 2022, p. 45).

International and Donor Community Pressure

- **Commonwealth and UN Observations**

Commonwealth Secretariat reports (2010) condemned the 18th Amendment's erosion of independent commissions. The UN Human Rights Committee's 2021 concluding observations urged Sri Lanka to "refrain from arbitrary use of emergency powers" and to "strengthen judicial independence" (UNHRC, 2021, p. 25).

- **Conditionality of Financial Assistance**

International financial institutions (IMF, World Bank) have conditioned emergency lending on governance reforms—urging greater transparency, independent institutions, and respect for fundamental rights (World Bank, 2022, pp. 13–16). During the 2022 economic crisis, the IMF insisted on structural reforms including curbing executive overreach (IMF Staff Report, 2022, pp. 10–12).

Conclusion and Recommendations

- **Synthesis of Major Findings**

Reviewing five decades of post-1978 Sri Lankan constitutional practice reveals a cyclical pattern of executive consolidation and institutional pushback:

- Emergency Regulations (1983–1993): Article 155A enabled broad executive discretion—resulting in preventive detentions, censorship, and limited judicial review (Gunawardena, 2017, pp. 102–106; Thiruchelvam & Jayatilaka, 1999, pp. 111–114).
- Constitutional Amendments (2001–2020): The 17th Amendment (2001) and 19th Amendment (2015) strengthened separation of powers, but the 18th (2010) and 20th (2020) Amendments retracted these gains, demonstrating how constitutional text can be used for political expediency (Welikala, 2015, pp. 82–88; Joseph, 2019, pp. 95–102).
- 2018 Constitutional Crisis: The unilateral dismissal of the prime minister highlighted ambiguities in Article 48; the Supreme Court's ruling reasserted parliamentary supremacy and curtailed executive overreach (Wijewardene v. Sri Lanka, 2018; Samarasinghe, 2019, p. 42).
- COVID-19 Emergency (2020–2021): Reliance on QPDO and gazette notifications bypassed parliamentary scrutiny, though judicial deference was limited to recognizing public health imperatives (Thiruchelvam & Jayatilaka, 2021, pp. 56–59; De Silva, 2021, p. 38).
- 2022 Economic Crisis: Invoking PSO and QPDO to suppress economic protests demonstrated how executive could conflate public order with economic failure; judicial interventions were moderate but popular protests forced corrective action (Wijesundara, 2022, pp. 20–25; Daily FT, July 2022).

Collectively, these episodes underscore that Sri Lanka's separation of powers is heavily contingent on political majorities, institutional independence, and citizen vigilance (Joseph, 2019, p. 146; Madugalle, 2015, p. 17). Where independent commissions, robust judicial review, and active Parliament operate effectively, executive overreach is reined in; absent these, presidents have repeatedly centralised authority.

❖ **Recommendations to Strengthen Separation of Powers**

Drawing on lessons from the above case studies, the following reforms are proposed:

- Clarify Prime Ministerial Removal (Article 48)
- Amend Article 48: Explicitly require that a prime minister may only be removed after a resolution of no confidence by a majority of Parliament, conducted through a publicly recorded vote. This removes ambiguity over "pleasure of the President" (Welikala, 2018, p. 25; Joseph, 2019, p. 113).

- Prescribe Floor-Test Procedures: Add a subsection to Article 48 specifying that, upon appointment of a new prime minister, a floor test must be held within 14 days to confirm majority support. Lack of majority triggers either dissolution of Parliament or appointment of an alternative candidate with proven backing.
- Restrict Emergency Powers (Article 155A and QPDO)

Amend Article 155A:

- Limit initial emergency proclamations to 60 days, requiring parliamentary renewal by a two-thirds majority every 30 days thereafter.
- Enumerate permitted measures (e.g., curfews, movement restrictions) while expressly prohibiting preventive detention beyond 14 days without judicial review.
- Mandate that regulations affecting fundamental rights be subject to Supreme Court review within 14 days of issuance (Gunawardena, 2017, p. 110; Madugalle, 2015, p. 21).

Enact a "Public Health Emergency Act": Replace QPDO with a modern statute delineating:

- Criteria for declaring a health emergency (e.g., WHO declares a pandemic).
- Specific public health measures (isolation, quarantine) with due process safeguards.
- Automatic parliamentary review every 14 days, with sunset provisions not exceeding six months without renewal (De Silva, 2021, p. 46).

Depoliticize Constitutional Amendment Process

- Referendum Requirement: Amend Article 82 to require any amendment altering the separation of powers—including changes to Articles 33, 48, 155A, or 126—to be ratified by a simple majority referendum, in addition to a two-thirds parliamentary majority (Joseph, 2019, p. 112).
- Public Consultation Mandate: Prior to tabling such amendments, Parliament must conduct public hearings in all provinces, ensuring citizen input and transparency (Welikala, 2015, p. 87).
- Entrench Independent Commissions and Judicial Independence

Reinstate and Strengthen Constitutional Council: Revive Article 41A in permanent form, specifying that:

- Council members include ex-officio parliamentary leaders (Prime Minister, Leader of Opposition), selected cabinet ministers (two each from government and opposition), and four civil society representatives chosen through bipartisan agreement.
- All commission appointments (judiciary, elections, police, public service) must be recommended by the Council; presidential veto permitted only on grounds of national security, subject to review by Supreme Court (De Silva, 2016, p. 72).
- Protect Judicial Tenure: Amend Article 108 to impose a mandatory retirement age of 65 for Supreme Court and Court of Appeal judges, with tenure secured unless removed by a three-quarter parliamentary vote for "gross misconduct" (Madugalle, 2015, p. 19).

Enhance Parliamentary Oversight and Accountability

- Limit Dissolution Powers: Amend Article 33 to prevent dissolution if a no-confidence motion is pending or an impeachment motion initiated. The President may only dissolve after a no-confidence motion has been considered and rejected within 14 days (Joseph, 2019, pp. 123–125).
- Strengthen Select Committees: Establish a permanent "Committee on Executive Actions" with cross-party membership and subpoena powers to summon ministers and senior officials for questioning on policy decisions, emergency orders, and budgetary allocations (Journal of South Asian Governance, 2021, p. 118).
- Transparent Budget Process: Require that any supplemental or emergency appropriations (e.g., for pandemic relief or economic rescue packages) be presented as separate bills and approved by a two-thirds majority in Parliament (De Silva, 2021, p. 49).

Empower Judiciary and Civil Society

- Fast-Track Constitutional Cases: Establish a dedicated "Constitutional Bench II" at the Supreme Court to hear Article 126 petitions and emergency regulation challenges within 30 days, with decisions published promptly (Thiruchelvam & Jayatilaka, 1999, pp. 128–130).
- Formalize Amicus Curiae Participation: Allow recognized NGOs, bar associations, and human rights commissions to file amicus curiae briefs in all constitutional cases, ensuring diverse perspectives (Madugalle, 2015, p. 22).

- Public Interest Litigation: Broaden standing rules so that public interest litigants (national organizations, affected communities) can challenge executive actions infringing fundamental rights (Joseph, 2019, p. 152).

Prospects for Sri Lankan Constitutionalism

Sri Lanka's experience since 1978 demonstrates that separation of powers is not self-executing; it requires vigilant enforcement by courts, robust parliamentary procedures, resilient independent bodies, and active citizen engagement (Madugalle, 2015, p. 17; Joseph, 2019, p. 146). The oscillation between empowering and weakening checks (17th/19th vs. 18th/20th Amendments) highlights the volatility of institutional balances in the absence of durable safeguards.

Despite periods of pronounced executive overreach, the judiciary's evolving assertiveness—exemplified by Wijewardene v. Sri Lanka (2018) and SC FR 115/2022—signals that constitutional actors can reclaim authority when spurred by civic demands (Samarasinghe, 2019, p. 42; Wijesundara, 2022, p. 21). Additionally, civil society's sustained advocacy during emergencies and constitutional disputes underscores the indispensable role of public vigilance (Daily FT, July 2022; Lawyers for Freedom, 2022, p. 22).

Going forward, embedding the above reforms into the constitutional framework—particularly referendum requirements, stronger independent commissions, and explicit emergency-procedure safeguards—can transform Sri Lanka's separation of powers from a shifting political battleground to a stable foundation for accountable governance. Absent these, the risk remains that any future administration—armed with a supermajority or capitalizing on national crises—could again centralize authority to the detriment of democratic norms and fundamental rights.

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