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# CONSTITUTIONAL CONTESTATION OF RELIGION IN SRI LANKA

Ayesha WIJAYALATH\*

## Abstract

*Sri Lanka's constitutional policy regarding religion affords a 'foremost place' to Buddhism and obligates the State to protect and foster the Buddha Sasana, whilst assuring the rights and freedoms of the other religions. By explicitly creating a special status for Buddhism, the constitution has produced the category of 'The Other'. The creation of this distinction has a potential to discriminate in a pluralistic society and to undermine the fundamental principle of equality.*

*By examining the public proposals on religion and the debates of the Constitutional Assembly with the Constituent Assembly debates (1970-71), this study retraces the evolution of the Buddhism Chapter and identifies the contestations and their role in deciding a constitutional arrangement. This is particularly salient given the immense interconnection of the religious and ethnic identity in Sri Lanka. In a time when Sri Lanka is forging her Third Republican Constitution, this study hopes to contribute to the public and scholarly debate on constitution-making in deeply divided societies embedded with intense discord on a state's religious or secular identity.*

Keywords: Constitution of Sri Lanka, Buddhism, Constitutional Assembly, Interim Report, Incrementalism.

## INTRODUCTION

Striking a balance between law and religion in a country's supreme law is undoubtedly a daunting task. Sri Lanka is no exception-where balancing law and religion is particularly crucial due to overlapping identities based on religion and language, and due to the deep ethnic cleavages in a country emerging from a thirty-year civil war. The majority of Sri Lankans (70.2%) identify themselves as Buddhists, along with 12.6% Hindus, 9.7% Muslims and 7.4% Christians<sup>1</sup>. These religious affiliations equally correlate with ethnic and linguistic identities.<sup>2</sup> At the time of drafting Sri Lanka's Third Republican constitution, these unsettled questions on identity based on religion and ethnicity are resurfacing and drafters are faced with the arduous mission of balancing these competing demands.

Sri Lanka's constitutional policy regarding religion is contained in Chapter II, Article 9 of the Constitution that affords a 'foremost place' to Buddhism, obligating the State to protect and foster the *Buddha Sasana*, whilst assuring all religions "the freedom of thought, conscience and religion, including the freedom to have or adopt a religion or belief of his choice" (Article

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<sup>1</sup> Population by religion- 2012, Department of Census and Statistics-Sri Lanka.

<<http://www.statistics.gov.lk/PopHouSat/CPH2011/index.php?fileName=pop43&gp=Activities&tpl=3>>, accessed 3 March 2017.

<sup>2</sup> Benjamin Schonthal, *Religion, Law and the Pyrrhic Constitutionalism of Sri Lanka* (CUP) 9.

10) and the “freedom, either by himself or in association with others, either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching” (Article 14(1)(e)). Thus, by explicitly creating a foremost place to Buddhism, the constitution has created the category of “The Other”.<sup>3</sup> The creation of this distinction has a potential to discriminate in a pluralistic society and undermine the fundamental principle of equality.<sup>4</sup>

Analyzing the evolution of this provision is of particular salience as the plain reading of the text of a constitutional provision may lead to superficial interpretations. The starting point then would be to look at the debates of the drafters. The historical origin and debates during constitution-making provide deep insight on why and how such provisions were incorporated on the first place. In addition, an analysis of debates reveals the socio-political context and the circumstances that led the drafters to bargain over and decide on what norms the constitution must strive to promote. This negotiating process is a complex one, enmeshed with disparate political demands.

Sri Lanka’s experience, too, faced a hard-bargaining process with demands ranging from explicit reference to Buddhism in the constitution to a secular one. The concept that a constitution is a ‘living tree’, which is open to change and reform, therefore, makes it important to analyze constitutional debates to identify sources of conflict, to fill gaps in the Constitution’s text, to help reduce amendments and to adapt to changing times.<sup>5</sup> Hence, the pre-enactment stage of the Buddhism Clause is significant to the constitutional practice of Buddhism in Sri Lanka.

The study is an attempt to understand the evolution of the Buddhism Clause in the Sri Lankan Constitution and to identify how the contestations impact the constitutional arrangement of religion in Sri Lanka. The paper argues that the ‘tripartite’ contestations on religion prevalent in the past, no longer exist. Instead, there is wider political consensus in retaining the existing Buddhism Clause, largely due to the current political climate. The paper, briefly analyzing the theories on constitutional design for divided societies, proposes incrementalism as the suitable approach to constitutionally regulate religion in the deeply divided Sri Lankan society.

This paper proceeds as follows. Section I will briefly discuss incrementalism as a constitutional design approach in deeply divided societies. Section II will narrate the historical arguments that have been advanced in support of bestowing on Buddhism a privileged position. It will equally outline the revival of Sinhala-Buddhist nationalism during the British rule and how it influenced a constitutional settlement on religion, reconciling diverse political interests. Section III examines the submissions on religion made by the public. It includes a detailed analysis on the proposed formulations on religion in the Interim Report of the Steering Committee that was presented in Parliament on 21<sup>st</sup> September 2017 and the submissions made on religion during the Constitutional Assembly debates on 30<sup>th</sup> to 5<sup>th</sup> November and 8<sup>th</sup>

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<sup>3</sup> Nihal Jayawickrama, ‘Reflections on the Making and the Content of the 1972 Constitution: An Insider’s Perspective’, in Asanga Welikala (ed) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Centre for Policy Alternatives: 2012) 106.

<sup>4</sup> Ibid.

<sup>5</sup> Vikram Raghavan, ‘Why do our constitutional debates matter?’, (LiveMint 5 October 2016), <<http://www.livemint.com/Opinion/mLactWgKWt6iKosuEyBNMI/Why-do-our-constitutional-debates-matter.html>>, accessed 21 October 2017.

November 2017. Section IV explores incrementalism as a constitution-making approach for Sri Lanka and Section V concludes.

### **Methodology**

The research methodology was qualitative in nature with an objective of gaining a deeper understanding of the socio-political context of altering the Buddhism clause in the new constitution. Interviews were conducted with Members of Parliament representing the prominent political parties, members of the civil society and clergy from the main religions in Sri Lanka, namely Buddhism, Hinduism, Islam and Christianity. A single interview was conducted with each informant, with him/her deciding the length of the interview that approximately ranged from one to two hours. Simultaneous audio recording took place with the consent of the informants. The questions were open-ended for the informants to freely express their views on the subject. The individual descriptions were studied for commonalities and differences. In addition, reference was made to the Public Representative Commission's Report that gathered public opinion in the island and the Interim Report Annexures that contained recommendations by political parties.

## **I. CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES**

In defining a 'divided society', it is noteworthy that such society is not merely diverse ethnically, linguistically, religiously and culturally but that these divisions are politically salient, i.e. 'they are persistent markers of political identity and bases for political mobilization'.<sup>6</sup> Mishandling the challenges arising in a divided society, could lead to drastic consequences, from discrimination to civil war and even genocide.<sup>7</sup> Therefore, in a divided society, the constitution becomes what constitutes the *demos* and the vehicle that constitutes a 'common political identity'.<sup>8</sup>

Most work on deeply divided societies has defined the parametres of constitutional design focusing on institutional and procedural aspects in a constitution, either integrative or accommodational.<sup>9</sup> However, apart from governing the institutional structure and its powers, constitutions also have a *foundational role* that expresses a 'common identity and norms of the nation.'<sup>10</sup> The relationship between the State and religion is considered a foundational provision in a constitution.<sup>11</sup>

In order to address deep disagreement over foundational principles in deeply divided societies, an innovative approach for constitution-making in divided societies has been advanced: i.e. the 'incrementalist approach'- where transformation occurs gradually instead of

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<sup>6</sup> Sujit Choudhury, 'Bridging comparative politics and comparative constitutional law: Constitutional design in divided societies' in Sujit Choudhury (ed.), *Constitutional Design for Divided Societies: Integration or Accommodation?*, (OUP 2008), 7.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid, Chapter I & II.

<sup>9</sup> Ibid. See 'The Lijphart-Horowitz Debate', pp 15-26 & 'Integration versus accommodation', pp 26-31

<sup>10</sup> Hannah Lerner, 'Constitution-writing in deeply divided societies: the incrementalist approach' (2010)(1)*Nations and Nationalism* 68, 69.

<sup>11</sup> Ibid.

occurring overnight in a revolutionary fashion.<sup>12</sup> The ‘incrementalist approach’ takes the shape of different constitutional strategies such as ‘avoidance of decision-making, using ambiguous and vague legal language and including contrary provisions in the constitution’.<sup>13</sup> These strategies circumvent overt conflicts.

The paper will now proceed to examine the historical and socio-political context in reforming religion in the constitution and whether incrementalism would best serve managing religion in the constitution.

## 1. Historical and Socio-political Context of the Buddhism Chapter

In Sri Lanka, the constitutional arrangement on religion gave Buddhism, the religion of the majority, the ‘foremost place’ in both Republican constitutions in 1972 and 1978.

Sri Lanka’s Independence constitution (1948) embodied the law concerning religion in Section 29(2),<sup>14</sup> prohibiting the parliament from enacting bills that would:

- a) Prohibit or restrict the free exercise of any religion; or
- b) Make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or
- c) Confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religion; or
- d) Alter the constitution of any religious body except with the consent of the governing authority

Section 29(2) was soon subject to strong criticism. On one hand it was argued that Section 29(2) failed to adequately protect Buddhism. This criticism found its way through Sinhalese-Buddhist revival that originated in late nineteenth and early twentieth century.<sup>15</sup> This Buddhist revivalist movement led by Anagarika Dharmapala<sup>16</sup> was both anti-colonial due to the interferences of the British in abrogating the link between Buddhism and the State and was also anti-Christian since the missionaries attempted to convert people to Christianity.<sup>17</sup>

Sri Lanka’s Buddhist activism also found its roots in the ‘Betrayal of Buddhism’ (1956), a report published by the Buddhist Committee of Inquiry, commissioned by the All Ceylon Buddhist Congress (ACBC),<sup>18</sup> a lay Buddhist organization poised with the mission of protecting rights and privileges of Buddhists and Buddhism.<sup>19</sup> The decline of Buddhism, culture and political autonomy due to successive invasions therefore, necessitated a

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<sup>12</sup> Hannah Lerner, *Making Constitutions in Deeply Divided Societies*, (CUP 2011) 39.

<sup>13</sup> *ibid.*

<sup>14</sup> The 1948 Constitution. < <http://tamilnation.co/srilankalaws/46constitution.htm#PART I.>>, accessed 26 September 2017.

<sup>15</sup> Stanley Jeyarajah Tambiah, *Buddhism Betrayed? Religion, Politics and Violence in Sri Lanka*, (University of Chicago Press 1992), 5.

<sup>16</sup> K M De Silva, *A History of Sri Lanka*, (Penguin Books India 2005) 464-5.

<sup>17</sup> *Ibid* 427-8.

<sup>18</sup> Tambiah (n.16), 33.

<sup>19</sup> To read about the ACBC, see <http://www.english.acbc.lk/about-us/>, accessed 26 September 2017.

resuscitation of Buddhism during independence.<sup>20</sup> The ACBC strongly opposed Section 29(2) on the premise that it failed to adequately protect Buddhism in the island which was widely maltreated during the colonial rule.<sup>21</sup>

On the other hand, oppositions to Section 29(2) were also directed from the minorities. Section 29(2) proved to be insufficient to protect racial and religious minorities in practice, thereby leading to the demands of a new constitution with stronger guarantees for minorities by way of incorporating a Bill of Rights.<sup>22</sup>

With the need for a complete legal break from the colonial rule, political debates on religion in the 1950s resurfaced in a constitutional setting, i.e. at the Constituent Assembly during the 1970-72 constitution-making process. The constitutional design of the 1972 Constitution altered drastically the fundamental constitutional structures. It enshrined a Buddhism Chapter (Article 6) that read:<sup>23</sup>

The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to foster Buddhism while assuring to all religions the rights granted by Section 18(1)(d).

Section 18(1)(d) assured all religions the freedom of thought, conscience and religion, including the freedom to manifest one's religion or belief in worship, observance, practice and teaching.<sup>24</sup>

The constitution making process of the 1972 Constitution reflected how the drafters endeavoured to accommodate religion due to the nationalistic sentiments attached to it. This was an exceptionally daunting task as the Constituent Assembly itself was divided along the lines of political ideology, ethnicity and religion.

The United Front (UF) government led by PM Sirimavo Bandaranaike was a coalition consisting of her own party, the Sri Lanka Freedom Party (SLFP), the Trotskyist Lanka Sama Samaja Party (LSSP) and the Communist Party (CP). Despite the leftist policies of the coalition, Sirimavo Bandaranaike strived to continue her late husband, former Prime Minister S.W.R.D. Bandaranaike's policies based on Sinhalese-Buddhist revival.<sup>25</sup>

However, by this time, with growing nationalism in the island, the main opposition, the United National Party (UNP) known for pro-capitalist, right-wing policies, too picked up on the 'Buddhist restoration' rhetoric for its own existence in electoral politics.<sup>26</sup> Tambiah states that both the SLFP and the UNP aligned towards the same ideology of restoring Buddhism that

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<sup>20</sup> Tambiah (n.16), 33.

<sup>21</sup> Benjamin Schonthal, 'Buddhism and the Constitution: The Historiography and Postcolonial Politics of Section 6' in Asanga Welikala (ed) *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Centre for Policy Alternatives: 2012), 206.

<sup>22</sup> Benjamin Schonthal and Asanga Welikala, 'Buddhism and the regulation of religion in the new constitution: Past debates, present challenges, and future options', (CPA Working Papers on Constitutional Reform, No 3, July 2016), 5.

<sup>23</sup> Section 6 of the 1972 Constitution.

<sup>24</sup> 1972 Constitution (n 15).

<sup>25</sup> Schonthal, (n.3), 85.

<sup>26</sup> Tambiah (n.16), 61.

in the subsequent years, this enabled them to be the main alternate ruling parties in Sri Lankan politics.<sup>27</sup>

## 2. Constitutionalizing Buddhism in 1972 and 1978: Challenges and Outcome

At the Constituent Assembly, Dr. Colvin R. De Silva, Minister of Constitutional Affairs tabled the Draft Basic Resolution 3 (3DBR):

In the Republic of Sri Lanka, Buddhism, the religion of the majority of the people shall be given its **rightful place** and accordingly, it shall **be the duty of the State to protect and foster Buddhism**, while assuring to all religions the rights granted by the Basic Resolution 5(4).<sup>28</sup> Basic resolution 5(4) embodied the religious freedoms imported in verbatim from the ICCPR.<sup>29</sup> [Emphasis added]

The 3DBR was put to debate. Three notable amendments were proposed, ranging from stronger protection for Buddhism to a secular constitution.

At one end of the scale, advocating for constitutional recognition of Buddhism, the UNP found the ‘rightful place’ insufficient to protect Buddhist interests. They proposed an amendment which sought to replicate several phrases on Buddhism stated in the Kandyan Convention (KC).<sup>30</sup> Section 5 of the KC declared that *‘the Religion of the Boodho,/.../ is declared inviolable, and its rites, ministers and places of worship are to be maintained and protected’*.<sup>31</sup>

At the other end, an amendment for a secular constitution was raised by the Federal Party (FP) that represented the Ceylonese Tamils. K. Jeyyakody proposed a secular constitution where Buddhists, Hindus, Muslims and Christians will all feel equal before the law and the constitution.<sup>32</sup> Dharmalingam a senior member of the FP, pointed out that there was a fundamental difference in granting rights to a religion itself and granting fundamental rights to individuals of non-Buddhist faiths.<sup>33</sup> He questioned ‘Then what is the necessity? You can allow Basic Resolution 5 to cover Buddhists as well.’<sup>34</sup>

In the centre of these two extreme positions, A. Aziz, a Muslim member of the ruling coalition proposed equal recognition of all religions stating that Hinduism, Islam and Christianity have all played an important role for a section of people in this country, whilst

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<sup>27</sup> Ibid.

<sup>28</sup> ‘Basic Resolution Adopted by the Steering Committee of the Constituent Assembly: Basic Resolution 3’, Sri Lanka Constituent Assembly Official Report, Debates Vol.1 (Ceylon Government Press, 1972) 742

<sup>29</sup> Schonthal, (n.3), 9.

<sup>30</sup> The KC was signed on 2 March 1815 between the British and the Chieftains of the Kandyan kingdom when the Kandyan kingdom was formally ceded to the British. See K.M De Silva (n.17), 300.

<sup>31</sup> Ibid. The Kandyan Convention, 2 March 1815, is also available at <http://citizenslanka.org/wp-content/uploads/2016/02/Kandyan-Convention-1815-E-1.pdf>, accessed 17 October 2017.

<sup>32</sup> The Constituent Assembly of Sri Lanka (Official Report) (30 March 1971) 954.

<sup>33</sup> Ibid, 933.

<sup>34</sup> Ibid.

agreeing to the special status granted to Buddhism in view of the island's historical Buddhist culture.<sup>35</sup>

The 'rightful place' was ultimately replaced by 'foremost place' and the phrase 'the religion of the majority people' was removed in the final text. Thus, Buddhism received constitutional cognizance for the first time in Sri Lanka's constitutional history. This provision is considered largely a compromise between secularism and Buddhist majoritarianism<sup>36</sup> which also deliberately left the relationship between Buddhism and other religions ambiguous.<sup>37</sup> De Silva's political ideology would have preferred a secular constitution<sup>38</sup>. Yet the prevailing circumstances and political pressure for a special status for Buddhism together with the recommendation of Mrs. Bandaranaike who was heading a committee to oversee the Buddhism Chapter in the Assembly<sup>39</sup>, made De Silva to arrive at this compromise. At the Assembly, he explained that any attempt to change the 3DBR would result in an 'unanticipated unbalancing of what is a very balanced Resolution.'<sup>40</sup>

Whilst Buddhism received state patronage, the other religions were only protected under the fundamental rights chapter in the constitution. This was a significant departure from Section 29(2). The Buddhism clause was unconventional in a multi-religious state and was potentially divisive as it resulted in identifying those who professed other religions, falling into the category of 'the Other'.<sup>41</sup> Despite the fundamental rights guarantees for the minority religions that included freedom to manifest his religion or belief in worship, practice and teaching, there was room for conflict when the State proceed to afford Buddhism 'foremost place' and to 'protect and foster' Buddhism in practice.<sup>42</sup>

The 1978 Constitution retained the basic tenets of Article 6 albeit changing the state's duty to protect '*Buddha Sasana*' instead of 'Buddhism'. Even though it did not establish Buddhism as state religion, *Buddha Sasana* referred to a wider range of Buddhist practices and ideology- not limiting to teaching and practices but also including 'temples, relics, temple lands and lay devotees',<sup>43</sup> and this indirectly postulated pre-eminence for Buddhism.<sup>44</sup> This privileged place afforded to Buddhism was further enhanced by making it an entrenched provision, requiring a 2/3rds majority in parliament and approval of the people at a referendum to amend or repeal the Buddhism Clause (Article 9 under the 1978 constitution).<sup>45</sup> The fundamental rights chapter was equally strengthened under the 1978 constitution, with

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<sup>35</sup> The Constituent Assembly of Sri Lanka (Official Report) (29 March 1971) 640-641.

<sup>36</sup> Jayampathy Wickremeratne, 'Fundamental Rights in the 1972 Constitution' in Welikala (ed), *The Sri Lankan Republic* at 40, 768.

<sup>37</sup> See Schonthal and Welikala (n.23), 12.

<sup>38</sup> Schonthal, (n.22),217.

<sup>39</sup> Jayawickrama (n.4), 106.

<sup>40</sup> The Constituent Assembly of Sri Lanka (Official Report), (29 March 1971), 644.

<sup>41</sup> Jayawickrama, (n.4), 107.

<sup>42</sup> Ibid.

<sup>43</sup> Benjamin Schonthal, 'Constitutionalizing Religion: The Pyrrhic Success of Religious Rights in postcolonial Sri Lanka' (2014) 3 *Journal of Law and Religion* 29, 482. See also 'Report of the Buddha Sasana Presidential Commission: Summary of conclusions and recommendations', Lankaweb (1 May 2012).

<http://www.lankaweb.com/news/items/2012/05/01/report-of-the-buddha-sasana-presidential-commission-2002-summary-of-conclusions-and-recommendations/>, accessed 18 October 2017.

<sup>44</sup> Ibid.

<sup>45</sup> Art 83 of the 1978 constitution. < <https://www.parliament.lk/files/pdf/constitution.pdf>>, accessed 5 October 2017.



justiciable rights.<sup>46</sup> Article 10 which guarantees the ‘freedom of thought, conscience and religion, including the right to adopt a religion of one’s choice’, is also an entrenched provision<sup>47</sup> and cannot be subjected to any limitations imposed on fundamental rights such as national security.<sup>48</sup>

In sum, the competing positions of the political parties on Buddhism during the Constituent Assembly debates reflected a ‘tripartite contest’: (i) the proposals insisting stronger protection for Buddhism above other religions, (ii) proposal to give equal recognition to all religions in addition to Buddhism and (iii) proposals for secular constitution.<sup>49</sup>

## II. RELIGION IN THE NEW CONSTITUTION

Sri Lanka is once again in the midst of drafting a new constitution. The need for a new constitution for Sri Lanka is intrinsically linked to the end of the civil war and to rectify the defects of the present constitution. The socio-political context at the end of the war warranted a recalibration of the legal norms particularly that of the governing structures to grant more political autonomy to the provinces.

In addition, both 1972 and 1978 Constitutions are considered to be partisan documents and Edirisinghe argues that they suffered from basic flaws: ‘(a) they were designed to promote the political vision and ideology of the party in power; (b) they entrenched rather than countered majoritarianism; and (c) they were designed with the convenience of the executive, rather than the empowerment of the People as their primary motivation or rationale.’<sup>50</sup>

The defeat of Mahinda Rajapakse at the 2015 presidential elections - considered a triumph of democracy – was a milestone that prompted constitutional reforms, particularly to repeal the 18<sup>th</sup> amendment that abolished presidential term limits and to resuscitate the independent commissions of the 17<sup>th</sup> amendment. In the commemoration of his second year in office, President Maithripala Sirisena promised a new constitution for Sri Lanka.<sup>51</sup> The constitution-making process was then formally inaugurated by Prime Minister Ranil Wickremesinghe by way of a resolution in parliament which converted the whole House to a Constitutional Assembly.<sup>52</sup>

The Speaker chairs the Constitutional Assembly which consists of sub-committees, namely the Steering Committee and six other sub-committees on fundamental rights, the judiciary, law

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<sup>46</sup> Art 126 of the 1978 Constitution.

<sup>47</sup> Art 83.

<sup>48</sup> Art 15(7.)

<sup>49</sup> Dian A H Shah, *Constitutions, Religion and Politics in Asia: Indonesia, Malaysia and Sri Lanka*, (CUP 2017) 34.

<sup>50</sup> Rohan Edirisinghe, ‘The need for a new constitution for Sri Lanka’, Ground Views, 08.01.2016, <<http://groundviews.org/2016/01/08/the-need-for-a-new-constitution-for-sri-lanka/>> accessed 12 January 2016.

<sup>51</sup> ‘No foreign influences in drafting the new constitution’, Presidential Media Division, = <http://www.president.gov.lk/news/no-foreign-influences-in-drafting-new-constitution-president-emphasized> accessed 6 October 2017.

<sup>52</sup> ‘Sri Lankan Parliament begins process to adopt new constitution’, The Economic Times, 9 January 2016, <[http://articles.economictimes.indiatimes.com/2016-01-09/news/69634746\\_1\\_new-constitution-constitutional-assembly-constitution-bill](http://articles.economictimes.indiatimes.com/2016-01-09/news/69634746_1_new-constitution-constitutional-assembly-constitution-bill)>, accessed 6 October 2017. See also The Constitutional Assembly of Sri Lanka, ‘Resolution for the appointment of the Constitutional Assembly’ (also called the Framework resolution), <<http://english.constitutionalassembly.lk/images/pdf/motion-en.pdf>>, accessed 5 October 2017.

and order, public finance, public service and centre-periphery relations.<sup>53</sup> The main responsibility of the Steering Committee is to prepare a Draft Constitutional Proposal for Sri Lanka.<sup>54</sup> The Steering Committee also directly deals with certain subject matters including the Buddhism Chapter.

The following discussion will examine the key arguments on religion as proposed by key interest groups: Public Representations Committee representing the public and political parties.

### **1. The Public Representations Committee**

One important aspect of the constitution-making process was to appoint for the first time a twenty member Public Representations' Committee (PRC) to obtain public proposals on constitutional reforms.<sup>55</sup> Within a period of six weeks, the PRC visited 25 districts and presented a final report on 10 May 2016.<sup>56</sup> The PRC report acknowledged that the public representation remained divided with regard to the relationship between State and religion; from retaining Article 9 to a secular constitution.<sup>57</sup> The reasons for fostering and protecting Buddhism were two-fold: (i) Buddhist institutions are in danger of decline and therefore require State patronage for their protection and (ii) to uphold the historical connection between Buddhism and the Sinhalese identity.<sup>58</sup> On the other hand, reasons for a secular State emphasized on religion being a part of the private sphere of life and that importance given to Buddhism will violate the principle of equality causing potential religious disharmony.<sup>59</sup>

A third postulation was to continue with the foremost place assured to Buddhism whilst ensuring State protection to all other faiths, and to distinguish Buddhism as a doctrine from institution.<sup>60</sup> This largely highlights the need to give pre-eminence to Buddhism due to historical and cultural reasons but also to refrain from permitting Buddhist religious groups or individuals act in a manner harmful to persons of other faiths.<sup>61</sup> Therefore, the reasoning in the PRC report reflects that the 'tripartite contest' that was visible in the Constituent Assembly debates in 1970-71, is equally prominent amidst the public.

As a result, the PRC - instead of producing a clear recommendation - forwarded six alternate recommendations:<sup>62</sup>

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<sup>53</sup> See Sub-Committees of the Constitutional Assembly, <http://english.constitutionalassembly.lk/sub-committees/about>, accessed 5 October 2017

<sup>54</sup> The Steering Committee of the Constitutional Assembly, <http://english.constitutionalassembly.lk/steering-committee>, accessed 5 October 2017

<sup>55</sup> Public Representations Committee on Constitutional Reforms, Prime Minister's Office, <http://www.yourconstitution.lk/>, accessed 9 October 2017

<sup>56</sup> PRC, 'Report on Public Representations on Constitutional Reform', (PRC on Constitutional Reforms May 2016), iii, <[http://english.constitutionalassembly.lk/images/public\\_representation/prc/PRC\\_english\\_report-A4.pdf](http://english.constitutionalassembly.lk/images/public_representation/prc/PRC_english_report-A4.pdf)>, accessed 9 October 2017.

<sup>57</sup> Ibid, 16.

<sup>58</sup> Ibid, 16-17.

<sup>59</sup> Ibid, 17.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

- i. Retain Article 9 (Chapter II) of the current Constitution with no change.
- ii. Heading of Chapter II of the current Constitution should state ‘Religions’ and not Buddhism and retain Article 9 as it is with no change.
- iii. Reformulate Article 9 of the current Constitution as follows:  
“The Republic of Sri Lanka shall give all religions equal status. The State shall protect and foster Buddhism and the *Buddha Sasana* while assuring to all religions the rights granted by Articles 10 and 14(1)(e) of the current Constitution”.
- iv. Sri Lanka shall be a secular State.
- v. Sri Lanka shall be a secular State while recognizing the role of religion in the spiritual development of the people.
- vi. Heading of Chapter II of the current Constitution should state ‘Religions’. The clause should be revised as follows:  
‘The Republic of Sri Lanka will give all religions equal status’.

The members of the PRC were greatly divided and none of the recommendations received majority support by the members.<sup>63</sup> These recommendations were evidence of the hesitation that persisted in removing the foremost place for Buddhism *in toto*, not only for socio-cultural reasons but also because of a more political reason; i.e. causing a total dismantling of the constitution-making process that would undermine the very legitimacy of the government. In fact, the PRC conceded that the six recommendations were a ‘compromise’ between adhering to pragmatism (so as to not to unduly affect the constitution making process with a rather contentious Buddhism Clause) and in exercising their responsibility in challenging the debate and dialogue on religion for Sri Lanka to move beyond existing divisions in the future.<sup>64</sup> It has also been argued that there existed substantive disagreement between the submission makers and PRC members on religion.<sup>65</sup> Nevertheless, the PRC was largely credited for its efforts in realizing a participatory constitution-making process that would give more legitimacy at the adoption of the constitution.

## 2. The Interim Report and Observations of Political Parties on Religion

The Interim Report of the Steering Committee (Interim Report) was presented to parliament on 21 September 2017 by the Prime Minister.<sup>66</sup> The Interim Report proposes formulations for the six subjects that were not dealt by the sub-committees, i.e. Chapter 1 and 2 (Buddhism) of the present constitution, nature of the state (unitary/federal), sovereignty, form of government,

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<sup>63</sup> Asanga Welikala, ‘Sri Lanka’s search for constitutional consensus amid social and political divisions’, (Constitutionnet 19 July 2016), <<http://www.constitutionnet.org/news/sri-lankas-search-constitutional-consensus-amid-social-and-political-divisions>>, accessed 9 October 2017.

<sup>64</sup> Ibid, 18.

<sup>65</sup> Benjamin Schonthal and Asanga Welikala, “Buddhism and the regulation of religion in the new constitution: Past debates, present challenges, and future options”, (CPA Working Papers on Constitutional Reform, No.3, July 2016), 3, <<http://www.cpalanka.org/buddhism-and-the-regulation-of-religion-in-the-new-constitution-past-debates-present-challenges-and-future-options/>>, accessed 30 August 2017.

<sup>66</sup> Sandesan Marasinghe and Camelia Nathaniel, ‘Premier submits Constitutional Assembly Interim Report to Parliament’, (Daily News, 21 September 2017), <<http://www.dailynews.lk/2017/09/21/local/128921/premier-submits-constitutional-assembly-interim-report-parliament-updated>>, accessed 25 September 2017.

electoral reforms, principles of devolution and land.<sup>67</sup> It also incorporates the principles and formulations that were reflected during the deliberations of the Steering Committee.<sup>68</sup>

Before tabling the Interim Report, a Draft Interim Report (Draft Report) was circulated among the members of the Steering Committee. The Draft Report dated 3 May 2017 contained seven alternate proposals on religion.<sup>69</sup> Apart from the first formulation which reflects the existing Article 9, the remaining alternatives are as follows:<sup>70</sup>

- *Proposal 2:* Sri Lanka shall give to Buddhism the foremost place and accordingly, it shall be the duty of the State to protect and foster the *Buddha Sasana*, while guaranteeing to all persons the fundamental rights guaranteed by the Constitution.
- *Proposal 3:* Sri Lanka shall give Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the *Buddha Sasana*, while treating all religions and beliefs with honour and dignity, and without discrimination.
- *Proposal 4:* (i) Sri Lanka shall give to Buddhism the foremost place as denoted by the *Tripitake*.<sup>71</sup> It shall be the duty of the State to protect and foster the *Buddha Sasana*. (ii) To afford all persons the fundamental rights guaranteed by the Constitution while treating all religions and beliefs with honour and dignity, and without discrimination.
- *Proposal 5:* Sri Lanka shall give to Buddhism the foremost place and it shall be the duty of the State to protect and foster the *Buddha Sasana*, while guaranteeing all persons the fundamental rights guaranteed by the Constitution and treating all religions and beliefs with honour and dignity, and without discrimination.
- *Proposal 6:* Sri Lanka shall give to Buddhism the foremost place and it shall be the duty of the State to protect and foster the *Buddha Sasana*, whilst guaranteeing all persons the fundamental rights guaranteed by the Constitution and treating all religions equally.
- *Proposal 7:* Sri Lanka shall give to Buddhism the foremost place and it shall be the duty of the State to protect and foster the *Buddha Sasana*. Sri Lanka shall treat all religions and beliefs equally while guaranteeing all persons the fundamental rights guaranteed by the Constitution.

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<sup>67</sup> ‘The Steering Committee of the Constitutional Assembly’, (Constitutional Assembly), <<http://english.constitutionalassembly.lk/steering-committee>>, accessed 21 September 2017.

<sup>68</sup> Interim Report of the Steering Committee, 21 September 2017, 3, <http://english.constitutionalassembly.lk/images/pdf/interim-report/ReportE%20CRR.pdf>, accessed 22 September 2017.

<sup>69</sup> Draft Interim Report (3 May 2017), 4-5 (in Sinhala).

<sup>70</sup> Ibid-(Translated to English from Sinhala).

<sup>71</sup> A collection of Buddhist teachings, known as Pali Canon in English.

The foremost place given to Buddhism and the state duty to protect and foster *Buddha Sasana* have remained intact in the proposals whereas the changes only relate to the constitutional guarantees on religious freedoms for other religions. Therefore, at the very outset, it appears that the proposals for a more secular constitution made by the PRC<sup>72</sup> were discarded. Yet a closer reading of the six formulations above reveals insights to the attempts taken by the drafters to provide stronger safeguards for other religions and to mitigate the pre-eminence afforded to Buddhism. The members have endeavored to extend the fundamental rights guarantees to all persons and not only for citizens as per Article 14(1)(e). According to the sub-committee report on fundamental rights, the freedom to manifest religion, including ‘propagation’ is a fundamental right guarantee to all persons<sup>73</sup> and not limited to citizens only.

By the time the Interim Report was finalized, only two formulations were proposed for consideration under Article 9:<sup>74</sup>

- i. Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the *Buddha Sasana*, while assuring to all religions the rights granted by Article 10 and 14(1)(e);

*Or*

- ii. Sri Lanka shall give Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the *Buddha Sasana*, while treating all religions and beliefs with honour and dignity, and without discrimination, and guaranteeing to all persons the fundamental rights guaranteed by the Constitution.

The **first formulation** resembles existing Article 9. Yet, it replaces ‘The Republic’ to denote ‘Sri Lanka’. It is argued that there is a fundamental difference between the two terms. Accordingly, the phrase ‘Sri Lanka shall give the foremost place’ is a mere historical statement denoting that ‘the people of Sri Lanka’ give foremost place to Buddhism and not the State—thereby absolving the duty of the State and removing state patronage for Buddhism.<sup>75</sup> However, the members of the Steering Committee did not highlight this distinction but instead regarded the first formulation to be reflecting the existing Article 9.<sup>76</sup>

The **second formulation** includes treating all religions and beliefs with dignity and honour and guaranteeing to all persons the protection of fundamental rights. This formulation broadly encompasses the content of the aforementioned alternate suggestions (2-6) of the Draft Interim Report.

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<sup>72</sup> See proposals iv, v, vi of the PRC on religion

<sup>73</sup> Sub-Committee Report of Fundamental Rights, 5, <<http://english.constitutionalassembly.lk/images/pdf/01-Fundamental-Rights-ste.pdf>>, accessed 9 October 2017.

<sup>74</sup> Interim Report of the Steering Committee, 21 September 2017, 3, <<http://english.constitutionalassembly.lk/images/pdf/interim-report/ReportE%20CRR.pdf>>, accessed 22 September 2017.

<sup>75</sup> Personal communication with a leading President’s Counsel on 01.10.2017, Dehiwala, Sri Lanka.

<sup>76</sup> Interview with three members of the Steering Committee stated that the first formulation reflected the existing Article 9, (25 September 2017 and 29 September 2017, Colombo).

The Interim Report equally contains the observations and comments by Members of the Steering Committee reflecting the position of their respective political parties on the proposed constitutional reforms. The following section explores the submissions of the political parties on religion annexed to the Interim Report as well as submissions made at the Constitutional Assembly debates from 30<sup>th</sup> October 2017 to 2<sup>nd</sup> November 2017, and 8<sup>th</sup> November 2017.

### 3. Submissions of the Political Parties on the Interim Report - Article 9

The current political climate in Sri Lanka undoubtedly has direct implications on party proposals on constitutional reform. For the first time in Sri Lanka's political history, Sri Lanka's two main parties, the UNP and the SLFP, along with Jathika Hela Urumaya (JHU), Sri Lanka Muslim Congress (SLMC), All Ceylon Muslim Congress (ACMC), Tamil Political Alliance and Eelam Peoples Democratic Party (EPDP) are now the major stakeholders of the National Unity Government (NUG).

The SLFP faced an inevitable split after the 2015 General Election that a faction of the SLFP headed by the former President Mahinda Rajapakse formed the Joint Opposition (JO), together with Lanka Sama Samaja Party (LSSP), Communist Party (CP), Mahajana Eksath Peramuna (MEP), Democratic Leftist Front (DLF), National Freedom Front and Pivithuru Hela Urumaya. After the 2015 General Election, the Tamil National Alliance (TNA) leader R. Sampanthan was appointed the Leader of the Opposition.

Thus, politically the tables have turned: the political dynamics that existed in the 1970s have drastically changed with the UNP leading the NUG and the LSSP, CP and a faction of SLFP acting as the opposition whilst the People's Liberation Front (JVP) and the TNA stand independently from the JO in the opposition.

In addition, the *Karaka Sabha Mandalaya* of the *Asgiriya* and *Malvathu* Chapters (the Committee of the two oldest Buddhist monastic schools of the *Siyam nikaya*)<sup>77</sup> had already made a statement urging the government to stop the constitution drafting process.<sup>78</sup> The vehement resistance from the Sangha on adopting a new constitution and their vow to support the opposition has created drastic implications on going ahead with the constitutional reform agenda. The protests are directed against granting greater politically autonomy for the Tamils and against reforming the Buddhism Chapter that would dilute the authority of Buddhism in the country.<sup>79</sup>

The SLFP (NUG), the JO and the JHU were opposed to any alteration made to the existing Article 9. The SLFP (NUG) disagreed with any other alternative proposal in the Draft

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<sup>77</sup> There are three *nikayas* (Buddhist monastic schools) in Sri Lanka, namely *Siyam*, *Amarapura* and *Ramanna nikayas*.

<sup>78</sup> Gagani Weerakoon, 'Proposed constitution facing stillbirth?' (Ceylon Today 22.10.2017). <http://www.ceylontoday.lk/columns20170401CT20180430.php?id=1021>, accessed 22 October 2017.

<sup>79</sup> 'Asgiriya Chapter totally rejects the new constitution', (Colombo, The Island 3 July 2017), < [http://island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=167713](http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=167713) > accessed 5 November 2017.

Interim report.<sup>80</sup> The JO relying on the *Buddha Sasana Kaya Sadhaka Mandalya*<sup>81</sup> stated that ‘strengthening safeguards of fundamental rights to other religious groups will weaken the authority of Buddhism in the country and therefore, article 9 should be retained’.<sup>82</sup> The JHU submitted that Sri Lanka is both legally and constitutionally a secular state and that Article 9 has not made Buddhism the State religion.<sup>83</sup> Accordingly, the foremost place for Buddhism is a ‘constitutional decoration’ recognizing the historical bond between Buddhism and the State.<sup>84</sup>

On the other hand, the TNA, CP, EPDP and DLF proposals contained demands for a secular constitution. Heading the TNA, the largest Tamil political group in parliament, M.A. Sumanthiran clearly emphasized at the Constitutional Assembly that a constitution giving a particular religion the foremost place cannot be a constitution that treats all its citizens equally.<sup>85</sup> However, he further stated that even if a secular constitution would have been the ideal, if the Buddhist people wish that a certain status be given to Buddhism, the TNA will not stand in the way.<sup>86</sup> The TNA therefore acknowledged that if the Buddhist people in the country strongly view Buddhism be given special constitutional importance, then such a view could not be disregarded. However, the TNA found issue with how Buddhism has been practiced in the island and therefore believed that constitutional management of religion in the new constitution needs to be handled with a great deal of circumspection.<sup>87</sup>

In the centre is the Joint Proposal submitted by the APMC, SLMC and the TPA stating that they are in principle agreeable to Article 9 albeit the replacement of ‘*Buddha Dharshanaya*’ in place of ‘*Buddhism*’. This proposition appears to be a reaction to the hostilities against Muslims stirred up by Buddhist extremist group the *Bodu Bala Sena*.<sup>88</sup> By adding ‘*Buddha Dharshanaya*’, it overtly excludes any pre-eminence afforded to Buddhist monks. Nevertheless, this unequivocal voice coming from the Muslim political parties to not to challenge Article 9 is a perhaps a politically strategy to avoid unnecessary political confrontation with the majority especially when there is an anti-Muslim propaganda within the country. Therefore, APMC and SLMC, akin to MP Aziz’s amendment in 1971, only suggested minor changes and agreed in principle on the foremost place given to the majority religion.

The UNP did not make separate submissions on religion in the Interim Report but during the debate MP Marikkar gave an assurance that any alteration to Art 9 will be defeated.<sup>89</sup>

The JVP submission did not contain any proposal regarding Article 9. However, the party position is for a secular constitution and strongly believes that the State should not

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<sup>80</sup> ‘Proposed submissions on the response of the Sri Lanka Freedom Party on the Interim Report of the Steering Committee of the Constitutional Assembly’, submitted by Hon.Nimal Siripala De Silva, Hon. A.D. Susil Premajayantha and Hon. Dilan Perera. (Document No. 1A) at 29, Interim Report (n.75).

<sup>81</sup> *Budda Sasana Karya Sadhaka Mandalaya* is a Buddhist organization comprising *Maha Sangha* and representatives of other main Buddhist Organizations which functions under the guidance of the *Mahanayake Theras* representing the three *nikayas* (monastic schools).

<sup>82</sup> ‘Written submission of the Joint Opposition on the draft Interim Report of the Steering Committee of the Constitutional Council, dated 8 August 2017’, (Doc 1E) submitted by Dinesh Gunawardhane and Prasanna Ranatunge on 31<sup>st</sup> August 2017. Interim Report, supra note (n 75) 62.

<sup>83</sup> Jathika Hela Urumaya, submitted by Patali Champika, (Document No.1D)Interim Report (n.75), 41.

<sup>84</sup> Ibid.

<sup>85</sup> Constitutional Assembly (Official Report, 30 Oct 2017), 64.

<sup>86</sup> Ibid.

<sup>87</sup> Personal Communication with a leading member of the TNA, 29 September 2017, Colombo, Sri Lanka.

<sup>88</sup> See ‘Sri Lanka Muslims killed in Aluthgama clashes with Buddhists’. (BBC 16 November 2014), < <http://www.bbc.com/news/world-asia-27864716> >, accessed 21 October 2017.

<sup>89</sup> Constitutional Assembly (Official Report, 30 Oct 2017), 135-136.

patronize any religion.<sup>90</sup> The JVP, a Marxist-Leninist party essentially would support a secular constitution in keeping with its communist principles. The founding member, Rohana Wijeweera stated that a State should avoid any pronouncement on a State religion or State language.<sup>91</sup> Yet, the JVP did not voice out in public their view on the relationship between religion and State. This non-committal position taken by the JVP is not uncommon. Despite the liberal image of the JVP, there was a widening ideological difference within the party, especially in relation to the ethnic problem.<sup>92</sup> These differences led some members of the JVP to discount the demands of the Tamils and to focus on broader socio-economic issues, so as to avoid alienating important segments of their support base.<sup>93</sup> By avoiding a public stance on religion in the new constitution, the JVP seems to be resorting to the same political strategy.

Interestingly, JVP MP Bimal Ratnayake highlighted the political reality behind the reformation to the Buddhism Chapter. At the debate, he affirmed that all religions must be treated equally but he pointed out that there was no major driving force or a single party who would genuinely attempt to change Article 9.<sup>94</sup> He emphasized that the government or any party in power would not risk its political stability by altering Article 9.<sup>95</sup>

### III. REFLECTIONS ON THE CONSTITUTIONAL POSITION OF RELIGION IN SRI LANKA

In a comparison of the Constituent Assembly 1970-71 debates with that of the present Constitutional Assembly, the 1970-71 debates clearly reflected a tripartite contestation on religion with robust protection for Buddhism in one end and demands for secularism on the other. Yet today, the sharp contours of the past contestations are no longer visible. Instead of demanding robust protection for Buddhism, it has been limited to retaining Article 9. Similarly, demands for secularism have been diluted.

Thus there is a broader agreement to retain Art 9. The move to retain Article 9 appears to be a calculative political strategy on part of the government as any alteration would give Rajapakse and the JO the necessary fodder to make the government unpopular amongst the devoted Buddhists. However, the government's continuing insistence on providing a special place to Buddhism could have disastrous implications in a society which is still recovering from a civil war.

The divergent views on the constitutional regulation of religion discussed above, manifest Sri Lanka's deep divisions on religion-based identity. Emerging from a three-decade war, Sri Lanka now has the opportunity to lay the foundations of an equal society. But by only insulating the majority religion, it affects the very fabric of the society that the NUG intends to unite.

However, unlike what was witnessed during the Constituent Assembly debates in 1970-71, no party seems to be vehemently demanding robust protections for Buddhism or a secular

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<sup>90</sup> Personal communication with JVP MP on 28 September 2017, Bandaragama, Sri Lanka.

<sup>91</sup> Rohan Gunaratne (1990). *Sri Lanka, A Lost Revolution: The Inside Story of the JVP*, 141. Kandy: Institute of Fundamental Studies.

<sup>92</sup> Kenneth Bush, *The Intra-Group Dimensions of the Ethnic Conflict in Sri Lanka*, (Palgrave Publications 2003) 111.

<sup>93</sup> *Ibid.*

<sup>94</sup> Constitutional Assembly (Official Report, 30 Oct 2017), 83-84.

<sup>95</sup> *Ibid.*



state. Instead the thrust is towards retaining Article 9. Politicians and experts argue that the removal of the foremost place to Buddhism will result in derailing the entire constitution-making process.<sup>96</sup> The failure of which will heavily question the legitimacy of the government.

Thus, as constitutions serve an expressive function of national unity<sup>97</sup>, constitution-making in deeply divided societies require rethinking of its approach when there is a lack of consensus on foundational principles and has competing visions on national and religious identity. Constitution-making in such polarized societies attracts political attention and constitutional debates tend to exacerbate tensions.<sup>98</sup> In Sri Lanka, questions on the nature of state (unitary or federal) and Buddhism have already sparked heated political debates.

Welikala argues that by embracing incrementalism, the Sri Lankan state can eventually conform to its social pluralism.<sup>99</sup> This is achieved by establishing ‘democratic procedures and space for long-term public and political debate’ which will eventually interrogate the Sinhala-Buddhist nationalism and manage to upheave the ‘traditions of pluralism, tolerance and accommodation’ that had remained undiscovered in the Sri Lankan culture and history so far.<sup>100</sup>

With the underlying political and social differences on religion, imposing any specific proposition on religion will risk finding constitutional solutions to more important constitutional concerns such as power-sharing. Instead of exacerbating the existing divides on religion, an incrementalist approach would help ease the tensions and help proceed with the constitution-making process. The current consensus of the major political parties to retain Article 9 further supplements this approach and it is perhaps the most logical.

One could argue that the compromise in Article 6 maneuvered by De Silva is an example of such incrementalism. Yet after 45 years, Sri Lanka still remains divided along racial and religious fault lines - as a result it was necessary to incorporate ‘the foremost place to Buddhism’ in both formulations proposed in the Interim Report as any other alternative would be practically inconceivable.

Unless there is a genuine attempt to initiate an open discourse on historical traditions of pluralism and tolerance – the very fact that the PRC members raised in their report: ‘that it was our responsibility to also try to challenge the debate and dialogue on religion in the country thinking of the future directions our country needs to take in order to move beyond existing divisions’<sup>101</sup>, - Sri Lanka will forever have to give into the majoritarian exigencies. Even if now is not the constitutional moment to introduce liberal democratic constitutional principles and therefore incrementalism is desirable, it is primordial that the government endeavor to remodel societal perceptions to accept what is just in a plural society.

#### IV. CONCLUSION

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<sup>96</sup> Personal communications with member of the Steering Committee representing the NUG (9.2017), MP of JVP (9.2017), Academics representing the civil society (27.9.2017), Colombo, Sri Lanka.

<sup>97</sup> Mark Tushnet, ‘Constitution-Making: An Introduction’, (2013) 9 Texas Law Review 1.

<sup>98</sup> Hannah Lerner, *Making Constitutions in Deeply Divided Societies*, (CUP 2011) 33.

<sup>99</sup> Asanga Welikala ‘The Idea of Constitutional Incrementalism’, (CPA Working Papers on Constitutional Reform No.14, January 2017) 22.

<sup>100</sup> Ibid, 21.

<sup>101</sup> PRC Report(n.57) 18.

This study traces the life of the Buddhism Clause in the constitutions of Sri Lanka and examines the constitutional contestations of religion in the Third Republican Constitution that is currently being drafted.

Juxtaposing the tripartite demands of the 1972 Constituent Assembly debates, namely: (i) demands for robust protection for Buddhism above other religions, (ii) demands to give equal recognition to all religions in addition to Buddhism and (iii) demands for a secular constitution, with the proposals on religion submitted by the public and the political parties for the new constitution, the research revealed that political demands have now been transposed to a different tone: i.e. to retain existing Article 9 in place of more vigorous protections for Buddhism.

Unlike no other instance before, there is a golden opportunity with broader consensus amidst political parties to adopt a new constitution. However, the need to reform Article 9 is not as acute amongst the political parties as addressing issues of devolution, abolition of Executive Presidency and electoral reforms. Therefore, De Silva's legacy –the Buddhism Chapter- more likely will continue in the Third Republican constitution.

However, retaining Article 9 is not necessarily a bad move in societies with deep divisions on national identity. The evolutionary process of the incrementalist approach will defer to the future the redefinition of religion in the constitution. Nevertheless, in this process, it is imperative to initiate public discourse to challenge the existing debate and promote dialogue on social pluralism in the country.