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**RESEARCH REPORT  
ON**

**INNER PARTY DEMOCRACY, ACCOUNTABILITY & TRANSPARENCY**

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## 1. Introduction

### 1.1 Rationale

Political parties play a crucial role in any country's political and governance system, helping to articulate group aims, nurture political leadership, develop and promote policy alternatives, and contribute towards efficient government. As they are a key platform of political discourse, a democracy needs strong and sustainable parties with the capacity to represent citizens. Hence, parties are among the most important players within a democratic system and can influence the ups and downs of sustainable development. For political parties to perform this vital role—along with other intermediate groups—democracy must exist within them. Without internal democracy, political parties have no legitimate basis for the important role they play. Internal democracy is essential for the strengthening of politically committed members within a party. More importantly, a democratic state cannot be governed efficiently and effectively by parties with undemocratic internal structures. For a functioning and effective democracy, political parties need to improve their performance and gain higher levels of public trust. Inner-party democracy is the only device through which they can achieve such status. All these apply within the Sri Lankan political discourse, especially since it is a multi-party system with 53 major and minor political parties. Matters pertaining to democracy within Sri Lankan political parties must, therefore, be studied to gain better insight into the mechanism of democracy within the state.

The present study pertains to only three major political parties—the United National Party (UNP), the Sri Lanka Freedom Party (SLFP) and the Sri Lanka Muslim Congress (SLMC). It is pertinent to examine their structures, all of which are distinct from each other. The UNP is three-tiered with the Party Convention at the top, the Executive and Working Committees at the middle and the geographically organized grassroots membership at the bottom. The SLFP's structure is designed with a Central Committee as the supreme body to which all other bodies, including the Executive Committee, are answerable. The grassroots organizations are organized at district and *pradeshiya* levels. The SLMC has several layers of decision-making with the High Command at the top. In between the High Command and district level organizations are the Politburo and Working Committee.

The UNP and SLFP have successively held power in Sri Lanka since independence in 1948. When analyzing the country's political history since the establishment of political parties, it is rare to find elements of internal democracy in any political party. Consequently, it is difficult to pressurize them in matters pertaining to democracy or the needs of the citizens they represent. Political parties must generally have a solid political program, clear ideology and vision, but most Sri Lankan political parties lack such identity. More often, parties represent the interests of internal groups rather than those of members or followers. Most political systems around the world place emphasis on allowing the membership to contribute towards forming the political will of a party. They also give prominence to the protection of minority groups within parties. However, an examination of the behavior of Sri Lankan political parties proves that members are rarely given such opportunities while minority groups, such as women and youth, are barely represented. Political parties are sometimes founded to fulfill an immediate requirement—such as a general or presidential election—after which they become more or less non-existent. Only around 15 of 53 registered parties get the opportunity to have themselves represented in Parliament. In the last five decades, the UNP and SLFP have, by far, been the largest political parties but coalitions have become the norm since neither is able to clinch a Parliamentary majority.

We chose the two major parties for this study as they represent the political interests of the large majority of Sri Lankans and have the longest political history. We have also selected the Sri Lanka Muslim Congress (SLMC) as it has certain important characteristics. The SLMC directly represents a single ethnic group (Muslims) and, unlike other parties, it is also religion-based (Islam). It was originally established as a region-based party although it is represented countrywide now. It is, in fact, the only political party which is directly and firmly guided by the principles of a particular religion. Hence, the SLMC can be compared with the two major parties when analyzing how democracy functions within these parties.

The indicators in this study for assessing levels of internal democracy are inclusiveness, decentralization and proceduralism. Daily happenings within Sri Lanka's political scene

make it obvious that all parties are highly centralized. It is universally accepted that policymaking should be transparent and that members should be permitted to voice their opinions. However, policy and decision-making powers within Sri Lankan political parties seem to be vested in the top level leadership. Institutional development is essential as it allows parties to become organized, to practice democratic values and to establish rules and procedures. This lets them compete more effectively at elections and to implement their policy preferences. But political parties in Sri Lanka do not appear to comply with such procedures as they do not observe any institutional development practices. This indirectly affects democracy within the party.

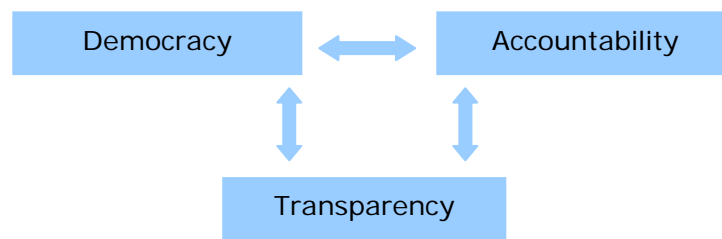
This study will reveal significant and important facts pertaining to inner-party democracy in Sri Lanka and can assist political institutions to develop better strategies to meet the needs of party members and of citizens.

## 1.2 Project objectives

As stated in the original project proposal, the “overall objective” of the study is:

To facilitate a social discourse on accountable, transparent and democratic political processes in intra-political party structures, which can equitably and effectively communicate to society the desire and vision of members and of the organization.

The study also analyzes the degree of democracy, transparency and accountability at constitutional level in the selected political parties.



This analysis is done in respect of the following areas:

Operational structures, decision/policy-making process and participation of membership in the political process. The study will examine, too, the implications of statutory provisions and practices dealing with the functioning and regulation of political parties in Sri Lanka. To accomplish the main objective, this study seeks to:

- a. Examine the basic values and policies according to which the respective political parties function.
- b. Find out the extent to which these three political parties encompass different mechanisms of democracy within their decision-making structures and processes.
- c. Analyze how those values and policies affect democratic governance within political parties.
- d. Find out to what extent moral, civic and political liberties are protected among party membership.
- e. Find out how political equality, material equality and equality before the law is applied to the general membership and to the party leadership.
- f. Find out the extent to which transparency and accountability are applied within the internal framework of decision making.

### 1.3 Methodology

Methodology is based on three divisions:

- a. Conducting a literature survey on the concept of inner-party democracy and on the policy and historical documents of political parties related to intra-democracy matters.
- b. Studying the internal structures and decision-making processes of the political parties and how they affect internal democracy. Following areas are covered under this section:
  - i. Content analysis of party constitutions.
  - ii. Case studies relevant to policy-making and implementation; human and physical resource management; organizational development procedures; and power structures (second stage of the study).
  - iii. Interviewing selected number of intellectuals attached to each party (second stage).
- c. Studying the legal provisions within which political parties operate in Sri Lanka.

### 1.4 Theoretical framework

#### **A definition of democracy**

*In general terms, a democracy is a form of government in which people have the right to participate in the process of decision-making that has a bearing on its destiny. It is also a way of life, a goal or an ideal, and a political philosophy. In a democracy, the people have the final authority and the right to make or at least influence decisions that affect their everyday lives. The term itself comes from the Greek words demos, meaning "people", and kratos meaning "rule", to designate a government where the people share in directing the activities of the state, as distinct from governments controlled by a single class, select group, or an autocrat.*

**Democracy** - The word means "Rule by the demos" (people)

Democracy is about people and their power. It is the organization of the power which belongs not to one person, not to a group of persons, but to all or to the majority of citizens that enables them to participate in the process of ruling. If liberty and equality are the main principles of democracy, it means that everybody can participate in the process of ruling. And, as the people living in a democratic order represent the majority and the laws to this majority are of great importance, such public order is democratic. Democracy treats the citizens as politically equal in governing. The democratic process secures political equality.

Throughout history, the most important aspects of the democratic way of life have been the principles of individual equality and freedom. Accordingly, citizens in a democracy should be entitled to equal protection of their persons, possessions and rights; have equal opportunity to pursue their lives and careers; and have equal rights of political participation. In addition, people should enjoy freedom from undue interference and domination by government. They should be free, within the framework of the law, to believe, behave, and express themselves as they wish. Democratic societies seek to guarantee their citizens certain freedoms, including freedom of religion, freedom of press, and freedom of speech. Ideally, citizens also should be guaranteed freedom of association and of assembly, freedom from arbitrary arrest and imprisonment, and freedom to work and live where and how they choose. Democracy insists that necessary restraints be imposed only by the consent of the majority and that they conform to the principle of equality.

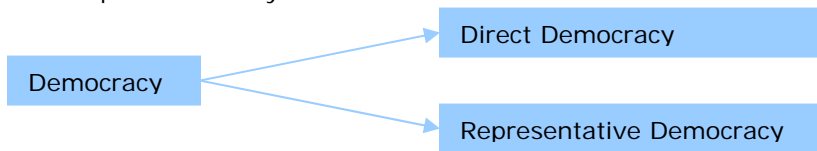
Definitions of democracy have been broadened to include aspects of society and political culture in democratic societies which are not specifically a 'form of government'.

While the term democracy is often used in the context of a political [state](#), the principles are also applicable to other areas of governance.

The power or authority exercised in a democracy is derived directly or indirectly from the represented people in one of the following two forms:

**Direct democracy:** This is classically termed as pure democracy. Direct democracy is a political system where everyone is given the opportunity to vote on government decisions. It is called direct because the power of making decisions is exercised by the people directly, without intermediaries or representatives.

**Representative democracy:** It is called representative because people do not vote on most government decisions directly, but select representatives to a governing body or assembly. This approach entails people voting to elect representatives in a free and fair electoral system to make policy for them under a wide range of checks and balances to help ensure leadership accountability.



*"A Democratic government is a "Government of the people, by the people, for the people" – Abraham Lincoln.*

### **Intra-party democracy**

"Intra-party democracy" is a broad term describing a wide range of methods for including party members in intra-party deliberation and decision-making. Internal democracy in a political party means that a political party has impersonal rules and procedures to avoid the arbitrary control of internal elections and party function by individual leaders or cliques. It also means that all party components and functionaries follow due processes and are accountable to the rank and file and to the lawful organs established in the statutes. Parties that "practice what they preach"—in the sense of using internally democratic procedures for their deliberation and decisions—generally strengthen democratic culture. The ideal of intra-party democracy has gained attention in recent years because of its apparent potential to promote a "virtuous circle" linking ordinary citizens to government, benefiting the parties that adopt it and, more generally, contributing to the stability and legitimacy of the democracies in which these parties compete for power.

In order for a political party to become internally democratized, its structures and proceedings should be both "accountable" and "transparent". Political parties can hold top officials accountable to party members, financial backers and citizens. At the same time, party leaders are answerable to members and to citizens on how they use party funds, how policy-making and implementation is done, and how they form the political will of the party. Accountability in this

*People of a country have a right to enjoy democracy and participate in governance. Only way of protecting this people's right to democracy and participation in governance is ensuring representative democracy within the society. The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the country. Representative democracy is indispensable for the stability, peace, and development of the country. Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms; access to and the exercise of power in accordance with the rule of law; the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people; the pluralistic system of political parties and organizations; and the separation of powers that ensures the independence of different branches of the state. In order to gain legitimacy in governance, political parties have to fashion the political will of the people. Political parties gain their rationale for existence through the notion of representative democracy. Political parties have a dual role. On the one hand, they are non public institutions within society. On the other, they participate in the forming of political will and consequently assume the position of a state organ.*

sense is not just a civic value but a way of keeping parties alive, open and adaptive. Transparency, on the other hand, helps to maintain a broad base in civil society and to win public trust. Internal party democracy will lead parties to adopt more open decision-making processes, and such procedures may help them win elections, recruit and select better candidates and retain popular support. Democratic structures within parties have to be constructed and not imposed; it has to take place through being more inclusive and through **evolution (devolution?)** of powers within the party. The organizational development of a party is another main aspect of inner-party democracy.

The existence of a well considered long-term strategic plan is essential, along with a program that pulls together all organizational dimensions to contribute towards the democratic governing of a party. Institutionalized parties are, thus, better able to respond to and account for the demands and interests of party members and the larger electorate.

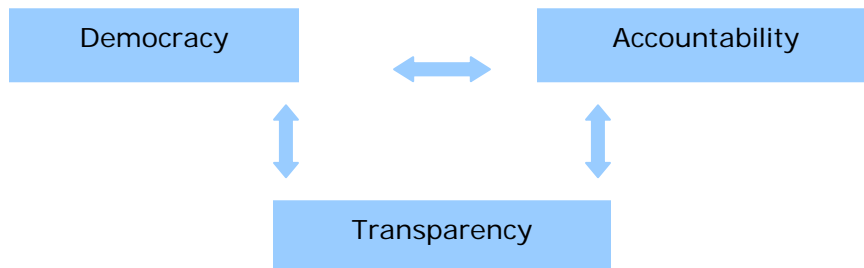
To exercise democracy, a political party must comply with the following:

- Annual planning of party activities.
- Democratic decision-making mechanisms.
- Decentralization of party activities.
- Transparency in the handling of resources.
- Accountability.
- Relations and selection procedures based on merit and solidarity.

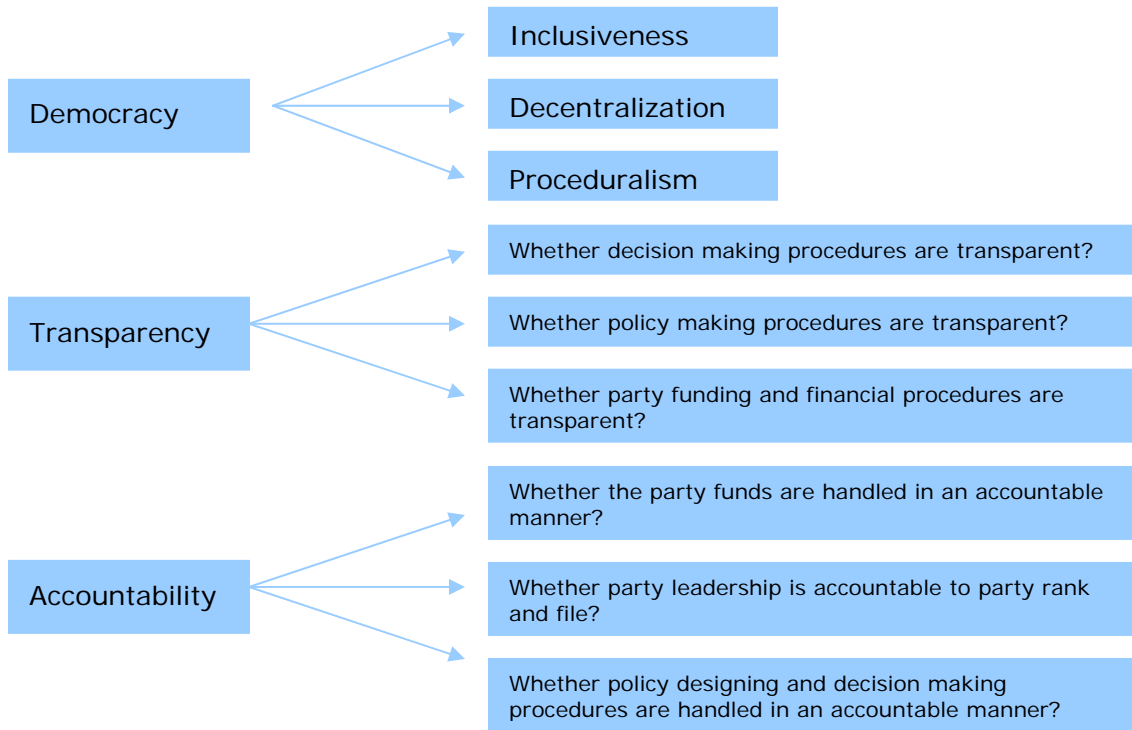
Democratic values and practices are crucial for institutionalization and the development of party strength. The control of communication and how the membership is defined are also crucial for the creation of checks and balances within a political party. In a more democratic party setting, it is the members who should exercise control. The process of discipline among party members also contributes towards the functioning of internal democracy. In a party where democracy is exercised at a higher level, statutes are democratically adopted and there are mechanisms to resolve conflict. Internal democratic practices then lead a party to function according to established rules and procedures and also help to avoid deep personal or political differences.

A high level of internal party democracy encourages political equality and improves the quality of democratic governance in a state by fostering inclusive and deliberative practices within parties. This is conducive to the establishment of a democratic political culture in a country.

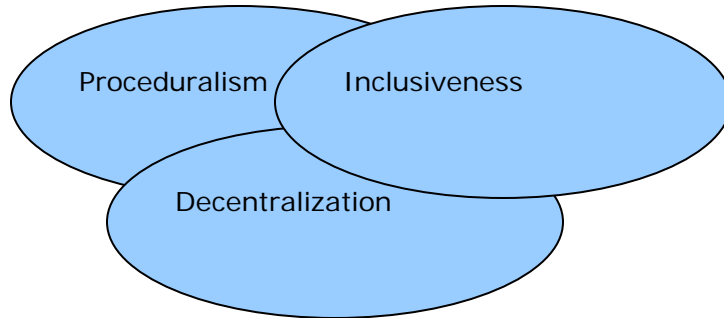
**Indicators to assess intra-party democracy**  
 [Intra-party democracy could be evaluated under three main topics]



Sub-divisions could also be identified under these three main categories:



Indicators that can be identified within these sub-divisions may be related in practice, may even overlap at times and may reinforce each other:



**Inclusiveness**

This relates to decision-making within a party. In parties with exclusive rules, key decisions are controlled by a single leader or a small group of leaders. In most inclusive parties, all members are given the opportunity to take key decisions. Also, are gender, ethnicity, youth, rural-urban representation just a token within the party or do people participate in decision making?

**Decentralization**

This relates to the extent to which members of all levels are included in party procedures such as policy designing, decision making and candidate selection.

**Proceduralism**

This relates to a party's internal organizational structure. The question here is whether this structure has been developed in accordance with democratic practices. One might also question whether party procedures have been correctly designed and followed.

Here are some basic questions to ask when assessing the extent to which "democracy" is exercised within a political party:

ISSUES	INDICATORS
<p><b>DEMOCRACY</b></p> <p>1. Inclusiveness</p> <hr/> <p>2. Decentralization of:            - decision making            - implementation of powers            - disciplinary powers</p>	<p>1.1. Pluralism            a. Whether the party is a reflection of society?            b. Whether party leadership represents society?            c. What components of society are represented within the party?            (Gender, ethnicity, religion and regions)</p> <p>1.2. Participatory            a. What is the difference between token representation and genuine representation within the party?</p> <hr/> <p>2.1. Decentralization            a. Whether powers are restrained at the centre?</p> <p>2.2. Delegation            a. Whether decision making powers are delegated to the periphery and to the rank-and file?</p> <p>2.3. Devolution</p>

3. Proceduralism	<ul style="list-style-type: none"> <li>a. Whether the periphery has powers to implement decisions and take action?</li> <li>2.4. Subsidiarity <ul style="list-style-type: none"> <li>a. Whether decisions are taken closer to ground level?</li> </ul> </li> </ul> <hr/> <ul style="list-style-type: none"> <li>3.1. Consensual <ul style="list-style-type: none"> <li>a. Whether decision making is consensual or voted?</li> </ul> </li> <li>3.2. Deliberativeness <ul style="list-style-type: none"> <li>a. Whether party decisions are presupposed?</li> <li>b. Are party structures in accordance with laid down principles and procedures?</li> </ul> </li> <li>3.3. Subsidiarity <ul style="list-style-type: none"> <li>a. Whether decisions are taken closer to ground level?</li> </ul> </li> </ul>
<b>TRANSPARENCY</b>	<p>Whether all party members party have access to information on:</p> <ul style="list-style-type: none"> <li>a. How decisions are taken?</li> <li>b. What decisions are taken?</li> <li>c. How are party leaders and leading bodies selected or appointed?</li> <li>d. What are the party funding and financial procedures?</li> <li>e. How are party policies designed and defined?</li> </ul>
<b>ACCOUNTABILITY</b>	<p>Is leadership accountable to the membership on:</p> <ul style="list-style-type: none"> <li>a. Policy designing, defining and implementation?</li> <li>b. Decision making and implementation?</li> <li>c. Handling of party resources?</li> </ul>

## 2. Taxonomy of constitutional & legal provisions that control the establishment and operation of Sri Lankan political parties

### 2.1 Introduction

In modern democracies, political parties are the main participants in governance. To gain legitimacy in governance, political parties have to fashion the political will of the people. Political parties gain their rationale for existence through the notion of representative democracy. Since they have become an integral part of representative democracy, their foundations must be free from any other encumbrances or vested interests. The internal and external environments within which these parties operate should, therefore, be based on democratic principles. At the same time, political parties are obliged to perform duties and to hold responsibilities. They must publicly account for the sources of income and intended use of their funds and property. Their aims and objectives should adhere to basic democratic principles and human freedoms. Finally, they should be under the common law of the country. As a body, political parties have a dual role: On the one hand, they are non-public institutions within society; on the other, they participate in the fashioning of political will in the political and public spheres and, thereby, assume the position of a state organ. This warrants a code of ethics to govern their goals, structures, formation of will and the rights and duties of their members. All these attributes can be fulfilled and can flourish only within a vibrant, representative, democratic atmosphere. In a sense, political parties and representative democracy compliment each other. One's non-existence may negate the existence of the other. It is pertinent, therefore, to develop an understanding of the notion of representative democracy and its contribution to society in order to analyze the constitutional and legal atmosphere that political parties operate in.

Representative democracy is indispensable for the stability, peace, and development of a country. Any unconstitutional alteration or interruption of the democratic order in a state

creates an insurmountable obstacle to the participation of those peoples' will at governance. It is universally accepted that people have a right to democracy and to participate in governance. Therefore, a state has an obligation to promote and defend it. The only way to protect the peoples' right to democracy and participation in governance is to ensure representative democracy. Consequently, representative democracy becomes an essential prerequisite for the social, political, and economic development of the people of any country. The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of a country. Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.

Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms; access to and the exercise of power in accordance with the rule of law; the holding of periodic, free and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people; the pluralistic system of political parties and organizations; and the separation of powers that ensures the independence of different branches of the state. Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of representative democracy. The strengthening of political parties and other political organizations is a priority for ensuring representative democracy.

The manner in which the pluralistic system of political parties is organized and how they ensure the peoples' sovereign rights are important factors in understanding the level of democracy in a society. Therefore, the most important aspect of this study is to understand the available enabling legal environment for political parties to form the political will of the people. Similarly, it is necessary to comprehend the manner in which representative democracy is practice—how the peoples' sovereignty materializes through elections into governance, with special emphasis on the legal arrangements that facilitate periodic free and fair elections based on secret ballot and universal suffrage. All legal arrangements may become redundant if the state structure does not provide a foundation to guarantee them. Thus, existing constitutional and rule of law arrangements that contribute towards representative democracy must be identified to understand the space available in society for a vibrant, representative democracy.

Special attention will be paid to understanding the legal space available for an accountable and transparent system of governance, especially for the functioning of political parties within the context of representative democracy. It is accepted that the elimination of all forms of discrimination—especially gender, ethnic and race discrimination—as well as diverse forms of intolerance is essential in the promotion of representative democracy. It is also accepted that human rights must be protected and promoted, and that respect for ethnic, cultural and religious diversity in the polity is vital. Special attention will be paid to identifying the kind of legal framework available for strengthening democracy and citizen participation by safeguarding these rights. This paper will also make observations on the kinds of obligations expected from the state and political parties to ensure these rights and freedoms.

## 2.2 Representative democracy in practice:

It is vital to understand the legal environment in relation to the following fundamental principles and how they are applied within the governance structures of the country:

- 2.2.1 Democracy as a principle of governance.
- 2.2.2 Notion of peoples' sovereignty, which provides the basis for representative democracy.
- 2.2.3 Elections as a tool of sovereignty.
- 2.2.4 Political party as a device that ensures public participation in governance.
- 2.2.5 Governance of state through executive, legislature and judiciary.

2.2.1 Fundamental structure of the Sri Lankan state, rule of law and constitutional arrangements that ensure representative democracy

The Sri Lanka Constitution enumerates the legal principles of the constitutional order of the state. The constitutional law which emanates from the Sri Lanka Constitution deals with legal rules governing the basic order of the state and the form of government. This entails its organization and the highest bodies, which are the constitutional organs that we commonly identify as the Executive, the Legislature and the Judiciary. In addition, the Constitution contains provisions pertaining to public administration and the fundamental rights of the people.

The fundamental structure of the Sri Lankan Republic is laid out in Articles 1 to 4 which state:

- i. That Sri Lanka is a Democratic Socialist Republic as provisioned in Articles 1 & 2.
- ii. Chapter VI enumerates the directive principles of state policy and fundamental duties of the state, which may perhaps have an effect on governance style.
- iii. Article 3 envisions that all public authority emanates from the people. It shall be exercised by the people through elections and referendums and by specific legislative, executive and judicial bodies as enshrined by Article 4.
- iv. Legislature is the supreme order of the state in view of Article 75.
- v. The Executive and Judiciary shall be bound by law and justice (Chapters VII & VIII).
- vi. Chapter IX deals with the Executive and Chapter XVI deals with the Judiciary.

The form and path of representative democracy emanates from this fundamental structure of the Sri Lankan state. Political parties are shaped by the influence of this basic structure.

2.2.1.a Separation of powers and independence of the branches of government in relation to representative democracy

The fundamental structure of the Sri Lankan state gives the Executive's role more prominence in governance when compared with the other two branches. Therefore, the notion of separation of powers does not function properly within the Sri Lankan polity. The Executive branch of the Sri Lankan state is constituted by bringing together two parts of the Sri Lankan state. The most dominant part of the Executive, the President of the country, is directly elected by the people as enumerated in Chapter VII of the Constitution. Political parties have the primary responsibility to nominate their candidates to the Presidency. If one of their candidates is elected, that candidate's party is afforded the opportunity of governing the state according to the policies of that particular party. The second component of the Executive arm is the elected representatives of Parliament, called the Cabinet. The Cabinet is an ultimate extension of political parties and policies but is subject to the will of the President.

The Public Service is another branch under the Executive as provisioned under Chapter IX. It plays a vital role in the formation of political parties and in transforming the notion of representative democracy into practice through party political representation in government. Consequently, the Public Service can be considered the guardian of representative democracy. From the point of formation of political parties to the point of elections, Public Service is involved in putting democracy into practice through its structures and processes. Where representative democracy is concerned, the most vital organ of the Public Service is the Election Commission which was introduced through the 17th Amendment to the Constitution. The powers and functions of the Election Commission are enumerated under Chapter XIVA as a separate state entity. The objective of the Commission is to conduct free and fair elections and referenda without interference.

The Judiciary in Sri Lanka is provisioned under Chapter XV and vested with ample powers to monitor and oversee the election of the President as well as election of representatives to Parliament. The powers vested in the Judiciary to monitor and oversee the conduct of elections are:

- i. Article 130 of the Constitution empowers the Supreme Court to hear and determine any legal proceeding relating to the election of the President; or the validity of a referendum; or an appeal from an order or judgment of the Court of Appeal in an election petition case.

- ii. The Court of Appeal shall have and exercise jurisdiction to try election petitions in respect of the election to the membership of Parliament in terms of any law for the time being applicable in that behalf as provisioned under Article 144. The process of election petitioning is enumerated by several Articles starting from Article 93 of the Constitution.

#### 2.2.1.b Human Rights and fundamental freedoms that govern representative democracy and political parties:

Fundamental rights applicable to the Sri Lankan people and legal entities are enshrined in Chapter III of the Constitution. In relation to representative democracy, the most relevant fundamental freedoms are spelt out in Article 10 which guarantees freedom of thought, conscience and religion. Nevertheless, this Article has to be read along with Article 9 of Chapter II which provides a foremost place for Buddhism and imposes a duty on the state to protect Buddhism. Therefore, when political parties are formed on the basis of their political convictions and they nominate representatives to the decision making process, the combined effect of these two Articles has a substantial impact over the selection of their nominees.

Additionally, Article 12—which ensures equality before the law and equal protection under the law irrespective of race, religion, language, caste, sex, political opinion and the place of birth of a person—has tremendous bearing on the functioning of representative democracy as well as on the internal and external operations of political parties. Article 14(1)a relating to freedom of expression and speech and Article 14(1)b relating to freedom of assembly provide another vital basis for representative democracy and political parties.

The freedom to form political parties and to engage with people is guaranteed by Article 14(1)(c), pertaining to the freedom of association. Article 14(1) (g)—relating to the freedom to engage oneself or in association with others in any lawful occupation, profession, trade, business or enterprise—may also have an effect on this issue.

All these fundamental freedoms, except Article 10, are restricted by Article 15 and the in-built restrictions of Article 12.

#### 2.2.2 Link between democracy and representative democracies:

By definition, the word 'demokratie' (democracy) means that the state lies in the hands of the people. In practical terms, the state comes in to the hands of the people through the concept of representative democracy. This means that the people exercise their state power through political elections and referenda and through certain organs of legislation, administration and judiciary. Participation at elections, therefore, is the main task of citizens with regard to ensuring his or her active role within a democracy. People taking part in the political process through their representatives is the second most important aspect of enjoying democracy. Political parties play a major role in that respect. Therefore, a political party is considered a practical political contrivance to ensure representative democracy.

#### 2.2.2.a Sovereignty & Elections:

Sovereignty is vested in the people through the Constitution. The people use one of its sovereignty attributes—the franchise—to elect their representatives to the decision-making tiers. This is provisioned under Article 26 of the Constitution. Nevertheless, the franchise of the people can be enjoyed only under Chapter V of the Constitution, which enumerates citizens' rights. The Sri Lankan Parliament as provisioned under Chapter X; Provincial Councils as provisioned under Chapter XVIIA; local government institutions established under the Urban Councils Act No. 61 of 1939; Municipal Councils Act No. 29 of 1949 and subsequently amended by several Acts; and the *Pradeshiya Sabha* Act No. 15 of 1987; and President as provisioned under Chapter VII of the Constitution; are directly elected by the Sri Lankan people. As a result, representatives of these institutions gain direct legitimization from the people to govern these bodies. In Sri Lanka, the election of representatives to Parliament, to the second and third tiers (Provincial Councils and local

government bodies) as well as the Executive President is done by the people through party representatives. These representatives are nominated by political parties. Once they are elected into the Legislature and into the Executive, they will hold legislative and executive powers on behalf of the people. Political parties, as a union of peoples' representatives, ultimately manifest peoples'/citizens' sovereign powers, according to their respective party policies. This is the rationale that governs the formation and functioning of political parties within a democratic society. Because of their representative nature, notions of accountability and transparency become essential governing principles for these bodies and their nominees. Thus, there's is a nexus between the sovereignty of the people and the delegation of powers by the people to party political representatives through elections. This is why analyzing the way elections are held becomes pertinent in this study.

#### 2.2.2.b Holding of periodic free and fair elections based on secret ballot and universal suffrage as an expression of the sovereignty of the people

##### **Ensuring democracy through elections Franchise and its connection to political parties**

To ensure democracy, one must start with designing democratic elections. A fundamental requirement in this respect is recognizing the peoples' franchise as a basic right. Article 26 under Chapter V enumerates how the franchise is to be exercised at elections. Article 88 enumerates how the franchise is manifested. It states that every person shall, unless disqualified, be qualified to be an elector at the election of the President and of the Members of Parliament or to vote at any referendum. Nevertheless, this section has included a prerequisite to become an elector by stating that no such person shall be entitled to vote unless his/her name is entered in the appropriate register of electors.

Disqualifications are also enshrined in Article 89, thereby indirectly introducing a process and a code of conduct to Sri Lankan electors. Non citizens of Sri Lanka, citizens who have not attained eighteen years of age and those who have been declared to be of unsound mind are disqualified from becoming electors. Those who have been punished for a period of seven years under Sri Lankan law are also disqualified. Consequently, the aforementioned criteria are vital in deciding membership when political parties are formed. Additionally, Article 101 provides for Parliament to pass further legal provisions from time to time in respect of conducting elections.

##### Who may be nominated to state organs by political parties?

Qualifications are enumerated not only for electors but also for representatives. According to Article 90, if a person is not competent to become an elector he or she shall not be qualified to be elected as a Member of Parliament. Articles 91 and 92 add another set of disqualifications for the people's representatives. Article 91 enumerates disqualifications for Members of Parliament and Article 92 enumerates disqualifications for Presidential candidates. In respect of Presidential candidates, the 17th Amendment has introduced still more disqualifications. These disqualifications are described under a different topic in this paper.

##### Sending political representatives from parties to the decision making process

The process of electing political candidates to the post of President, to Parliament, and to Provincial Councils is specifically mentioned in the Constitution and several laws have also been passed. Election of representatives to local government bodies is covered by several parliamentary legislations. Under Article 95, a Delimitation Commission was appointed and has divided Sri Lanka into not less than twenty and not more than twenty-five electoral districts. The Commission shall assign names to those districts in keeping with Article 96. Accordingly, each province of Sri Lanka may itself constitute an electoral district or may be divided into two or more electoral districts. Article 98 sets out the number of members to be returned by the electoral districts and their apportionment among such districts. According to Article 98, several electoral districts shall together be entitled to return 196 members. The apportionment of the number of members that each electoral district shall be entitled to return shall, in the case of 36 members, be determined in accordance with the provisions of paragraph (4) of Article 96.

The 15th and 17th Amendments have further amended this section. The Election Commission, by gazette order, certifies the number of members which each electoral district is entitled to return by virtue of a proclamation under Article 97 and this Article.

Mode of Election of party political representatives into the decision making process

Article 99 introduces proportional representation (PR) as the prescribed mode of election of political party representatives to Parliament. This has been further amended by the 14th and 17th Amendments. Under the PR system, every elector on the occasion of electing Members of Parliament shall, in addition to his vote, be entitled to indicate his preferences for not more than three candidates nominated by the same recognized political party or independent group. Any recognized political party or any group of persons contesting as independent candidates may, for the purpose of any election of Members of Parliament for any electoral district, submit one nomination paper setting out the names of such number of candidates as is equivalent to the number of members to be elected for the district, increased by three. The recognized political party or independent group that polls the highest number of votes in any electoral district shall be entitled to have the candidate nominated by it, who has secured the highest number of preferences, declared elected. According to the 15th Amendment, every recognized political party and independent group polling less than one-twentieth of the total votes polled at any election in any electoral district shall be disqualified from having any candidates of that party or group being elected for that electoral district. The votes polled by the disqualified parties and independent groups, if any, shall be deducted from the total votes polled at the election in that electoral district and the number of votes resulting from such deduction will be referred to as the "relevant number of votes". The relevant number of votes shall be divided by the number of members to be elected for that electoral district reduced by one.

Structures of state-decision making that party political representatives participate in Parliament

Provisions for the election MPs are enumerated in Article of 62 of Chapter X. Parliament shall consist of 225 Members, elected in accordance with the provisions of the Constitution. The election of MPs takes place on the basis of the total number of votes polled at a general election. This has been further amended by Section 8 of the 14th Amendment and by Section 27 of 17th Amendment. Of the 225 MPs, 196 seats are elected through the PR system and the rest—29 seats—are elected according to Article 99A by the Election Commission considering the percentage of the total votes obtained by the political party or the independent group in such a general election.

**The Presidency**

The election of the President is enumerated in Article 31 of Chapter VII. Any citizen who is qualified to be elected to the office of President may be nominated as a candidate for such office:

- i. By a recognized political party, or
- ii. If he/she is or has been an elected member of the Legislature, by any other political party or by an elector whose name has been entered in any register of electors.
- iii. No person who has been twice elected to the office of President by the people shall be qualified thereafter to be elected to such office by the people.
- iv. The poll for the election of the President shall be taken not less than one month and not more than two months before the expiration of the term of office of the President in office.

**The Provincial Councils**

The 13th Amendment to the Constitution introduces eight Provincial Councils, one for each province, as specified in Schedule Eight. Every Provincial Council shall be constituted upon the election of the members of such Council in accordance with the law relating to Provincial Council elections. The number of members as may be determined by or under law, having regard to the area and population of the Province for which that Provincial Council is established.

Responsibility of political parties in nominating members to Parliament through the National List

The 17th amendment specifies that parties contesting such election should submit a list of people to be nominated as National List MPs. After the election, the Election Commission

will notify to the respective secretaries of parties the names of the nominees elected to the Parliament. The Election Commission shall before issuing the aforesaid notice determine whether the number of members belonging to any community, ethnic or otherwise, elected to Parliament under Article 98 is commensurate with its national population ratio. The Election Commission shall request the secretary of such recognized political party or group leader of such independent group, in so nominating persons to be elected as Members of Parliament, to ensure as far as practicable that the representation of all communities is commensurate with its national population ratio (15th and 17th amendments).

Opportunities for political parties to mobilize people in policy making outside Parliament:

The 1978 Constitution gives political parties an opportunity to evaluate their policies through referenda in situations where these policies are stuck in Parliament for want of clear numerical majorities. Article 85 pertains to referenda. It says the President shall submit to the people by referendum three kinds of bills: (i) *Bill which the Cabinet of Ministers has certified as being intended to be submitted to the People by Referendum, or which the Supreme Court has determined as requiring the approval of the People at a Referendum* (ii) *or any Bill (not being a Bill for the repeal or amendment of any provision of the Constitution, or for the addition of any provision to the Constitution, or for the repeal and replacement of the Constitution, or which is inconsistent with any provision of the Constitution), which has been rejected by Parliament* (iii) *or any Bill or any provision in any Bill submitted to the people by Referendum.* The Bill shall be deemed to be passed by the people if approved by an absolute majority of the valid votes cast at such referendum.

Provisions for ensuring transparency and accountability in elections

Chapter VII in election of President; Chapter VIII (a) in provisions for establishing a Constitutional Council; Chapter XIX in appointment of Election Commission; and Chapter XVI in jurisdiction of the Supreme Court; enumerate valuable checks and balances to ensure transparency between people and their usage of franchise to elect their representatives.

Accountability provisions are guaranteed under the Fundamental Rights section of Chapter III; the section on Judiciary in Chapter XV; and the section on International Treaties and Agreements in Article 157.

The Constitution provides other checks and balances to ensure accountability and transparency:

- i. In a situation where a public servant becomes a political party candidate, Article 102 states that such officer cannot (during such period) exercise, perform or discharge any of the powers, duties or functions of his office to avoid conflict of interest between the functions of the public officer and party political candidacy at an election.
- ii. In relation to the duties and functions of public officers during election times, Article 102(g) states that all public officers are responsible and answerable to the Election Commission.
- iii. Article 100 of the Constitution imposes a penalty for sitting and voting in Parliament when disqualified.
- iv. The 17<sup>th</sup> Amendment to the Constitution has introduced a Constitutional Council (CC) under Article 41(a). The CC is appointed to recommend appointments to the Commissions specified in the schedule to the Article. Article 41(b) states that no person who has been appointed by the CC shall be removed except as provided for in law. Also, the President is not empowered to remove such appointee without prior approval of the CC.

The following bodies are covered by Article 41(a):

- (a) The Election Commission.
- (b) The Public Service Commission.
- (c) The National Police Commission.
- (d) The Human Rights Commission of Sri Lanka.
- (e) The Permanent Commission to Investigate Allegations of Bribery or Corruption.
- (f) The Finance Commission.

(g) The Delimitation Commission.

All but the Finance Commission have a direct or indirect bearing over the conduct free and fair elections.

2.2.3 The pluralistic system of political parties and organizations

From the legal regime that governs political parties in Sri Lanka, it is quite clear that they come under the scrutiny of the rule of law only at election time. The Constitution makes an effort to keep an indirect tab on political parties by enumerating qualifications and disqualifications for electors and for the election of MPs and the President. Nevertheless, it is silent on how political parties should operate within the Sri Lankan polity by ensuring fundamental rights and basic freedoms. But enshrining certain qualifications and disqualifications for Members who are to be elected to Parliament and the Presidency, one might contend that the Constitution is exercising indirect control over political parties.

Four other laws come into force as governing legal regimes with some control over the behavior of political parties at election time. They are an extension of provisions contained in the Constitution:

- i. Parliamentary Elections Act No. 1 of 1981;
- ii. Presidential Elections Act No. 15 of 1981;
- iii. Provincial Councils Elections Act No. 2 of 1988;
- iv. Local Authorities Elections Ordinance of 1947, amended by No. 24 of 1977 and No. 20 of 1987.

2.2.3(a) Constitutional provisions that control the election of peoples' representatives

**Disqualifications for MPs under Article 91 of the Constitution**

- i. Disqualifications specified in Article 89 (disabilities of an elector).
- ii. Stands nominated as a candidate for election for more than one electoral district at a general election.
- iii. Stands nominated as a candidate for election by more than one recognized political party or independent group in respect of any electoral district.
- iv. Stands nominated as a candidate for election for an electoral district and, before the conclusion of the election for that electoral district, he stands nominated as a candidate for election for any other electoral district, or,
- v. Being a Member of Parliament, except in the circumstances referred to in Article 70 (7) or Article 155 (4) (i), stands nominated as a candidate for election for any electoral district.

**Disqualifications for Presidential candidates under Article 92 of the Constitution**

If such a candidate is:

- i. A judicial officer;
- ii. The Parliamentary Commissioner for Administration;
- iii. The Secretary-General of Parliament or a member of his staff;
- iv. A member of the Public Service Commission.

**The following additional disqualifications are introduced by the 17th amendment:**

- v. A member of a Provincial Public Service Commission;
- vi. The Commissioner-General of Elections;
- vii. A Member of the Election Commission;
- viii. Member of the Constitutional Council;
- ix. A Member of the National Police Commission;
- x. The Auditor-General.

**The following disqualifications are introduced by the 9th Amendment:**

- xi. A public officer holding any office and drawing salary per annum below the prescribed limits mentioned by the Constitution.
- xii. A police officer or a public officer exercising police functions.
- xiii. He/she has any interest in any contract made by or on behalf of the state or public corporation as Parliament shall by law prescribe.

- xiv. He/she is undercharged bankrupt or insolvent having been declared bankrupt or insolvent.
- xv. If during the preceding seven years he/she has been adjudged by a competent court or by a Special Presidential Commission of Inquiry to have accepted a bribe or gratification offered with a view to influencing his judgment as a Member of Parliament or as a member of the Legislature prior to the commencement of the Constitution.

Such persons are not considered as fit persons to be candidates for Post of Presidency.

**2.2.3(b) Vacation of seat of a Member**

Under Article 66 of the Constitution, the seat of a Member shall become vacant upon a Member's death, resignation, or assuming the post of Presidency, or if he/she becomes subject to any disqualification specified in Articles 89 or 91. Also, a vacancy may occur when such Member continues to hold public office after such election or is absent in Parliament during a continuous period of three months without leave. The elected Member's seat can also be declared void under Article 81 whereby the Member of Parliament can be expelled upon a resolution.

According to Article 81, Members may be expelled and civic disabilities imposed by appointing a Special Presidential Commission of Inquiry under the Special Presidential Commissions of Inquiry law.

**2.2.3(c) Vacation of the post of President**

According to Article 38, vacation of office by the President can happen on the following grounds:

- i. Upon his/her death.
- ii. If he/she resigns from office by writing under his/her hand addressed to the Speaker.
- iii. If he/she ceases to be a citizen of Sri Lanka.
- iv. If the person elected as President willfully fails to assume office within two weeks from the date of commencement of his term of office.
- v. If he/she is removed from office through an impeachment.
- vi. If the Supreme Court in the exercise of its powers under Article 130 (a) determines that his/her election as President was void and does not determine that any other person was duly elected as President.

**2.2.3 (d) Formation of a political party under the Parliamentary Elections Act No. 1 of 1981**

Section 2 of this Act states that the number of Members returned from each electoral district will be decided by Article 98(8) of the Constitution. Polling divisions and each polling district will be decided under the Registration of Electors Act No. 44 of 1980. According to Section 4, any political party—other than one which is already entitled to be treated as a recognized political party for the purpose of elections [registered under the Ceylon (Parliamentary Elections) Order in Council, 1946]—shall be entitled to be treated as a recognized political party for the purpose of elections. Consequently, the secretary of such party may at any time apply in writing to the Commissioner of Elections that the party be treated as a recognized political party for the purpose of elections.

Along with such application, the secretary should submit:

- i. Symbol the party desires to be allotted to it;
- ii. Copy of the constitution of the party, and;
- iii. List of office-bearers of the party

According to Section 06, the Commissioner may hold an inquiry to ascertain whether the applicant is fit to be a political party and is organized to contest elections. But the law does not define the two notions 'political party' and 'organized'. If the Commissioner is satisfied that the aspirant party meets those two requirements, he shall recognize it as a political party. The Commissioner has absolute discretion to assign a symbol to the party but, under Section 12, this discretion is subject to the scrutiny of the courts.

Section 08 states that any subsequent amendment to the party constitution or the appointment of new office-bearers should be notified to the Commissioner within 30 days of

such an amendment. It is the duty of the secretary general of the party to convey these changes in written form.

Section 09 states that a political party ceases to be recognized when it fails to comply with the provisions of Section 08.

In case of a dispute within a party, the Commissioner holds absolute power to decide which faction should receive recognition under the Section 13 of the Act. Sub-section (2) states that no suit or other proceedings shall lie against the Commissioner of Elections by reason of his having issued a direction under sub-section (1).

Section 14 says that qualifications to become an electoral candidate are as envisioned by Article 90 of the Constitution.

Offences related to polling are described in Section 66 of Part VI.

2.2.3(e) Provincial Councils Elections Act No. 2 of 1988

Section 8 provides for the recognition of political parties for the purpose of Provincial Council elections. Every political party which is recognized under the Parliamentary Elections Act No. 1 of 1981, shall, so long as that political party continues to be treated as a recognized political party under that Act, be deemed to be a recognized political party for the purpose of elections under this Act.

2.2.3(f) Local Authorities Elections Ordinance of 1947 amended by No. 24 of 1977 and No. 20 of 1987

The Local Authorities Elections Ordinance is applicable to the local bodies established under the Urban Council Act No. 61 of 1939, Municipal Councils Act No. 29 of 1947, amended by 1987, and *Pradeshhiya Sabha* Act No. 15 of 1987.

Section 27(a) defines political parties that nominate candidates to local government elections. Every party treated as a recognized political party under the Parliamentary Elections Order-in-Council shall—so long as that political party continues to remain as so treated under that Order—be deemed to be a recognized political party for the purpose of local elections.

2.2.4 Ensuring accountability & transparency of political party representatives

The Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 has been introduced to deal with bribery and corruption. Its objective is to investigate allegations of bribery or corruption made to the Commission in accordance with the succeeding provisions of this Act and to direct the institution of prosecutions under the Bribery Act and the Declaration of Assets and Liabilities Law No. 1 of 1975.

Part III of Section 32 of the Bribery or Corruption Act assigns power to the President to appoint Commissions of Inquiry to investigate allegations of bribery. Under Section 1, the President (subject to the Constitutional Council as introduced by the 17th Amendment to the Constitution) may appoint, by warrant under the Public Seal of the Republic, a Commission of Inquiry consisting of one or more members to inquire into and report on any allegations of bribery made generally against the Cabinet of Ministers, or the Members of Parliament, or the members of any local authority, or persons appointed by the President to any office, or the members, directors, or governing body of any scheduled institutions. However, a glaring omission of this Act is that it lays down no provision to inquire into any complaints against the President.

The only means by which to bring charges against the President is to impeach him as described in Article 38(2)(a). This provision states that any Member of Parliament may, by writing addressed to the Speaker, give notice of a resolution alleging that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of the following:

- i. Intentional violation of the Constitution;
- ii. Treason;
- iii. Bribery;

- iv. Misconduct or corruption involving abuse of the powers of his office, or;
- v. Any offence under any law, involving moral turpitude, and setting-out full particulars of the allegation or allegations made and seeking an inquiry and report thereon by the Supreme Court.

2.2.4(a) Offences of bribery under the Bribery Act and Commission to Investigate Allegations Of Bribery or Corruption Act No. 19 of 1994

Article 14 and 15 of the Bribery Act state that bribery of MPs as inducement or reward for such members doing or forbearing to do any act in his capacity as such Member is an offence. Nevertheless, the proviso of Section 14 states that it is not an offence on the part of a trade union or any other organization to offer an MP any allowance or other payment solely for the purpose of his maintenance. Similar to Article 14, Article 15 also provides some exceptions. Article 15 states that *an MP who solicits or accepts any gratification as an inducement or a reward for (a) his/her interviewing a public officer on behalf of any person, or (b) his appearing on behalf of any person before a public officer exercising judicial or quasi-judicial functions is an offence provided, however, that it shall not be an offence under the preceding provisions of this section for an MP to appear as an attorney-at-law before a court or before a statutory tribunal of which a public officer is not a member.* The two exceptions created by these two articles are questionable within the context of Sri Lankan socio-economic and cultural conditions.

Article 23 states that the use of threat or fraud to influence the vote of a member of a local authority, or of a scheduled institution, or of the governing body of a scheduled institution, shall be an offence under this Act.

2.2.4(b) Corruption as an offence under the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994

Section 70 of Act No. 19 of 1994 has introduced corruption as an offence for the first time. It states that *any public officer who, with intent to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favor or advantage on himself or any person, or with knowledge that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favor or advantage will be conferred on any person (a) does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public officer; (b) induces any other public officer to perform, or refrain from performing, any act, which such other public officer is empowered to do by virtue of his office as a public officer; (c) uses any information coming to his knowledge by virtue of his office as a public officer; (d) participates in the making of any decision by virtue of his office as a public officer; (e) induces any other person, by the use, whether directly or indirectly, of his office as public officer to perform, or refrain from performing, any act, is considered as an offence.*

2.2.4.c Right of the Bribery or Corruption Commission to refer to declarations of assets and liabilities made under the Declaration of Assets and Liabilities Law No. 1 of 1975

Section 6 of the Act states that *the Commission shall have the right to call for and refer to any declaration of assets and liabilities made under the Declaration on of Assets and Liabilities Law No. 1 of 1975 by a person to whom that Law applies, notwithstanding anything to the contrary in that Law; and where the Commission requires a person to whom a declaration of assets and liabilities has been made under Section 4 of that Law to produce such declaration before the Commission, it shall be lawful for such person to comply with that requirement.*

Section 11 of the Act states that, where the material received by the Commission in the course of an investigation conducted by it under this Act discloses the commission of an offence by any person under the Bribery Act or the Declaration of Assets and Liabilities Law No. 1 of 1975, the Commission shall direct the director-general to institute criminal proceedings against such person at the appropriate court and the director-general shall institute proceedings accordingly.

2.2.4(d) Declaration of Assets and Liabilities Law No. 1 of 1975 as amended by Act No. 29 of 1985 and No. 74 of 1988

The provisions of this law shall apply to every person belonging to any one of the following classes or descriptions of persons:

- Members of Parliament;
- Judges and public officers appointed by the President; public officers appointed by the Cabinet of Ministers; judicial officers and scheduled public officers appointed by the Judicial Service Commission; and staff officers in ministries and government departments ;
- Chairmen, directors, members of boards and staff officers of public corporations;
- Elected members and staff officers of local authorities and;
- Office-bearers of recognized political parties for the purposes of election under the Presidential Elections Act No. 15 of 1981; the Parliamentary Elections Act No. 1 of 1981; or the Provincial Councils Elections Act No. 2 of 1988; or the Development Councils (Elections) Act No. 20 of 1981; or the Trade Unions Ordinance;
- Executives of trade unions registered under the Trade Unions Ordinance;
- Candidates nominated for election at elections to be held under the Presidential Elections Act No. 15 of 1981; the Parliamentary Elections Act No. 1 of 1981; the Provincial Councils Elections Act No. 2 of 1988; the Development Councils (Elections) Act No. 20 of 1981; or the Local Authorities Elections Ordinance;
- Proprietors, editors and members of the editorial staff of newspapers in respect of which declarations have been made under Section 2 of the Newspapers Ordinance;
- Chairman, directors and staff officers of companies registered under the Companies Act No. 17 of 1932, in which the majority of shares are held by the State or by a public corporation and;
- Such categories of other officers as may be specified by regulations.

Section 3 states that *every person to whom this law applies shall, within three months after the appointed date, make a "declaration of assets and liabilities" which contains (a) individual assets and liabilities; (b) the assets and liabilities of his/her spouse; and (c) the assets and liabilities of each of his/her children, as on such date as may be prescribed by resolution of the National State Assembly.*

Section 4 states that following two categories of persons should submit their declarations to the Commissioner of Elections:

- Office-bearers of recognized political parties for the purposes of elections under the Presidential Elections Act No. 15 of 1981; Parliamentary Elections Act No. 1 of 1981; the Provincial Councils Elections Act No. 2 of 1988; the Development Councils Elections Act No. 20 of 1981; or the Local Authorities Elections Ordinance.
- Candidates nominated for election at elections to be held under the Presidential Elections Act No. 15 of 1981; the Parliamentary Elections Act No. 1 of 1981; the Provincial Councils Elections Act No. 2 of 1988; the Development Councils (Elections) Act No. 20 of 1981; or the Local Authorities' Elections Ordinance.

Section 5 of the Act *provides that any person shall on payment of a prescribed fee to the appropriate authority have the right to call for and refer to any declaration of assets and liabilities. On payment of a further fee to be prescribed he/she shall have the right to obtain that declaration.*

Section 6 states that *the Bribery Commissioner may, at any time, call for such additional information as he/she may require from any person who has made a declaration of assets and liabilities under this law, and utilize such information or the declaration made under this law for the performance of his functions under the Bribery Act.*

Section 7 states that *any person may, by a communication in writing signed by him/her and addressed to an appropriate authority, draw the attention of such authority to any recent acquisitions of wealth or property or to any recent financial or business dealings or to any recent expenditures by any person to whom this law applies, which to the knowledge of the person making such communication is not commensurate with the known sources of wealth and income of such person to whom this law applies.*

2.2.4(e) Commissions of Inquiry Act (17 Of 1948 and amended by Acts of 8 of 1950, 40 of 1953, 8 of 1955 and 29 of 1955)

*Whenever it appears necessary to the President for an inquiry to be held and information obtained over a) the conduct of any member of the public service; or b) any matter in respect of which an inquiry will, in his/her opinion, be in the interests of public safety or welfare, the President may, by warrant under the Public Seal of the Republic, appoint a Commission of Inquiry consisting of one or more members to inquire into and report upon such administration, conduct or matter.*

2.2.4 (f) Inland Revenue Act No. 38 of 2000

**Imposition of Income Tax**

Section 2 as amended by Act No. 37 of 2003 states that *income tax will be levied for every year in respect of the profits and income of every person for that year of assessment, wherever arising, in the case of a person who is resident in Sri Lanka in that year of assessment; and arising in, or derived from, Sri Lanka in the case of every other person.*

Nevertheless, certain institutions, such as the President's Fund established by the President's Fund Act No. 7 of 1978, is exempt from income tax.

Section 9 states that the following incomes/persons also are exempt from income tax;

- i. Emoluments from pension and any other benefits arising to any person from the Office of the President of the Republic of Sri Lanka;
- ii. Official emoluments for any year of assessment commencing on or before April 1, 2005, paid to "any individual who holds any paid office under the Republic out of the Consolidated Fund";
- iii. Any Member of any Provincial Council;
- iv. Any Member of any local authority;

### 3. United National Party

#### 3.1 Introduction

The United National Party was founded in 1946 as a conglomeration of various political groups—among them were the Ceylon National Congress, Sinhala *Maha Sabha*, All Ceylon Muslim League, Moors Association and some renowned Tamil political leaders.

D.S Senanayake was appointed founder president while S.W.R.D Bandaranaike, Sir John Kotelawela, G.F de Silva, T.B Jayah and A. Mahadeva were made vice-presidents. Sir John was also appointed president of the propaganda committee while J.R. Jayewardene was made treasurer.

The UNP was projected as both an alternative and a reaction to the prevailing and expanding Marxist tendency in the Sri Lankan (Ceylon) political mainstream. The UNP leadership renounced the revolutionary path and stood for several progressive social reforms. They volunteered to defend democracy, religion and civilization which they asserted were under threat from Marxists. They said the party's mission was to achieve five freedoms—freedom from want, foreign control, unemployment, ignorance and disease. The party also espoused the concept of a mixed economy with the participation of local and foreign capital.

The UNP's structures and practices were modeled on those of Western, especially British, political parties. Even regional parties in South Asia appear to have had an impact on the UNP.

In theory, the party appears to be based on the principles of participatory democracy but, in practice, there would seem to be an exceptionally high degree of centralization around the leadership.

As Dr. Chanaka Amaratunga states in his study on '*The structure and organization of Sri Lankan Political Parties*', the degree of centralization of power within the UNP reached high levels during later stages. He says the Party Convention was initially accorded a key position in the UNP constitution (around 1946). The Convention then consisted of delegates elected by the members of party branches throughout the country which formed the basic units of the UNP. It was the Convention that appointed the leader and secretary.

The current constitution was adopted before the 1977 election and differs markedly from the earlier one in this respect. Not only has the membership lost the opportunity to elect the leader, but all major decisions pertaining to the party are now taken by the leader or by committees appointed by him. The new constitution also has no provisions to remove an incumbent leader. Today, all members of the Working committee are nominees of the leader.

It is apparent that the experience and thinking of J.R. Jayawardene—who was party leader at the time—had influenced the drafting of this constitution. He created a Presidency-centric Constitution for the country while the UNP constitution that was adopted under his tenure centered all powers on the party leadership.

#### 3.2 Structure of the United National Party

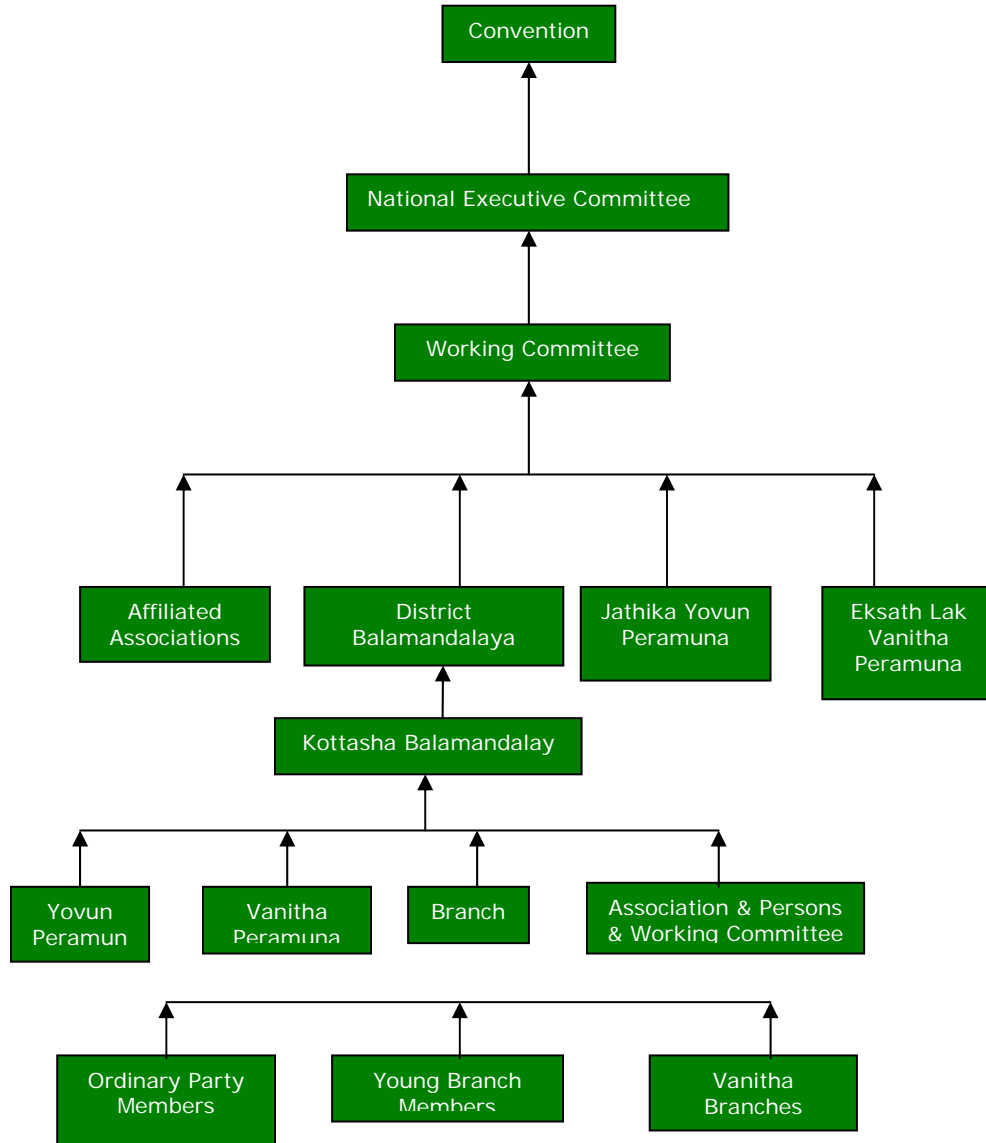
The diagram below explains the UNP's structure. In terms of the powers assigned to and the composition of the Party Convention<sup>1</sup>, it is the highest body. The National Executive Committee and the Working Committee are next in line. The task of geographically organizing grassroots membership is assigned to the branches which are the smallest units of the party structure. They are, in turn, connected to the electorate-level *Kottasha Balamandalayas* (electoral organization) and at the district-level to the District *Balamandalayas* (district organization). According to the diagram, the *Yovun* (youth),

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<sup>1</sup> The original constitution was amended on numerous occasions. Because of difficulties in accessing all these changes, this study is based only on the original constitution.

*Vanitha* (women) and other affiliated wings connect up with the party structure at different levels.

(Figure 01 )



### 3.3 Constitution

The UNP constitution has sixteen chapters. The first three introduce the party, explain its objectives and define membership requirements. They outline the party's dedication to democracy and to non-communal and non-sectarian policies. They describe the objectives of the party as organizing and maintaining itself—in Parliament as well in the country—with a view to gaining power at Presidential, Parliamentary and other elections. Also, the party will strive to educate the masses with the aim of achieving political, social, economic and cultural development. These chapters emphasize the UNP's commitment to protect universal franchise and human rights.

### 3.4 Membership

Anybody over fifteen years of age may obtain membership and he/she should register in a branch at electorate level. The Working Committee is authorized to draft rules and regulations for membership. All members are required to abide by party policies and regulations. The regulations governing the dismissal of members are described in this **chapter** (which chapter?). It is stated that obtaining membership and/or holding office in any other political party and holding office or ministerial portfolios in a government formed by other political parties are violations of the party constitution.

Chapter four describes the organizational structure of the UNP. It states that the UNP has several levels consisting of *District Balamandalayas*, Electorate *Balamandalayas*, Branch Organizations, *Yovun*, *Vanitha* and affiliated organizations. Under the category of affiliated organizations are trade unions, professional bodies and foreign-based associations.

#### 3.4.1 Local Organization

**District *Balamandalaya*:** Governed under rules prescribed by the Working Committee, it is entrusted with the implementation of Working Committee decisions and the handling of district political affairs. Office bearers of the District *Bala Mandalaya* are appointed by the Working Committee. All decisions made by the District Committee should be conveyed to the party leadership and general secretary. These should not be contrary to the party constitution and Working Committee decisions.

**Electorate *Balamandalaya*:** Comprises of representatives of branch, *Yovun* and *Vanitha* organizations and is governed by Working Committee regulations. Chairman, secretary and treasurer are appointed by the Working Committee. It is entrusted with the implementation of Working Committee and District Committee decisions. All decisions made by this *Balamandalaya* should be conveyed to the general secretary and should not be contrary to the party constitution and Working Committee decisions.

**Branch Organizations:** The focal point of party activities. There are one or more organizations for each polling station. Party members residing in a village, ward or a similar entity within a polling booth area may combine to form a main branch which shall consist of a minimum of 25 members.

### 3.5 Upper structure

#### 3.5.1 Party Convention

The Party Convention is the UNP's highest forum and is explained in Article 5 of the constitution. It is held annually but special Conventions may be summoned by the leadership or the Working Committee. Sub-Sections 5.1 to 5.5 of this Article pertain to the holding of the Convention, its power to determine party policies as well as the powers, procedures and composition of the Convention. It also emphasizes that the Convention has the power to remove office bearers and even elected members.

Table 01 explains the composition, powers and limitations of the Party Convention.

(Table 01)

Composition	Powers	Limitation
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<ol style="list-style-type: none"> <li>1. Office bearers and members of the Working Committee.</li> <li>2. Parliamentarians and Members of Provincial Councils.</li> <li>3. Members of local authorities, chairmen of the <i>Kottasha Balamandalayas</i> (appointed by party leader).</li> <li>4. Such other delegates as determined by the Working Committee.</li> </ol>	<ol style="list-style-type: none"> <li>1. To amend the constitution and standing orders by way of addition, deletion, alteration, repeal and replacement.</li> <li>2. To determine party principles and policies and give directions on such matters.</li> <li>3. Removal of office bearers of the District <i>Balamandalayas, Kottasha Balamandalayas, Kottasha Sangamayyas</i> and branches that fail to carry out their duties and functions.</li> <li>4. Suspension from party organizational work of elected Members of Provincial Councils and local authorities who fail to carry out their duties and/or functions.</li> </ol>	<ol style="list-style-type: none"> <li>1. The procedure at the Convention shall be strictly in accordance with the party's standing orders.</li> </ol>
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### 3.5.2 National Executive Committee

The second highest body in the party hierarchy, the National Executive Committee (NEC) is described in Article 6 of the constitution. It meets annually and is convened by the Working Committee. Articles 6.2 and 6.3 explain its composition and powers respectively.

Table 02 explains the composition, powers and limitations of the NEC.

**(Table 02)**

Composition	Powers	Limitation
<ol style="list-style-type: none"> <li>1. Office bearers and Working Committee members.</li> <li>2. Members of Parliament and Provincial Councils.</li> <li>3. Members of local authorities.</li> <li>4. Chairmen of the <i>Kottasha Balamandalayas</i>.</li> <li>5. Such other representatives as shall be determined by the rules made by the Working Committee.</li> </ol>	<ol style="list-style-type: none"> <li>1. Shall determine the policies and programs of the party (subject to Article 5.2).</li> <li>2. To enforce the constitution, standing orders, rules and the code of conduct and to take any action it deems necessary for such purpose including disciplinary actions.</li> <li>3. To ensure that all office bearers and members conform to the constitution and standing orders, rules, directions and code of conduct</li> <li>4. To propose any amendment to the constitution and the standing orders.</li> <li>5. It shall receive a report of the activities of the Working Committee for its consideration.</li> </ol>	<ol style="list-style-type: none"> <li>1. The NEC is subject to Article 5.2 when determining the policies and programs of the party.</li> <li>2. NEC meetings shall be summoned by the Working Committee.</li> <li>3. The procedure at such meetings shall be determined by the rules made by the Working Committee.</li> </ol>

### 3.5.3 Working Committee

Working Committee is entrusted with practical administration. Although it operates as the NEC's representative body, it exercises practical authority over the party merely because it meets more often.

Article 7 explains **Working Committee** powers. This includes its composition (7.1), authority (7.2), powers and functions (7.3-7.6), power to appoint nomination boards (7.7) and other matters dealing with sub-committees (7.8). Article 7 also sets guidelines for the appointment of the auditor (7.9), making of other appointments (7.10/7.11) and filling of vacancies (7.12), discipline (7.13) and rules (7.14). The exercise of the NEC's powers are outlined in 7.15.

Table 03 - explains the composition, powers and limitations of the Working Committee.

(Table 03)

Composition	Powers	Limitation
<p>1. Party leader.</p> <p>2. Office bearers.</p> <p>3. Members not exceeding fifty, nominated annually by the leader from amongst the members of the NEC.</p>	<ol style="list-style-type: none"> <li>1. It is vested with authority by the constitution and the NEC to manage all party activities.</li> <li>2. To confer with the Parliamentary party at the opening of each Parliamentary session or at any other time when it or the Parliamentary party desires a conference on any matters related to the party.</li> <li>3. To convene the Party Convention and special sessions of the Convention whenever necessary.</li> <li>4. To prepare the agenda of the Convention.</li> <li>5. To lay down the procedure to be followed at the NEC meetings and the Party Convention.</li> <li>6. To organize and maintain a fund to finance Presidential, Parliamentary and other elections and other activities.</li> <li>7. To adjudicate any dispute that may arise between <i>Balamandalaya, Sangam</i>, branches and affiliated associations.</li> <li>8. To appoint nomination boards and issue general or special directives to such boards .</li> <li>9. <b>To appoint a sub committee to organize any election that is to be contested (is this correct?)</b></li> <li>10. To appoint an auditor.</li> <li>11. To make such other appointments as are considered necessary to carry out the organizational and administrative functions of the party.</li> <li>12. To appoint special or emergency committees or sub-committees to give effect to the objectives of the party.</li> <li>13. To fill vacancies in the respective committees or offices until the next Annual Convention.</li> <li>14. To appoint disciplinary committees.</li> <li>15. To make rules and orders on matters for which it is so authorized by the constitution and to give effect to the provisions of the constitution.</li> </ol>	<ol style="list-style-type: none"> <li>1. Rules and orders made by the Working Committee shall be brought before the next NEC meeting for ratification.  <i>(Any rule or order which is not so ratified shall be deemed to be rescinded as from the date of non-ratification but without prejudice to anything previously done there under. Rules made by the Working Committee applicable to the Party Convention should be ratified by the NEC before such rules are made applicable).</i></li> <li>2. The appointments made to fill vacancies in respective committees and offices would be valid only up to the following Convention.</li> </ol>

3.5.4 Office bearers

A separate chapter states that the party leader has total authority to appoint and replace all office bearers. The same chapter describes provisions pertaining to the leader but there is

no mention of his/her appointment. It is only explained how a vacancy in the leadership may be filled, whenever such vacancy arises.

Article 8 deals with office bearers: The NEC has to fill any vacancy that arises in the leadership but these powers may be delegated to the Working Committee. The deputy leader, assistant leader, party chairman, general secretary and the treasurer are appointed by the leader for a period of one year and their powers, too, are determined by him. All other officials are appointed on the leader's recommendation. He has all power to direct the party.

#### 3.5.5 Financial control

No special mention is made in the constitution of day-to-day financial management, although Article 8.6(a) mentions that a treasurer will be appointed by the leader. However, chapter 14 deals with the party's movable and immovable property.

#### 3.5.6 The committee system

The UNP appoints committees to facilitate the party's functioning. Currently, three main committees are sitting within the party:

- Political Affairs Committee;
- Media & Publicity Committee;
- Management Committee.

The Political Affairs Committee—which is chaired by the leader and consists of 13 members appointed by him—deals with political issues. The deputy leader, chairman, general secretary and deputy general secretary and national organizer are ex-officio members. Eight other senior Parliamentarians have been appointed by the leader as members of this committee, which meets every Monday to discuss political issues.

The Media and Publicity Committee also meets every Monday, under the leader's chairmanship. The positive and negative media coverage that the party had received during the preceding week is discussed in detail and responses decided on where necessary. They also draw up the overall media and publicity strategy for the week, including the names of party representatives to participate at media briefings and TV programs. Party spokesmen are advised on the opinions and views they should express at such forums.

The Management Committee is chaired by the deputy leader and meets every Monday. The chairman, general secretary, deputy general secretary, treasurer and vice chairman in charge of legal matters are members. All matters pertaining to the management of party headquarters, follow-up action on disciplinary matters, financial position including the cash flow and any other issues concerning the membership are discussed and decisions taken.

The tendency in the UNP to handle important matters through committees may be attributed to a desire to seek wider participation in an overly centralized structure.

#### 3.5.7. General comments

It is apparent that almost all powers are constitutionally concentrated within the top leadership of the UNP. Although critical decision-making powers are vested in the Working Committee, it is the leader who appoints persons to that Committee. There is no provision for the replacement of the leader while there is no entity or mechanism to challenge his powers. Financial operations are exclusively handled by people appointed by the leader. He selects nominees for elections through the Working Committee and directly appoints chairmen to the *Kottasha Bala Mandalayas*.

The party has a well established and multilayered structure but the Working Committee exerts control over it. Only the *Yovun* and *Vanitha* fronts represent the diversity of the UNP's membership and there are just three spheres for affiliated organizations: trade unions, professional and foreign organizations.

Party membership is open to anybody but it lapses after 12 months if not renewed. Party members are committed to follow party decisions but there is no mention anywhere about

their rights. Membership also does not appear to be a precondition for holding office in the party.

Delegation of power appears to be confined to the appointment of committees and the allocation of some powers to office-bearers. There is no provision at all for the devolution of powers.

There are no provisions to ensure transparency and accountability in the decision-making process.

#### **4. Sri Lanka Freedom Party (SLFP)**

##### **4.1 Introduction**

The Sri Lanka Freedom Party was founded in 1951 under the leadership of S.W.R.D Bandaranaike. It was intended to be a reformist, non-revolutionary alternative to the conservative UNP and the Marxist Left.

The SLFP was depicted as the common man's party. Its policies revolved around rural development and the upliftment of the Sinhala language and Buddhism. Sinhala and Buddhism were to be given the pride of place and Buddhist monks, Ayurvedic physicians, teachers, farmers and workers were regarded as the popular base of the party. Some Muslim and Christian elements also joined.

A 'middle path policy' between capitalism and socialism was adopted in economic matters. The party said it aimed to achieve economic freedom within the socialist system through the expansion of the state sector, creation of more employment opportunities in the public sector and the development of rural agriculture. It believed in a policy whereby the state took over the direction of the economy and the utilization of national resources through the nationalization of resources and enterprises.

The SLFP also stood for media freedom, the freedom of speech and the right to assemble while opposing arbitrary arrest. In foreign affairs, the SLFP adhered to a policy of non-alignment.

The party was dominated by the Bandaranaiques since inception, until Mahinda Rajapaksa emerged as leader in 2005.

The tendency to centralize power on the leadership may also be observed in the SLFP constitution. This is generally explained away as a reaction to the threats posed by the UNP to the party's very existence. The foundation of J.R Jayawardene's policy was the perpetuation of his power as well as that of his party (UNP) through the weakening of the opposition. Consequently, several disputes arose within the SLFP, necessitating the emergence of a leader who had extraordinary powers to safeguard the party.

##### **4.2 Structure of the Sri Lanka Freedom Party**

The SLFP structure is depicted in Figure 2. The branch is the smallest unit in party hierarchy, responsible to Executive Committee through Electoral District Organizations. The Advisory Council, Disciplinary Committee and Political Management Committee, too, are answerable to the Executive Committee. Youth, women's and affiliated organizations also come under the purview of the Executive Committee and sometimes coordination is done through a special board appointed for the purpose.

The Central Committee is the party's supreme body with the Executive Committee being answerable to it. There are two other important bodies—the *Samastha Lanka Karaka Sabhawa* and the Party Convention. The relationships among these bodies are governed by their composition and inherent powers.



4.3 Constitution

The SLFP constitution has 32 articles. The preamble outlines the party's basic policies as the ushering in of a democratic socialist system of governance—or the 'middle path'—through a Parliamentary system. It espouses the protection of liberty and independence of the Judiciary. It also emphasizes the party's opposition to dictatorship as well as commitment to development, ad religious and cultural renaissance.

Article 2 explains the party structure and affiliated organizations. The organizational structure consists of branches and electoral, divisional and district units along with youth and women's organizations. Additionally, several administrative units—such as National Committee, Executive Committee, Central Committee, Disciplinary Committee, Political Management Committee and Consultative Committee—are in operation. The General Convention, too, is a major component of this structure. There are 12 affiliated organizations including one for the clergy.

4.4 Organization of membership

According to Articles 3 and 4, at least one branch with a minimum of 20 members should be established in every polling area or *Grama Niladhari* division. A branch may be established even within a public institution.

The composition of the electoral organization is described in Article 5. Membership consists of chairmen and secretaries of branches, local government representatives and chairmen, secretaries and treasurers of youth and women's organizations and other affiliated groups. The chairman of the Electoral Organization is appointed by the SLFP chairman. Article 6 says that the Electoral Organization is responsible for all political activities within the electorate. It may raise money on its own and is required to send reports on disciplinary matters to the SLFP general secretary.

Article 7 says that if there is more than one local government body within one electoral area, then a Regional Organization may be established.

Article 8 explains the composition of the District Organization. It consists of the Members of Parliament from the district, chairmen and secretaries of the electoral organizations, members of the Provincial Council, local government representatives and district organizers. The leader of the District Organization is appointed by the party chairman.

4.5 Samastha Lanka Karaka Sabhawa

The Samastha Lanka Karaka Sabhawa has powers to amend anything in the constitution but the basic policy components. It can be convened by the party chairman. Articles 9 and 10 explain its composition and powers respectively.

Table 04 outlines the composition, powers and limitations of the *Samastha Lanka Karaka Sabhawa*.

**(Table 04)**

Composition	Powers	Limitation	Others
1. All Members of Parliament. 2. Presidents and secretaries of all the Electorate Organizations. 3. Provincial Council members, heads of Urban Councils, team leaders or opposition leaders representing the SLFP at local authorities. 4. A maximum of 50 representatives selected by the youth organization.	1. To amend the Constitution, excluding the party principles.	All the names of representatives sent by the organizations from (4) to (8) should be approved by the Central Committee.	The Committee should meet at least once in six months.  The party chairman has power to call a meeting of this Committee when he/she feels it

5. A maximum of 41 representatives selected by the women's organization.			necessary.
6. A maximum of 10 representatives for each, selected by all affiliated organizations.			
7. A maximum of 30 representatives selected by the workers' organization.			
8. A maximum of 20 representatives selected by the Government Professionals' Union of the SLFP.			
9. A maximum of 50 members nominated by the president of the party.			

4.6 Executive Committee

The Executive Committee can formulate party policies and propose amendments to the constitution, organize election campaigns and handle party finances as mentioned in Articles 11 and 12.

Table 05 - explains the composition, powers and limitations of the Executive Committee.

(Table 05)

Composition	Powers	Others
1. All SLFP Members of Parliament. 2. Electorate organizers. 3. Five selected from the youth organization representatives who are members of the All Island Representative Committee. 4. Three selected from women's organization representatives who are members of the All Island Representative Committee. 5. Two representatives each from affiliated organizations and five from the farmers' organization, all of whom are members of the All Island Representative Committee. 6. Three members of the workers' organization and two members of the Government Professionals' Union, all of whom are represented in the All Island Representative Committee. 7. Twenty-five members of the committee of the All Island Committee, appointed by the president of the party 8. If any party member is holding or has held the position of the party president or the post of the executive president of the state, he/she should be a member of the Executive committee	1. To appoint the following officials: i. President ii. Four Senior Vice Presidents iii. Ten Vice Presidents iv. Senior Secretary v. National Organizers vi. Eight Deputy Secretaries vii. Treasurer 2. To formulate principles and constitutional amendments. 3. To organize electoral matters and activities pertaining to other party events, as directed by the central committee.	1. The Executive Committee should meet at least once in three months. Members who do not attend three successive meetings without prior approval will lose their membership and the vacant positions in the Committee will be filled by the Executive Committee.

4.7 Central Committee

The Central Committee is the SLFP's supreme decision-making body and its composition and powers are spelt-out in Articles 13 and 14. The chairmanship of the Central Committee is held by the party chairman while the secretary acts as the secretary of this Committee. Significantly, the party chairman entitled to appoint 23 members to the Central Committee.

Table 06 - explains the composition, powers and limitations of the Central Committee:

(Table 06)

Composition	Powers	Others
<p>1. 26 officers appointed by the Executive Committee.</p> <p>2. A maximum of 23 members from the Executive Committee selected by the party president.</p> <p>3. The vice presidents of the youth and women's organizations and the general secretaries of the workers' organization and the trade union association.</p> <p>4. The president of the Central Committee has the power to call upon a maximum of 10 members from the party or from affiliated organizations as observers.</p>	<p>1. This is the apex body in the party organization. The party president should be the Central Committee president and the party general secretary is its secretary.</p> <p>2. A decision declared by this Committee regarding any issue concerning the party or the party constitution would be final.</p> <p>3. The ultimate authority on all disciplinary matters, the Central Committee is authorized to appoint disciplinary committees, nomination boards and other committees as and when necessary.</p> <p>4. When a membership has ceased or an organization is proscribed, the Central Committee has the authority to take action to continue party activities without interruption.</p> <p>5. The Central Committee should appoint a Consultative Committee comprising members from each district and persons with extensive knowledge of each sector.</p> <p>6. The Central Committee must approve all representatives nominated to the All Island Representative Committee (<i>Samastha Lanka Karaka Sabhawa</i>) by the youth organization, women's organization, workers' organization, Government Professionals' Union.</p>	<p>1. The party president has the authority to call special meetings of the Central Committee.</p>

The Central Committee is also the responsibility of the chairman and general secretary. Article 15 outlines the powers vested in the chairman. He/she may appoint or remove electoral organizers and district organizers and take decisions on disciplinary matters. He/she may preside over any meeting of any organization. It is also his responsibility to appoint members to the Disciplinary Committee.

Article 16 pertains to the Political Management Committee and the Advisory Board which operate in an advisory capacity on policy decisions.

4.8 General Convention

The General Convention is explained in Article 17. Policies can be amended at the General Convention with prior approval of the Executive Committee. Any party member can make any proposal to the Convention through the party body of which he or she is a member, provided it is approved by the Central Committee.

The Convention is attended by all members of the Central Committee; the *Samastha Lanka Karaka Sabhawa*; five active members from each electoral organization; ten from each youth and women's organization; five from each affiliated organization; all elected

members of local government bodies; and office bearers of the youth and women's organizations.

#### 4.9 Membership

Articles 23 to 27 deal with membership, which anybody over eighteen years could obtain. The party chairman, too, can offer membership to anybody. Membership of all members ends on December 31 and has to be renewed.

All elected representatives are required to pay annually an amount prescribed by the Central Committee.

Although Article 26 deals with the rights and responsibilities of members, only responsibilities are explained. It calls for a probationary period of six months for new members to be accepted as permanent members.

Article 29 explains party funds. The five-member Finance Committee headed by the treasurer is appointed by the party chairman. All the immovable and movable properties are owned by a trust headed by the chairman.

#### 4.10 General Comment

Powers in the SLFP are centered on the party chairman. The SLFP has accommodated different social segments through the twelve affiliated organizations and given them formal representation in various party bodies. But, although there are avenues by which authority could be delegated—such as for the appointment of committees—there is hardly any devolution of power.

Total power over the handling of party funds lies with the party chairman and the committee appointed by him/her.

No proper procedure for the selection or expulsion of the party chairman has been stated. However, a recent introduction to the constitution stipulates that, if a member of the SLFP is elected as the country's President, then he or she automatically becomes party chairman. From the point of view of an average member, this gives an opportunity to non-SLFPers to indirectly influence the selection of the SLFP chairman.

A major constitutional crisis broke out in the SLFP recently with the election of Mahinda Rajapaksa—who was one of its vice presidents—as the President of the country. The constitution states that the SLFP president had all the necessary powers to control and give leadership to the party. The crisis came to a head when the former President of the country—who was also the party president—refused to relinquish her position while the newly-elected President of the country, with all the powers of the Presidency behind him, found no role within the party. This was at odds with the Sri Lankan political reality.

The crisis was resolved through an amendment to the party constitution that stipulated that whoever was elected President of the country from the SLFP would be appointed party president while the earlier incumbent would be made a senior advisor to the party.

## 5. Sri Lanka Muslim Congress

### 5.1 Introduction

The Sri Lanka Muslim Congress (SLMC) was founded in Kattankudy of the Batticaloa district on 11th September 1987 under the chairmanship of Mashoorah A.C. Ahamed. The founder president was the late A.H.M. Ashraff. It was the first time a Muslim leader from Eastern Province became a leader of the party. When the party was officially inaugurated in Colombo, Ashraff once again became its leader.

The concept of a separate Muslim identity was born with Muslim-Sinhala clashes in 1915. Sri Lanka's political history shows that the Muslim community usually leaned towards the SLFP and UNP. Muslim leaders attempted to gain political power through that strategy. During the period of the last government, however, they realized that the Sinhala dominated parties only used Mashoorah leaders to contain their vote base during elections. In return, these parties offered only a few offices to Muslim leaders. This led them to complain that the rights of Muslims were not being satisfactorily met. Discontent started growing among young Muslims.

In the 1970s—especially from 1971 to 1972 when Sri Lanka became a republic—the emergence of Sinhala supremacy or domination within the arena of political power became evident. The Tamil polity reacted to this vehemently but the Muslims did not express themselves in a similar manner.

In 1977, Muslim leaders thought they might gain more power by joining the Tamil United Liberation Front (TULF) because the TULF-led Tamil national struggle focused mainly on the Tamil language issue. During the 1977 election, the Muslim United Front contested under the TULF's 'rising sun' symbol.

When the 13th Amendment was introduced in 1987, TULF leader A. Amirthalingam said the Muslims were not a separate entity but a part of Tamil nationality. The underlying idea of that statement was that Muslims should accept Tamil cultural domination but the Muslim leadership aggressively opposed this.

Consequently, the need for a separate political party to meet Muslim aspirations was created. This may be taken as the fundamental cause behind the SLMC's establishment.

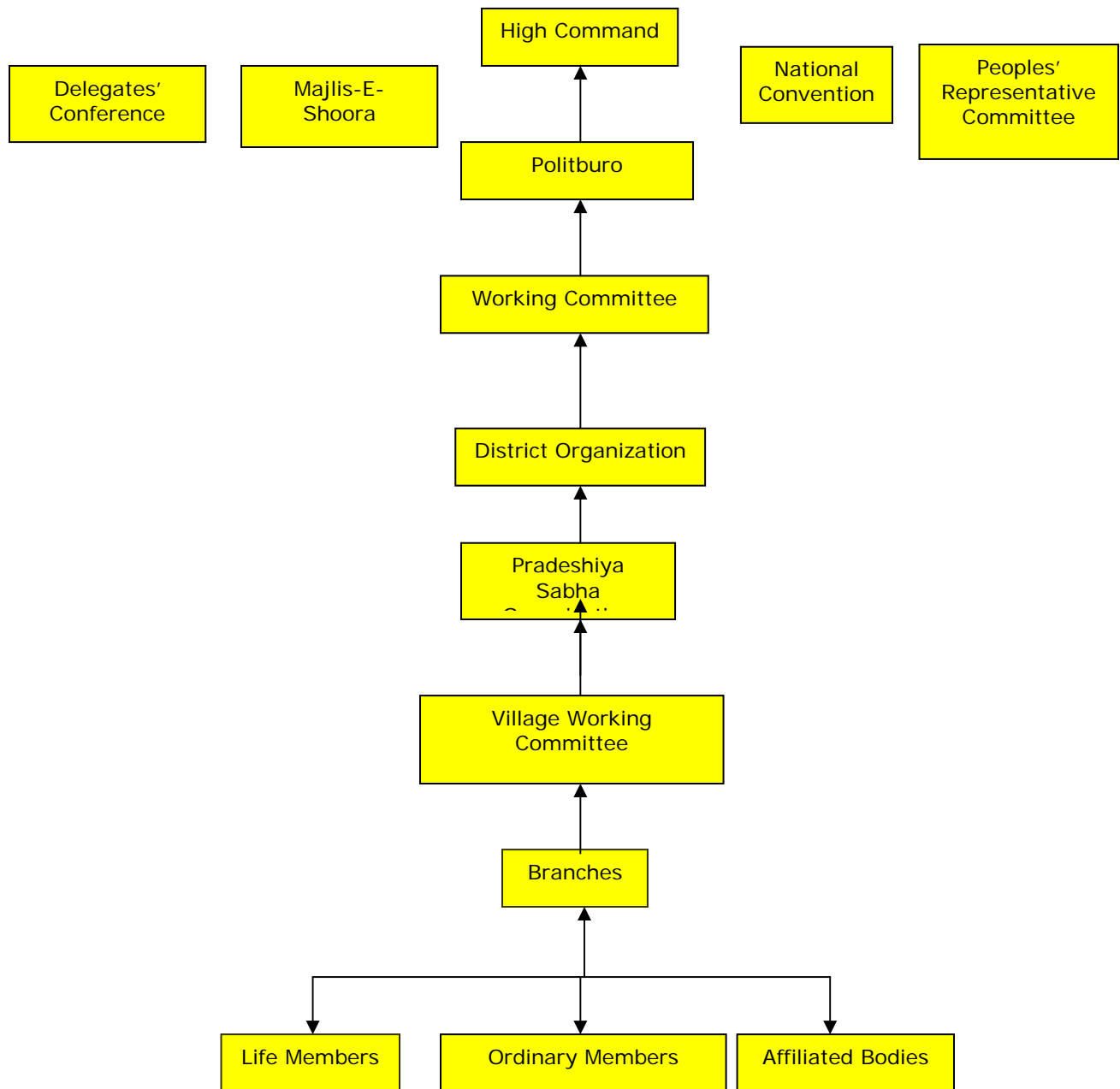
The present SLMC Constitution, drafted in consultation with political activists and academics, was backed by Ashraff.

### 5.2 Structure of Sri Lanka Muslim Congress (SLMC)

The SLMC structure is shown in Figure 3. The branches, which are the smallest units, are vertically connected with the Village Working Committee and the *Pradeshiya Sabha* organization above it, and thereafter to the District Organization.

At higher management level, it works upwards to the Working Committee, the Politburo and, thereafter, to the High Command which is the supreme decision-making body. The Delegates' Conference, Majlis-e-Shoora, National Convention and the Peoples' Representative Committee also contribute towards the operation of the party. Their relationships with each other depend on their composition and powers.

(Figure 03)



The SLMC constitution has 9 chapters, of which the first covers the party name, flag and song as well as some general topics.

The party's objectives are explained in Chapter 2. The main objectives are to protect the country's sovereignty and territorial integrity, democracy, fundamental rights, rule of law and the independence of the Judiciary. The SLMC is committed to find a solution to the

national question. Additionally, the party intends to foster the acceptance of ethnic and religious diversity in the country and to promote the Sharia law.

Chapter 3 explains the party hierarchy and powers vested in the leader and spokesman. All decisions are to be made by the High Command in agreement with the Mashoora. The leader, who is also the spokesman, is given powers to make decisions on disciplinary and other matters but all such decisions should be approved by the High Command.

Chapter 4 deals with membership. Any person over 15 years who is ready to accept party policies could obtain membership. There are two other membership categories—general and life. Life members are nominated by the Politburo. The individual and collective members of members are stated in Chapter 5.

Chapter 6 explains the organizational structure. Branch organizations, village organizations, *Pradeshia Sabha*-level organizations, district organizations, Delegates' Conference, Working Committee, Majlis-e-Shoora, High Command, Peoples' Representative Committee, directors, affiliated bodies, Convention and District Convention are clearly defined.

The basic political organizations at village level are the branches of the party. Life members of the party at *Grama Niladhari* level are elected for these branches. The national organizer appoints regional leaders and they, in turn, can appoint *grama* leaders after consultation with party leaders.

The regional leaders must handle the election of office-bearers to branch organizations. Each has a propaganda secretary and a board of consultants.

A Working Committee is established under the village organization, its composition being decided by the Politburo. It serves as the consultation board for the regional leaders. All decisions should be endorsed by the Mashoora. This committee can make decisions on cultural, educational, health and agricultural matters.

Each *Pradeshia Sabha* has a *Pradeshia Sabha* organization. Its head is appointed by the party leader. The secretary is also appointed by the national organizer. District organizations are set up to look after district-level matters. The national organizer appoints district organizers in consultation with the party leader. The decision-making process of the *Pradeshia* and district organizations is handled by Mashoora.

### 5.3 Delegates' Conference

Party delegates shall meet at least once a year for the Annual Delegates' Conference. When a Delegates' Conference is summoned for a special purpose, it is designated as a Special Delegates' Conference.

Table 07 - explains the composition, powers and limitations of the Delegates' Conference.

**(Table 7)**

Composition	Powers	Others
1. Members of the High Command. 2. Members of the Politburo. 3. Members of the Working Committee. 4. A maximum of 257 local area Organizers.	The supreme authority to amend, add to, repeal and replace the party constitution.	The interval between two Annual Delegates' Conferences shall not exceed 14 months.

The party secretary and treasurer should submit their reports to the Delegates' Conference, which would also be addressed by the party leader.

### 5.4 Working Committee

The main responsibilities of the Working Committee are to make guidelines for the party, define its policies and handle the implementation of party plans. The party leader presides over this Committee.

The Working Committee is the representative body of the National Delegates' Conference.

Table 9 - explains the composition, powers and limitations of the Working Committee.

(Table 9)

Composition	Powers	Other
<ol style="list-style-type: none"> <li>The Working Committee shall consist of a maximum of 77 members. (The National Delegates' Conference shall elect a minimum of two members from each of the administrative districts of Sri Lanka and a minimum of one person in respect of the electoral divisions of Kalmunai, Sammanthurai and Kalkudah).</li> <li>The party chairman shall preside at the meetings of the Working Committee.</li> </ol>	<ol style="list-style-type: none"> <li>Shall proceed to elect the members of the Politburo at its first meeting except the 23 ex-officio members of the High Command.</li> <li>The Working Committee shall formulate and implement the party guidelines.</li> </ol>	<ol style="list-style-type: none"> <li>The Working Committee shall meet at least once in three months.</li> <li>Any member of the Working Committee who fails to attend two consecutive meetings of the Working Committee without a valid reason in writing shall <i>ipso facto</i> be deemed to have vacated his membership in the Working Committee.</li> </ol>

#### 5.5 Politburo

The Politburo is the representative body of the Working Committee and shall meet at least once a month. It comprises of 50 members—27 are selected by the party leader from among the members of the Working Committee. While selecting persons to the Politburo, emphasis is placed on regional representation while compulsory representation is given to Kalmunai, Sammanthurai, Kattankudy and the Ulema's Congress. The Politburo meets every month.

Table 10 - explains the composition, powers and limitations of the Politburo.

(Table 10)

Composition	Powers	Limitation	Other
<ol style="list-style-type: none"> <li>The membership of the Politburo shall be 50.</li> <li>The party leader shall choose 27 persons from among the members of the Working Committee. They should consist of:               <ol style="list-style-type: none"> <li>A representative from every administrative district;</li> <li>Representatives</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>It shall be the ultimate authority to formulate rules for membership in accordance with the provisions contained in the constitution.</li> <li>It can summarily dismiss any member of the party who is guilty of misconduct or restore the membership of such a person.</li> <li>It may appoint at its discretion persons to serve in the Village Central Committees.</li> <li>It will decide the maximum number of delegates to participate at the National Delegates' Conference or at the Special Delegates' Conference.</li> <li>It shall have the power to restrict the number of persons from a Village Working</li> </ol>	<ol style="list-style-type: none"> <li>The Majlis-e-Shoora may from time to time issue guidelines to the Politburo for consideration before arriving at decisions.</li> </ol>	<ol style="list-style-type: none"> <li>Any member of the Politburo who fails to attend three consecutive meetings without a valid reason in writing shall <i>ipso facto</i> be deemed to have vacated his membership in the Politburo.</li> </ol>

<p>from the electoral divisions of Kalmunai, Sammanthurai and Kalkudah.</p> <p>3. The secretaries of the Working Committee, Delegates' Conference and the Majlis-e-Shoora shall have ex-officio membership in the Politburo.</p>	<p>Committee who are eligible to attend Delegates' Conference.</p> <p>6. Any such decision of the Politburo shall not be questioned in any court of law.</p> <p>7. The Politburo at its last meeting before the Annual Delegates' Conference shall elect the 23 ex-officio members of the High Command for the ensuing year.</p> <p>8. It shall also be lawful for the Politburo to delegate any of its powers to the High Command or to any special committee consisting of member of the Politburo appointed for a special purpose.</p> <p>9. According to the recommendations of the Politburo, it shall be lawful—and the right is vested in such trustees—to deal with and to dispose of such properties in any manner from time to time.</p>		
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5.6 Majlis-e-Shoora

The Advisory Council, known as the Majlis-e-Shoora, is an integral organ of the party consultative body. It is appointed by the party leader in consultation with the High Command and provides guidelines to the Politburo.

Table 11 - explains the composition, powers and limitations of the Majlis-e-Shoora.

(Table 11)

<b>Composition</b>	<b>Powers</b>
<p>1. Past members of the Politburo who continue to be actively involved in party activities (appointed by the leader in consultation with the High Command).</p> <p>2. It may also include two persons to represent affiliated organizations (appointed by the High Command).</p>	<p>1. Shall formulate its own rules for the conduct of its meetings.</p> <p>2. The Politburo may from time to time consult it on matters before taking decisions.</p> <p>3. The Politburo shall meet the Majlis-e-Shoora at least once a year.</p> <p>4. The Majlis-e-Shoora may from time to time issue guidelines to the Politburo for consideration before arriving at decisions.</p> <p>5. The Majlis-e-Shoora may summon the Politburo for any discussion and it shall be the duty of the Politburo to attend such discussion when such a request is conveyed to the general secretary.</p>

5.7 High Command

The High Command comprises of 23 officials including the party leader. Appointing candidates for elections, defining the constitution, calling conventions in keeping with the constitution, appointing officials, dismissing members and appointing committees are some of the functions of the High Command. It appoints members to all party bodies such as trade unions, professional groups and youth and women's organizations. The Peoples' Representative Committee consists of the peoples' representatives and representatives of

the Politburo and the Majlis-e-Shoora. The party leader holds the chairmanship of the High Command.

Table 12 - explains the composition, powers and limitations of the High Command.

(Table 12)

Composition	Powers
<ol style="list-style-type: none"> <li>1. The leader;</li> <li>2. The chairman;</li> <li>3. The senior deputy leader;</li> <li>4. The deputy leader I;</li> <li>5. The deputy leader II;</li> <li>6. The deputy leader III;</li> <li>7. The secretary general;</li> <li>8. The general treasurer;</li> <li>9. The president, Majlis-e-Shoora;</li> <li>10. The national coordinating secretary;</li> <li>11. The national propaganda secretary;</li> <li>12. The additional propaganda secretary;</li> <li>13. The national organizer;</li> <li>14. Director international affairs;</li> <li>15. Director constitutional affairs;</li> <li>16. Representative of the Ulema Congress;</li> <li>17. The deputy chairman;</li> <li>18. The deputy secretary-general;</li> <li>19. The deputy general treasurer;</li> <li>20. Deputy president, Majlis-e-Shoora;</li> <li>21. Deputy national coordinating secretary;</li> <li>22. Deputy national propaganda secretary;</li> <li>23. The deputy national organizer.</li> </ol>	<ol style="list-style-type: none"> <li>1. To constitute, dissolve or reorganize any subcommittee or any subordinate organization or allied body of the party and to suspend the activities of such committee, organization or body.</li> <li>2. To nominate the party candidate/candidates at a Presidential, Parliamentary, Provincial Council, local authority or any other elections.</li> <li>3. To form subsidiary committees and to interpret the provisions of the constitution.</li> <li>4. To provide for and to correct any error/mistake present in the constitution.</li> <li>5. To take disciplinary action against any party member, dismiss him from membership and expel him from the party or to take any other appropriate action.</li> <li>6. To nominate all party officials.</li> <li>7. To formulate draft policies and to enact rules and regulations from time to time, as and when necessary.</li> </ol>

The party can appoint a director for a specific subject who can then work with the leader's consent. A National Convention should be held annually.

A five-person committee must be appointed for administrative purposes, headed by the party leader.

While the party's name is the Sri Lanka Muslim Congress, membership is not limited to Muslims.

Although many powers are centered on the leader, there appears to be some limitation due to the establishment of different committees under the constitution. It is evident that responsibilities have been dispersed among many members by the constitution which creates a large number of posts within the party. The constitution has clear provisions about functions of rural level organizations.

A special feature is the granting of life membership through which the SLMC has offered some stability to members.

#### 5.7 General Comment

The highest authority on all decisions is the High Command but some important decisions are taken through the Mashoora concept of consensus. But when the special powers vested in the leader under Article 3.3 of the constitution—and the resultant leeway that is enjoyed by him—are taken into account, it becomes clear that nearly all decision-making powers are centered on the leader.

Any person over the age of 15 could obtain party membership provided that he or she is willing to accept the provisions and rules of the party constitution. But Article 1.3 prevents non-believers of Islam from joining by insisting on the acceptance of the Koran and the teachings of Prophet Mohammed as the highest guiding principles of the party.

The concept of Majlis-e-Shoora is derived from Muslim tradition. In practical terms, when a decision is needed to be made on a particular subject, an 'Amin' is appointed within a group and he, in turn, consults other members before taking a decision.

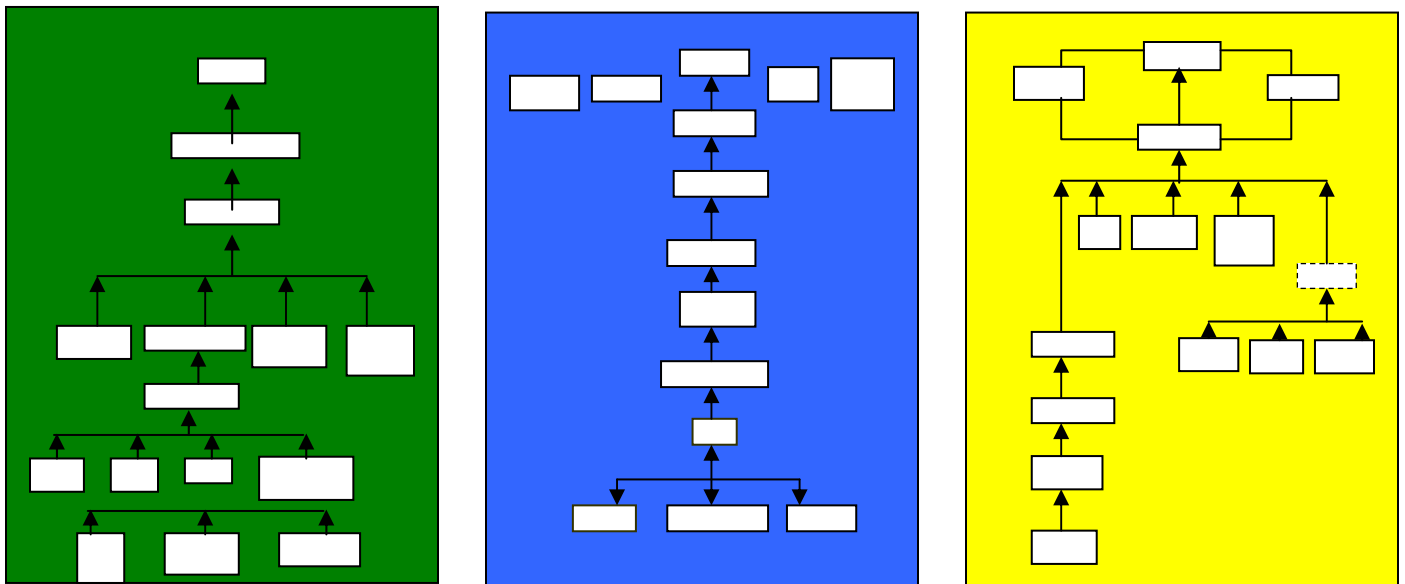
There are comprehensive provisions in the constitution to handle discipline but there is a growing demand within the party to simplify this procedure. It is believed that changes will be made in the near future.

Another notable feature is the apparent absence of female representation although the constitution does not specifically debar them from joining the party. This is attributed to Islamic religious tradition.

## 6. Comparative Study

### 6.1 Structures

(Figure – 4)



All three parties employ almost similar mechanisms in dealing with party membership at lower levels. Such processes start with branches at the lowest level and wind their way up to district organizations.

The SLFP has several regional organizations that operate under a district organization when there is more than one local government body within an electorate.

Where the UNP is concerned, every electorate has a clearly-defined *Balamandalaya*.

With regard to the SLMC, there are Village Working Committees and *Pradeshiya Sabha* organizations placed between its branches and district organizations. This development may be because the SLMC is based on the Muslim community in the Eastern Province.

Through analyzing these structures and processes, it becomes evident that the UNP process is a simple, clear one which ends up at the Convention after having gone through the Working Committee and the National Executive Committee.

Comparatively, the SLFP structure is not as simple. There, the Central Committee has been designed as the most powerful decision-making body and the relationship between the Central Committee and the *Samastha Lanka Karaka Sabhawa* as well as the Party Convention is more complex.

The apex body in the SLMC is decisively the High Command and the Delegates' Conference. The Peoples' Representative Committees operate as parallel organizations under the High Command.

## 6.2 Processes

### 6.2.1 Changing/amending the constitution

(Table 13)

	<b>Body</b>	<b>Composition</b>	<b>Meeting Frequency</b>
<b>UNP</b>	Approval - Party Convention (Ch. 5.3) Initiated by the WC (Ch. 7.4)	Chapter - 5 5.5 a, b, c, d, e,	Once a year
<b>SLFP</b>	Approval - Central Committee (14.II) Initiated by the Ex Co (Ar. 12.II )	Chairman - 23 Ex Co, 26 Youth, <i>Vanitha</i> , <i>Nidahas Sewaka Sangamaya</i> , Trade Union Federation officials	According to necessity
<b>SLMC</b>	Delegates' Conference (6.8c) High Command - under the power to make all decisions (3.1a)	Leader/ HC/PB/WC/local area organization	Once a year

- i. In the UNP and SLMC, changing or amending the party constitution is the sole responsibility of the delegates' body whereas, in the SLFP, this would be done by the Central Committee which is an appointed body.
- ii. The meeting of the delegates' bodies of the UNP and SLMC is generally held every year (however, meetings can be convened on special occasions as well) while there is no such compulsion or a timeframe mentioned in the SLFP.
- iii. Thus, the SLFP has a relatively greater leeway to amend or change its constitution. In terms of amendments, it is a flexible constitution.
- iv. In the SLFP, the drafting of proposals is done by the Executive Committee while the Working Committee performs this task in the UNP. A special feature in the SLMC could be that the High Command enjoys authority to take all the major decisions (under 31a), including decisions regarding constitutional changes.

It is evident, therefore, that constitutional changes in all three parties may be attempted only through processes under the control of the incumbent leader.

### 6.2.2 Formulation of Policies

(Table 14)

	<b>Body</b>	<b>Composition</b>	<b>Meeting Frequency</b>
UNP	Approval - Party Convention (Ch. 5.2) Drafting of Policies - WC (Ch. 7.4)	Chapter - 5 5.5 a, b, c, d, e,	Once a year
SLFP	Approval - Party Convention (17.e) Prior approval. Ex Co (Ar. 12)		Once in 2 years
SLMC	Approval - High Command (Ch. 3.1a)	HC 23	

In the UNP and SLFP, the approval of policies may only be done at the delegates' bodies whereas, in the SLMC, such powers are vested in a committee appointed by the High Command.

The UNP Convention is generally held every year (meetings can be convened on special occasions, too) while the SLFP meets only once in two years and there's a hard-and-fast timeframe for the SLMC convention. In the SLFP, the drafting of proposals is done by the Executive Committee while the Working Committee does it in the UNP. A special feature in the SLMC could be that the High Command enjoys authority to take all the major decisions (under 31a) that includes decisions regarding constitutional changes.

Although the formulation of policies in the UNP and SLFP is done through structures that are under the domination of the leaders, the SLMC leader seems to be able to wield more power in this area.

#### 6.2.3 Appointment of the leader

(Table 15)

	<b>Body</b>	<b>Composition</b>	<b>Meeting Frequency</b>
<b>UNP</b>	Only if there is a vacancy By the National Ex Co (Ch. 8, Ar. 8)	Chapter - 6 6.2, a, b, c, d, e,	
<b>SLFP</b>	Executive Committee (Ar. 12.I)	Chairman 26 & +	At least once in three months
<b>SLMC</b>	Last Politburo meeting held before the Annual Delegates' Conference (Ar. 6.9 b)	50 persons. Twenty-seven out of these are appointed by the leader	Once a year

- i. The UNP leader is not reappointed annually. Provision has been made to appoint such a leader only if there's a vacancy. The leaders of the SLFP and SLMC have to be reappointed annually.
- ii. According to recent amendments to its constitution, any SLFPer who is elected as the country's President automatically becomes the party leader. This appears to allow non-SLFPers an opportunity to influence the selection of the SLFP leader.
- iii. In the SLFP and the SLMC, the leader always has majority control over processes that appoint the party leader.
- iv. In practical terms, no party seems to have provisions that would allow challenges to an incumbent leader.

#### 6.2.4 Appointments to other posts and filling of vacancies.

(Table 16)

	<b>Body</b>	<b>Composition</b>	<b>Meeting Frequency</b>
<b>UNP</b>	By the party leader Chapter 8	Chapter 8 8.5 (1)	Annually

	(8.5 (1), 8.6,8.7) 2. Filling of vacancies by the leader (Ch. 8, Ar. 8.8)	8.6 8.7	
<b>SLFP</b>	1. Executive Committee ( Ar.12.1) 2 No provisions to fill vacancies	Chairman 26 & +	At least once in three months
<b>SLMC</b>	High Command ( 3.1a)	23 appointed	Once a year

- i. The UNP has directly entrusted its leader with the task of making appointments to all posts.
- ii. In the SLFP and SLMC, too, the leader dominates the relevant appointment of committees.
- iii. With regard to the filling of vacancies, the UNP leader has absolute authority.
- iv. Even in other parties, leaders seem to have a great deal of power in this regard.

#### 6.2.5 Financial Management

(Table 17)

	<b>Body</b>	<b>Composition</b>	<b>Meeting Frequency</b>
<b>UNP</b>	General treasurer (8.6a, 15. 1-4)		
<b>SLFP</b>	Executive Committee [12. IV (Financial Committee , appointed by chairman) Article 29& 30]	Chairman 26 & +	
<b>SLMC</b>	By a committee (3b viii, 6.12 viii 8-1)	Leader, chairman, secretary, national organizer, general treasurer	

- i. It's apparent from these party constitutions that day-to-day financial management and resource management have been handled separately.
- ii. In the UNP, the finances are handled by a treasurer appointed by the leader. Furthermore, a committee appointed by the leader consisting of the chairman, secretary and the treasurer has been entrusted with the management of fixed assets of the Party. In addition, the Working Committee would appoint an accountant.
- iii. In the SLFP, a financial sub-committee under the chairmanship of the treasurer and consisting of five members is appointed to handle the day-to-day finances while a board of trustees has been assigned the task of managing movable and immovable properties of the party.
- iv. In the SLMC, the party treasurer, who is a senior member of the High Command, handles the finances while a committee consisting of five people including the party leader manages party assets.
- v. It is obvious that financial and asset management of all parties is under the control of party leaders and people and groups appointed by him. No special provisions for financial management have been made.

#### 6.2.6 Appointment of candidates

	<b>Body</b>	<b>Composition</b>	<b>Meeting Frequency</b>
<b>UNP</b>	Working Committee (Ar. 7.7, 9.-1,2,)		
<b>SLFP</b>	Chairman (Ar. 15.2)		
<b>SLMC</b>	High Command (Ar. 6.13.b)		

- i. **The UNP Working Committee appoints a nomination board. Chapter 9 of the constitution is devoted to elections and stipulates that this board should get opinion from the District *Balamandalayas*.**
- ii. In the SLFP, the leader handles nominations while in the SLMC, the High Command deals with it.
- iii. As such, nomination processes, on the whole, are closely centered on party leadership.

6.2.7 Powers

- i. **The UNP Working Committee appoints a nomination board. Chapter 9 of the constitution is devoted to elections and stipulates that this board should get opinion from the District *Balamandalayas*. (Same point as above, is this intentional or accidental?)**
- ii. Sri Lankan political parties are not considered as legal entities.
- iii. Every party has constitutional supremacy. As a result, they are not bound by external guidelines in their constitution-making process.
- iv. All parties have the authority to take the final decision with regard to party affairs.
- v. With regard to discipline, too, the parties have total authority.

6.2.8 Checks & Balances

**Disciplinary Action**

	<b>Body</b>	<b>Composition</b>	<b>Meeting Frequency</b>
<b>UNP</b>	Working Committee (Ch. 7 Ar.7.13 )		
<b>SLFP</b>	1. Central Committee (Ar. 14. III) 2. Chairman (Ar.15.III)		
<b>SLMC</b>	1. Leader (Ar.3.3.a) 2. High Command (Ar.4.4/6.14) 3. Politburo (Ar. 5.2,Ch. 7)		

- i. In the UNP, disciplinary matters are handled by a discipline committee while in the SLFP and SLMC, the leader has powers relating to discipline in addition to the disciplinary committees.
- ii. The SLMC has attached more importance to discipline than other parties. The Politburo and High Command have disciplinary powers in addition to those held by the leader. A detailed disciplinary process is included in Chapter 7 of the constitution and there is even provision for imposing fines on those found guilty.
- iii. On the whole, however, disciplinary powers, too, seem to center on leaders.

6.3 Inter-relations and balances among higher bodies of the parties

6.3.1 United National Party (UNP)

The Working Committee, National Executive Committee and the Convention may be identified as the higher bodies.

The Working Committee consists of members appointed by the leadership and is entrusted with the administration of party affairs.

The National Executive Committee is the decision-making body with regard to party policies and is vested with the responsibility of implementing the provisions of the party constitution as well as other rules and regulations. It also has the authority to initiate amendments to the constitution and to standing orders.

Only the Party Convention has the authority to amend the constitution.

- i. The Working Committee decides on the date, agenda and the rules of procedure of the Convention.
- ii. But such rules of procedure for the Convention have to be authorized by the National Executive Committee.
- iii. The Working Committee also decides on the summoning of the National Executive Committee and its procedure.
- iv. Working Committee members are ex-officio members of the National Executive Committee and the Party Convention.

#### 6.3.2 Sri Lanka Freedom Party (SLFP)

The *Samastha Lanka Karaka Sabhawa*, Central Committee, Executive Committee and the Convention can be identified as the higher bodies.

The Central Committee is the supreme body and has final authority on party affairs. The party chairman heads this committee and appoints 23 out of a membership of 53.

The Executive Committee is entrusted with the appointment of the party chairman and other officials. It is the ultimate authority on financial management and is empowered to draft policies and constitutional amendments. The chairman nominates 25 members to the Executive Committee.

The *Samastha Lanka Karaka Sabhawa* has broad representation with the power to amend the constitution.

#### **The Convention is the policy-making body**

- i. The date of the Convention may be decided by the Central Committee and any policy changes to be adopted by the Convention have to be approved in advance by the Executive Committee. Members of the Central Committee and the *Samastha Lanka Karaka Sabhawa* are also members of the Convention.
- ii. It is the function of the Executive Committee to attend to election and other organizational activities in accordance with the instructions of the Central Committee.

#### 6.2.3 Sri Lanka Muslim Congress (SLMC)

The High Command, Working Committee, Politburo, Majlis-e-Shoora, Delegates' Conference and Peoples' Representative Committee may be identified as the higher bodies.

The High Command is the supreme body and operates under the command of the party leader.

The Politburo is the representative body of the Working Committee and meets once a month. Twenty-seven of its 50 members are appointed by the leader. The Politburo is also entrusted with the task of selecting High Command members, including the leader.

The Working Committee is the representative body of the Delegates' Conference and sets the guidelines for the party.

The Majlis-e-Shoora is the advisory body whose members are appointed by the leader with the approval of the High Command.

The Delegates' Conference has the sole authority to amend the constitution.

The Peoples' Representative Committee has the broadest representation.

- i. The Majlis-e-Shoora has the authority to summon the Politburo and to issue guidelines with regard to its activities.
- ii. The Politburo decides on the members of the High Command.
- iii. Members of the High Command, Politburo and the Working Committee are also members of the Delegates' Conference.
- iv. The Politburo is the representative body of the Working committee while the latter is the representative body of the Delegates' Conference.

#### 6.4 Membership

- i. In the UNP and the SLMC, anybody above the age of 15 may obtain membership while the minimum age is 18 in the SLFP.
- ii. In the SLFP, one's membership is confirmed only after six months from the date of joining but there are no such limitations in the UNP and SLMC.
- iii. In the SLMC, there are two categories of life and ordinary members.
- iv. In the UNP, the members are organized at branch level while several branches, in turn, form the *Kottasha Bala Mandalaya*. But nowhere has it been mentioned that office-bearers of any of these entities should be elected from among their respective memberships.
- v. In the SLFP, the basic unit is the branch with the constitution stipulating that its officials should be elected by the members. Such elected officials represent the branches at the *Kottasha Bala Mandalayas*.
- vi. In the SLMC, too, the basic unit is the party branch. However, its organizers are not elected but appointed by the local area organization. Nevertheless, it is indicated that officials of the branch organization—the next higher body—have to be elected.
- vii. When all three parties are taken into consideration, the membership has not been provided with constitutional provisions or structures to forward proposals; appoint a leader; or change leadership. All these activities must be carried out with involvement of the leadership's representatives.
- viii. Another significant feature of the three parties is that all provisions with regard to the membership are handled by units at the centre of the party.

#### 6.5 Leadership - Powers

UNP	SLFP	SLMC
i. The leader should be informed of the decisions of the District <i>Balamandalaya</i> .	i. The party chairman appoints all district and electoral organizers.	i. The party leader shall be its spokesman.
ii. Chairmen of <i>Kottasha Balamandalayas</i> are appointed by the leader.	ii. A maximum of 50 members nominated to the <i>Samastha Lanka Karaka Sabhawa</i> .	ii. In exceptional circumstances, the leader is free to make any decision or to take disciplinary action against any member.
iii. The Working Committee comprises totally of the leader's nominees.	iii. Appointment of 25 members to the Executive Committee.	iii. The party leader shall choose 27 persons from among the members of the Working Committee to serve in the Politburo.
iv. Nomination of all office bearers of the party.	iv. Appointment of the Financial Committee.	iv. The leader constitutes an Advisory Council of the party known as the <i>Majlis-e-Shoora</i> .
v. The party leader shall have the right to attend, preside, vote at and address any meeting of the party.	v. Appointment of 23 members to the Central Committee.	v. Appoint directors of the party and assign to them specific functions.
vi. The leader has the power to fill any vacancy.	vi. The party chairman is chairman of the Central Committee, too.	
vii. The leader shall have the power to regulate and	vii. Call special meetings of the Central Committee, the All Island Committee, and the Executive Committee and of any other affiliated organization or committee.	

<p>conduct party business.</p> <p>viii. The appointments of the chairpersons of the <i>Yovun Peramuna</i> and <i>Lak Vanitha Peramuna</i>.</p>	<p>viii. The chairman has the power to confiscate the membership of any party member or to proscribe any organization.</p> <p>ix. The Political Management Committee should be chaired by the party chairman.</p> <p>x. The Party Convention should be chaired by party chairman.</p> <p>xi. The party chairman may offer party membership to any person.</p>	
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## 7. Observations

Political parties are formed in the expectation that they will be social organs functioning to satisfy the peoples' needs, based on representative democracy. However, neither the Sri Lanka Constitution nor legislative enactments directly state under what circumstances or within which rights and obligations political parties must function.

The Constitution or legislative enactments do not contain guidelines for the internal management of political parties, with regards to decision-making or resource management. Therefore, there are no guiding principles for parties to formulate impersonal inner-party rules and procedures. Research reveals that neither the Constitution nor any other legislative enactments lay down principles that would help to maintain democracy, accountability and transparency inside political parties.

There are several legislative enactments to govern the establishment and functioning of Sri Lankan political parties but they do not describe procedures for elaborate inner-party management. Political parties in concert or by legislative enactment do not emphasize the need for codes of conduct that ensure professionalism in the membership and officials.

Neither the Sri Lanka Constitution nor the legislative enactments prescribe how affairs should be conducted by party or state officials when a particular party becomes the ruling component of the state.

## 8. Conclusions and Recommendations

As the introduction states, this study represents the first phase of a broader inquiry into inner-party democracy. If a country is to have a vibrant democracy, it should not only have strong and well-organized political parties, but also parties in which decisions are arrived at democratically and with the participation of the membership. It has often been said that too much inner-party democracy may make parties ineffective because there would not be closure in internal discussions. This argument, however, does not hold water. The presence of inner-party democracy does not necessarily imply that parties cannot take decisions and act on them. Party membership can engage in democratic deliberations and also take decisions, either through majority vote or consensus. Actions may also be based on the decisions thus arrived at. Moreover, decisions taken by the party should be valid until those decisions are changed through a similar democratic process. Continuous democratic interaction not only makes the membership feel that they are the owners of the party—thus avoiding unnecessary splits—but also ensures that the party is in possession of a self-corrective mechanism.

Sri Lanka has a longstanding democratic tradition. It was one of the few countries in the world to have enjoyed universal franchise early. The first proto-political party formations took place in the late 19<sup>th</sup> century and the first political party proper was formed in the late

1920s. Since then, Sri Lanka has witnessed the emergence of multiple political parties. Despite this, however, we have also witnessed a tendency towards the emergence of the two-party/two main fronts system. Despite been many instances of election malpractice, Sri Lanka has had reasonably free and fair elections. However, one of the central weaknesses of the Sri Lankan democratic system is the lack of inner-party democracy. This has generated adverse effects, especially in the last three decades or so. To make Sri Lankan democracy more vibrant, therefore, steps must be taken to ensure that political parties adhere to the principles and practices of internal democracy in the process of decision-making and implementation.

This study identifies inner-party democracy as an outcome of the combined activation of three elements, namely, democracy, accountability and transparency. Democracy within a political party is a function of inclusiveness, decentralization and proceduralism. We have also posed the question whether, and to what extent, the upper level of a party is accountable to its lower levels. A political party should possess a mechanism through which the leadership is made accountable to the party rank and file. We have also investigated the degree of transparency in Sri Lankan political parties. The study, however, has focused only on three political parties—the United National Party, Sri Lanka Freedom Party and the Sri Lanka Muslim Congress. They were selected, not only because they are representative of the large majority of people, but also because they have been the principal political actors in democratic politics.

The study has shown that the three parties lacked a reasonable degree of internal democracy on all three counts. Our conclusion at this stage, however, is tentative as our analysis is confined only to a study of the party constitutions. We have seen that party constitutions underwent a change after the introduction of the Executive Presidential system. Party structures have become increasingly centralized and top-down. This process was facilitated by amendments to party constitutions, the acceptance of unwritten practices, and undemocratic practices. Consequently, almost all decisions have been of a top-down kind, particularly in the two main political parties. The possibility of the party rank and file influencing party decisions has been weak if non-existent. The recent changes in the SLFP constitution and the unwillingness of the UNP leader to change the constitution of his party demonstrate hegemony in the decision-making process.

The study finds that the legal-constitutional framework within which political parties operate is not clear. It also fails to provide a basis for internal democracy. The question of inner-party democracy surfaces only when a leading member of a political party questions the decision/s of the party to which she/he belongs. Therefore, there appears to be a dire need for some changes with regard to the legal structure of parties. Of course, one may attribute the lack of internal democracy to cultural and historical factors. But, there is no doubt that these factors operate at multiple levels. For example, families play an important role in Sri Lankan politics. It is interesting to see how family background even today is linked to the appointment of the party leader. There have been exceptions. Still, even these exceptions have not weakened the influence of families in party politics. Instead, they have added a new set of actors into the scene based on familial links. If there is strong inner-party democracy, the presence of family influence may not in itself produce adverse results.

We suggest that this study should continue into covering actual practices, including membership narratives and interviews. This should form the second phase of this research.

Since the results of this investigation should form a basis for and orient study towards corrective actions, a carefully designed project of democratic practice has to be put in place. It is clear, however, that such a project may be inconsistent with the prevailing vested interests and power structures. Its implementation may not be an easy task. These traditions cannot be enforced on the parties from above or from outside but should be accepted by them either through conviction or for pragmatic reasons. So, a slow and continuous education process is the only way in which we can make some headway in this direction.