

## **BALANCING POWER AND ACCOUNTABILITY: GERMAN PARLIAMENTARIANISM'S RELEVANCE FOR SRI LANKA**

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**Abstract:** This article delves into the multifaceted landscape of political governance, focusing on the transformation of Sri Lanka's parliamentary system and the imperative quest for simultaneous elections. The trajectory of Sri Lanka's parliamentary evolution, from its inception as a key democratic institution to its peripheral status under semi-presidentialism, is illuminated. The call for simultaneous elections, advocated by organizations like the National Institution for Transforming India Aayog ("NITI Aayog"), aims to streamline administrative disruptions attributed to staggered elections. To facilitate this transition, mechanisms like constructive no-confidence votes and fixed-term legislatures have been proposed. Drawing from Germany's distinctive limited parliamentarianism, this study explores the potential for Sri Lanka's Parliament to regain centrality in its democracy. Germany's Basic Law, with its robust checks and balances and prudent regulation of political parties, serves as a compelling case study. However, caution is advised, as excessive inflexibility might jeopardize democratic ideals and parliamentary functionality. A novel approach is proposed, aligning objectives without compromising the fluidity of legislative periods and the integrity of a parliamentary democracy. The article undertakes a comprehensive comparative analysis of diverse constitutional governance models and their implications for accountability. Sri Lanka's experimentation with these concepts is examined in depth. Ackerman's concept of restricted parliamentarianism is expounded, juxtaposed with the distinctive legislative facets of German limited parliamentarianism.

Elections, as a cornerstone of democracy, enable citizens to exercise their franchise and demand accountability. India, the world's most populous democracy, is grappling with the notion of simultaneous elections. The article scrutinizes the Law Commission of India's recommendation for synchronized elections, exploring fixed-term legislatures and constructive votes of no-confidence as instruments of change. Critical features of the proposed scheme are unveiled, highlighting the interconnections that bind its components. Analyzing the repercussions of simultaneous elections on policy-making, the Model Code of Conduct, administrative efficacy, electoral violence, communal tensions, expenditure, and corruption, the study navigates through the intricacies of electoral dynamics. It examines how regional parties and down-ballot elections are influenced by simultaneity, probing accountability dimensions and the potential for personalization in the voting process. Conclusions reveal that simultaneity can be achieved without the accountability drawbacks of fixed terms and stability-driven strategies. Proposals are tendered for simultaneous elections, preserving governmental accountability through constructive voting and calibrated terms. Embracing flexible legislative periods, which harmonize with election cycles, emerges as a viable strategy, upholding simultaneity while preserving adaptability and accountability.

**Keywords:** parliamentary evolution, simultaneous elections, political governance, limited parliamentarianism

## INTRODUCTION

With the establishment of semi-presidentialism by the 1978 Constitution of Sri Lanka, the significance of the Sri Lankan Parliament under the 1948 and 1972 constitutions was demoted to a peripheral position. The National Institution for Transforming India Aayog (“NITI Aayog”) and other organisations have proposed holding simultaneous elections throughout the country to reduce the numerous administrative interruptions created by periodic elections. To establish and sustain simultaneous elections, mechanisms such as constructive no-confidence votes and fixed-term legislatures have been proposed.

The executive's constitutional importance is bolstered by party politics, which are very barely controlled under post-independence constitutions. Despite their importance in expressing people's opinions and upholding democratic principles, even the most current constitutional proposals from 2016–2017 do not propose constitutionalizing parties. In this article, I examine the unique characteristics of Germany's limited parliamentarianism that are important for the Sri Lankan Parliament to become a key participant in the country's democracy. Aside from the strong system of checks and balances, the German Basic Law controls political parties and protects the parliament's institutional autonomy and functional competence. While the objective itself appears good, the methods employed to attain it may have significant accountability costs by making the system more inflexible, undermining democratic and federal ideals, and weakening the fundamental elements of a parliamentary democracy. As a result, we suggest an alternate approach that achieves the same aim while avoiding the corrosive effects of flexible legislative periods and phased elections.

The second portion of this study compares and contrasts several constitutional governing models in terms of accountability. I outline how Sri Lanka has experimented with most of these concepts in this section. I explain Ackerman's idea of restricted parliamentarianism in the third portion of the study, as well as the distinctive legislative aspects of German limited parliamentarianism.

Elections are a necessary means for the citizens of a country to exercise their right to choose the people who will govern them and seek accountability. India is the most populous democracy in the world with its elections being the largest democratic exercise

Even though the Constitution of India (“the Constitution”) does not mandate “simultaneous stakeholders to decide on a road map for synchronised elections. After gathering input from all stakeholders, the LCI advocated having simultaneous elections in its draught report, firmly stating its stance. The proposed proposal (the Scheme) calls for elections to the Lok Sabha and State Assemblies to be held at the same time.

This article examines suggested changes aimed at introducing simultaneous elections through fixed-term legislatures (“fixed terms”) and constructive votes of no-confidence (“constructive vote”). Part 2 focuses on some of the Scheme's most important features, as well as the connections between the many strands of the plan. We discover that simultaneity is unaffected by fixed words and constructs. Part 3 delves more into the separation of powers concept, which appears to be involved by the plan. It talks about the idea in terms of efficiency and accountability. Parts 4 and 5 examine the ideas of simultaneity, fixed terms, and constructive vote as they relate to the proposal's efficiency goals and likely effectiveness. The fourth, fifth, and sixth sections of the report argue for enhancing the parliament's composition, increasing institutional capacity, and creating institutional autonomy of the parliament over the president.

The impact of elections on policy-making, the implementation of the Model Code of Conduct (“MCC”), administrative efficiency, electoral violence and communal disturbances, spending, and corruption are all examined. This section analyses the impact of simultaneity on the presence of regional parties and down-ballot elections while looking at accountability issues. Elections are held in a staggered order, as opposed to staggered elections. It also tries to see if such elections would enhance the likelihood of personalization in the voting process. The influence of election scheduling on voter turnout is then examined.

Simultaneity is desired and feasible without the accountability costs of fixed terms and other stability-seeking strategies, according to our findings. Finally, in Part 6, we propose two options for holding simultaneous elections while maintaining government accountability through constructive voting and set terms. Simultaneity is accomplished in these models using the idea of Flexible legislative periods, with tenures adjusted to coincide with election dates. Flexible terms make simultaneous elections easier to implement and maintain, and they minimise the need for procedures that make the system inflexible and diminish accountability.

#### **METHODOLOGY: IMPLICATION OF CONSTITUTIONAL PRINCIPLES:**

In its current form, the Scheme would jeopardise several of the Constitution's most important elements. If the proposed reforms are adopted, they will have an impact on the separation of powers, which is one of the most fundamental touchstones of constitutionalism despite not being specifically established in the Constitution. To assess the impact of any changes in constitutional arrangements on the separation of powers, the core of separation of powers is ensuring that each government organ executes the duties that it is best qualified to fulfil. As a result, division of authorities is based on efficiency.

#### **Models for Governance:**

The strength of the constitutional and political accountability may be used to classify the models for constitutional government given in comparative constitutionalism. A considerable degree of constitutional authority is placed in one person: the executive president, in the French-style Gaullist form of semi-presidentialism.

In this system of government, the legislature plays a minor function. The president-parliamentary and premier-presidential models are two sub-divisions of this system that differ in the amount of executive accountability to the legislature. This model views the legislative and executive as co-equal arms of government, each with the authority to serve as a check on the other. In practise, however, the system still exhibits imbalance of power in favour of the executive.

Parliamentarianism in the British model, in which legal sovereignty is vested in the legislature as the centre of government, relies on the legislature to keep the administration responsible. As a result, to maintain constitutional and political responsibility, this system relies on many interests represented in parliament. Kumarasingham devised the Eastminster method, which clarifies how. Meanwhile, Ackerman's interpretation of German-style limited parliamentarianism emphasises the necessity of numerous accountability centres. Numerous independent actors working to maintain democratic values are further checked by constrained parliamentarianism, which supports a legislature that is further checked by multiple independent actors.

The suggested reforms also include the goal of increasing efficiency as one of their main objectives. However, the suggestion appears to be aimed at maximising of wealth and increase of administrative productivity, rather than the concept of efficiency underpinning separation of powers, which must imply that the institutions fulfil the purposes that were established for them to do. The plan aims for technological efficiency, whereas separation of powers is based on a much simpler definition of efficiency: the convergence of form and function. Any plan that

aims to reform the voting system and governing arrangements must take into account the farreaching ramifications. Because executive aggrandisement is characterised by systematic and gradual changes that run the danger of undermining the systems that maintain executive accountability.

### **Different Models in Sri Lanka**

Under the three post-independence constitutions, Sri Lanka's system of constitutional government has experienced significant changes. The British created the Soulbury Constitution in 1948, which established a Westminster-style legislature but limited it by a codified constitution that impliedly authorised judicial scrutiny of legislation.

This constitution had the potential to grow into a kind of limited parliamentarianism, but it was thwarted when the First Republican Constitution was enacted. The Sri Lanka Freedom Party (SLFP)-led socialist, nationalist coalition government, led by Prime Minister Bandaranaike, defended the stated constitution by citing the need for an autochthonous constitution.

The United National Party (UNP) administration defended the 1978 constitution and the installation of a nearly omnipotent executive by citing the necessity for fast economic development. The political instability caused by the Liberation Tigers of Tamil Eelam (LTTE military-style)'s separatism rising in the north and east warranted a strong executive. The Prime Minister and the Cabinet of Ministers were accountable to both the executive and the legislature under the 1978 Constitution's structure. The administration, both constitutionally and politically, controlled the legislative at the detriment of the latter's institutional autonomy and relevance.

The Rajapaksa government strengthened the executive branch of government by introducing the Constitution's Eighteenth Amendment in 2010. The Constitutional Council, established by the Seventeenth Amendment to limit the president's power in appointing critical public officials and independent commissions, was eliminated by the amendment. The Constitutional Council's suggestions were required to be considered by the Seventeenth Amendment, while the Parliamentary Council could only offer non-binding recommendations under the Eighteenth Amendment. The legislation also lifted the two-term restriction on presidential candidates.

Following the ratification of the Nineteenth Amendment, Parliament attempted to improve its committee structure in order to engage in more effective executive supervision. These committees are becoming part of the Sri Lankan parliament's institutional culture. When the president sought to dismiss the Prime Minister and dissolve Parliament in violation of the constitution, the newly strengthened parliament was put to the test. This attempt by the president to remove the prime minister from office on disputed constitutional grounds has been dubbed a constitutional coup by Welikala. The Constitutional Coup of 2018 showed the parliament's potential inside the Nineteenth Amendment's Premier-Presidential system. The parliament refused to endorse the President's choice for Prime Minister and expressed its independence from the government.

### **The Indian Model:**

In a constitutional democracy like India, the government is based on specific political ideals. In order to achieve administrative efficiency, the suggested reforms endanger such values.

Simultaneous elections, on the other hand, appear to be desirable as a different idea. However, the approach proposed in the current proposal has more drawbacks than advantages.

Administrative efficiency and cost-cutting goals may be met without jeopardising the fundamental principles of separation of powers and constitutional democracy. We aim to offer a methodology later in the essay that can be successful in reaping such advantages without compromising the Constitution's cardinal principles.

Constitutionalism would be harmed if such accountability was eroded. When the elections and other processes for seeking responsibility in a nation with a liberal democratic constitution are weakened in any manner, it undermines the principles of democracy and liberalism. It's possible that the suggested adjustments will simply bring it closer. The dilution of a noconfidence vote would reduce the requirement for the political administration to maintain the confidence of a parliamentary majority, undermining accountability. If the Lok Sabha and state elections are held at the same time, there is a risk that voters would vote for the same party.

### **Election System Lacunae:**

The move to simultaneous elections has been advocated largely on the basis of the potential for improved government performance. We investigate such assertions by looking at how simultaneity can affect policymaking, voter turnout, election violence, administrative disruptions, spending, and corruption. Many of the problems appear to be alleviated by lowering the frequency of elections.

Simultaneous elections, on the other hand, may result in a loss of accountability, since regional parties may be eclipsed by dominant national parties. Concurrent elections may result in the customization of the electoral process.

### **Parliamentarianism Constrained in Sri Lanka:**

Bruce Ackerman presents limited parliamentarianism as a model of constitutional government preferable to American-style presidentialism in his article "The New Separation of Powers." He argues that the former has a stronger ability to check the executive's authority and hold it accountable for its activities. Sri Lanka is grappling with the similar challenge of improving executive accountability.

Parliament, according to Ackerman's definition of limited parliamentarianism, is the government's major power player. Multiple institutional processes inside the parliament, as well as a larger network of checks and balances, support the parliament's role in holding the government responsible. Popular referenda, courts, and a second branch of the legislature make up the democratic legitimacy side. The side of functional specialisation refers to the bureaucracy's integrity and the fourth pillar institutions in general. The side of liberal rights refers to the use of courts to enforce basic rights. However, while focusing on the institutional network necessary to demand maximum responsibility from the government, Ackerman misses crucial aspects that enhance the parliament's quality and relevance.

As a result, I concentrate on Germany, one of Ackerman's comparative examples for theorising limited parliamentarianism, to learn more about the mechanisms in place to improve the compositional and institutional standards of the legislature.

A pluralistic unanimity characterises democracy, which requires continual adjustment of conflicting interests. 86 Parties are expressive agents that transform popular demands into policy, and when the majority of the winning representatives are from the same party, it will have an impact on varied representation, governance, and policymaking. The dominance of a single party can be countered by holding elections in a staggered fashion. Members of the upper chamber are elected using a staggered formula in more than twenty countries with bicameral legislatures (including India and the United States). Election schedule and the number of seats for which elections are held are designed to guarantee that no single political party dominates.

As a result, we find that one-phased simultaneous elections can lead to regional parties being overshadowed, but they can also assist minimise the down-ballot impact in honeymoon elections. They may also use their limited resources to assist regional parties in gaining national prominence and outreach. However, the cost of prospective

national party domination exceeds the advantages. As a result, we propose a model that reaches a happy medium by switching from the present system to a two-phased staggered model.

### Relevance

The Nineteenth Amendment to the Sri Lankan Constitution, which aims to improve the institutional structure of checks and balances, has aspects of Ackerman's limited parliamentarianism theory. The parliament must, nevertheless, be the major participant in the country's administration in order for the limited parliamentarianism model to work. During the 2018 Constitutional Coup and the 2019 Easter Sunday Attacks, however, the Sri Lankan parliament struggled to demonstrate its independence within the country's constitutional and political system. As a result, the constitutional arrangements that increase the parliament's compositional and institutional powers, as well as its autonomy, which Ackerman assumes in his explication of limited parliament.

When all elections are held at the same time, the political environment in the country is likely to be controlled by the party with the most visibility and resources. Concurrent elections at the state and national levels may result in a down-ballot influence in terms of voting behaviour.

Voters' decisions at the state level may be influenced by the popularity of a charismatic leader. Because Ackerman recommends limited parliamentarianism to discourage younger democracies from embracing American-style presidentialism, this idea is important for Sri Lanka. However, as I have stated, Sri Lanka has gone above and beyond the American model in granting constitutional primacy to the executive president. As a result, in the context of Sri Lanka,

Constrained parliamentarianism reform necessitates a significant realignment of governmental authorities and a rethink of the checks and balances system. The German model is particularly relevant for Sri Lanka since the German parliament underwent a constitutional and political change from executive subservience to an autonomous body.

Furthermore, learning from German-style limited parliamentarianism can help Sri Lanka avoid an Eastminster model as a result of parliamentary changes. British Asia, according to Kumarasingham, has extracted the Westminster model, in which the executive is a member of the legislative and is answerable to it. Party organisations and policy platforms continue to play a major role in election competitiveness and government formation under parliamentary democracies. Voting decisions are influenced by a person's affiliation with a political party. Except in close races, where a leader's popularity may make or break a party's win or defeat, leaders have a smaller impact on election outcomes than dissenters.

Furthermore, assuming that the voter is entirely uneducated, politically unengaged, and thoughtless would be condescending. Although personality may influence voter decisions, the intricacy of a voter's decision cannot be reduced to a single element. Personalization cannot be equated with the suffocation of democratic choice on its own.

In a democracy, the psychological qualities that influence voters and make a leader popular are not politically unimportant. A leader's popularity may be based on his ability to perform effectively in his position and connect with his constituents. In conclusion, voters may be swayed by irrelevant issues at times, but their support for a leader may be motivated by a variety of other considerations. As a result, I propose that, using Germany as an example, the composition of the Sri Lankan parliament must be improved, its institutional structure capacities must be increased, and its autonomy vis-à-vis the president must be created through constitutional amendments.

These reforms are required for a nation with a semi-presidential government, such as Sri Lanka, to attain limited parliamentarianism with its better capability to guarantee public accountability.

## **RESULTS, DISCUSSION AND RECOMMENDATION**

This concept tries to implement and maintain simultaneous elections in two stages over the course of a five-year electoral cycle while staying within the legally mandated maximum tenure of five years. Approximately half of the states might have elections in April–May 2026, i.e. Phase I of the elections, while the remaining half, as well as Lok Sabha elections, could be held in October–November 2028, i.e. Phase II of the elections.

Parliament is made up of elected members who are elected by the public in regular elections. While individuals can run for office on their own, the majority of lawmakers belong to organised political parties. As a result, party politics and political ideology have an important role on parliamentary composition. This section examines the evolution and present status of political parties in Sri Lanka, as well as the necessity to constitutionalize parties as a vital participant in constitutional governance and the means for doing so based on German experience. To enhance the composition of the parliament, electoral changes are also necessary. The People's Liberation Front (also known as the JVP) began as a Marxist movement that attempted two insurgencies in 1971 and 1987–1989, both of which failed and resulted in many deaths and political instability.

However, when the SLFP's prominence waned, other communist groups, such as Lanka Sama Samaja Party, were incorporated into it. While these parties' mobilisation strength is limited, Shastri and Uyangoda believe that they give intellectual vitality to the SLFP's socialist and populist elements. The first step would be to alter the tenures such that they finish in 2026 or 2028, respectively. Simultaneous elections would be held in 2026, rather than 2024 (which is the logical alternative, given that the present Lok Sabha's term expires in 2024), because doing so would limit the mandate of the states that held elections in 2020 and are allowed to maintain their tertiary powers.

The Sri Lankan legislature is also made up of ethnically diverse political groups. The Jathika Hela Urumaya (JHU) is a Sinhala nationalist party that began as a bhikku-led party advocating for a unitary state and dharma rajya (a righteous state). In 2015, the party split, with the JHU siding with Ranawaka, who backed the Sirisena-Wickremasinghe alliance.

Rather than being a constitutional organisation through which individuals express themselves, both major parties have taken on the appearance of family enterprises. Parties have often given little attention to fostering the emergence of new leadership. Potential leaders were denied the opportunity to develop through the ranks of the party and were forced to defect or be booted out outright.

There is a democracy gap in elected representatives representing selective interests, as well as a gap between the capacity necessary for getting elected to legislative positions and the capacity required for fulfilling the responsibilities of the office once elected. Current party structures enable the political elite and their families to wield power in ways that are harmful to the legislative process. As a result of this dominance, the public is increasingly dissatisfied with the whole political system, and potential candidates with adequate qualifications are discouraged from running owing to the obstacles and stigma associated with those seeking political office.

## **CONCLUSION**

While the Constitution of Sri Lanka's Nineteenth Amendment has incorporated aspects of limited parliamentarianism by seeking to empower various centres of responsibility, the amendment has failed to change the status of the Sri Lankan parliament. As a result, the amendment's attempt to limit the president's powers has

frequently resulted in constitutional crises and political impasse. from its existing periphery in the constitutional framework to a centre position The crucial next stages in changing the parliament in Sri Lanka should be threepronged, based on the model of German-style limited parliamentarianism. The first is to enhance the makeup of parliament by enshrining party democracy in the constitution, and establishing internal party organisation norms that must be followed. Second, the parliament's institutional capacities must be enhanced in order to improve its legislative and executive oversight powers. In the context of Sri Lanka, it is also critical to strengthen the parliament as a separate institution from the president.

These changes will usher in a Sri Lankan type of limited parliamentarianism, allowing for constitutional government that promotes democracy and the rule of law.

The imposition of administrative authority only for the sake of synchronising electoral cycles would jeopardise the constitutional values of democracy and federalism, which are part of the Constitution's core construction. These procedures aren't required for simultaneous elections, and they're unlikely to result in stable and effective governance. As a result, I suggest alternative models for introducing and maintaining simultaneous elections without the need of the aforementioned processes. The models are founded on the notion of changeable and flexible terms, in which the voter knows how long the government will be in power before voting. This greatly minimises any accountability expenses that may be involved with holding elections for the entire country just once every five years. As a result, the second model is the best choice for holding simultaneous elections.

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**REFERENCES:**

- Robert Hazell, *Fixed Term Parliaments* (The Constitution Unit Department of Political Science UCL 2010) 16 (“Hazell”). NITI Aayog Simultaneous Elections (n 1) 28
- Esteban, J. and Ray, D. 1994. On the measurement of polarization. *Econometrica*, 62: 819–852. [Crossref], [Web of Science ®], [Google Scholar]
- Feder, G. and Nishio, A. 1998. The benefits of land titling and registration: economic and social perspectives. *Land Policy Studies*, 15: 25–43. [Google Scholar]
- Fiaschi, D. and Lavezzi, A. M. 2003. Distribution dynamics and nonlinear growth. *Journal of Economic Growth*, 8: 379–401. [Crossref], [Web of Science ®], [Google Scholar]
- Field, E. 2003. “Entitled to Work: Urban Property Rights and Labor Supply in Peru Harvard University working paper”. [Google Scholar]
- Finan, F., Sadoulet, E. and de Janvry, A. Measuring the poverty reduction potential of land in Mexico. *Journal of Development Economics*, (forthcoming) [Google Scholar]



Jeremy Waldron, 'Separation of Powers in Thought and Practice' (2013) 54(2) Boston College Law Review 433, 436; *State of U.P v. Sanjay Kumar* 2012 (6) All LJ 746. 'The separation of powers between the legislature, the executive and the judiciary constitutes one of the basic features of the Constitution. There is distinct and rigid separation of powers under the Indian Constitution.

Tarunabh Khaitan, 'Executive aggrandizement in established democracies: A crisis of liberal democratic constitutionalism' (2019) 17(1) International Journal of Constitutional Law 342, 347 ("Khaitan Democracies").

Shashi Tharoor, 'Turn India's model code of conduct into law, and prevent future EC bias' (*The Print*, 14 May 2019) <<https://theprint.in/opinion/turn-indias-model-code-ofconduct-into-law-and-prevent-future-ec-bias/234959/>> accessed 13 June 2020; Rasheed

Kidwai, 'Elections 2019: The consistent betrayal of Model Code of Conduct; no political gain without political will!' (*Observer Research Foundation*, 6 May 2019) <<https://www.orfonline.org/expert-speak/model-code-of-conduct-needs-legal-cover-arevisit-by-stakeholders-50534/>> accessed 13 June 2020.