

Constitutional Resilience and Limiting Power: A Comparative Study of Recent Executive Removals in South Asia.

Ashmi de Silva (ID:2400593)

Supervised by: Markus Böckenförde

Comparative Constitutional Law – Central European University

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Abstract

This essay examines the interplay between constitutional design and culture in enabling or obstructing the removal of Chief Executives (CEs) during crises, with a comparative focus on Sri Lanka, Pakistan, and Bangladesh between 2022 and 2024. It interrogates the accessibility and effectiveness of constitutional mechanisms for executive accountability and explores the conditions under which extra-constitutional approaches—such as violent protests can be justified to ensure constitutional resilience. The study defines constitutional resilience as the capacity of a constitution to recover from or cope with breakdowns emphasizing that resilience depends not only on formal rules but also on the constitutional culture. Through a close analysis of constitutional and legal texts, parliamentary processes, judicial interventions, and socio-political developments, the thesis argues that in contexts where constitutional pathways are blocked—whether by design, or constitutional culture—citizen-led extra-constitutional actions can function as expressions of constitutional protection rather than breakdown, safeguarding constitutional resilience in certain democracies.

Key Words: *Constitutional Resilience, Executive Accountability, Constitutional Culture, Right to Protest, Extra-constitutional Approaches, South Asia.*

AUTHOR’S DECLARATION

I, the undersigned, **Ashmi de Silva**, candidate for the BA/MA/MSc/LLM/PhD degree in **Comparative Constitutional Law** declare herewith that the present thesis titled **“Constitutional Resilience and Limiting Power: A Comparative Study of Recent Executive Removals in South Asia”** is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person’s or institution’s copyright.

I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 16 June 2025

Ashmi de Silva

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List of Abbreviations

- AG – Attorney General
- BAP – Balochistan Awami Party
- BCL – Bangladesh Chhatra League
- BGB – Border Guard Bangladesh
- BNP – Bangladesh Nationalist Party
- CE – Chief Executive
- CPA – Centre for Policy Alternatives
- DS – Deputy Speaker
- FRs – Fundamental Rights
- GDA – Grand Democratic Alliance
- HR – Human Rights
- HRCSL – Human Rights Commission of Sri Lanka
- HRs – Human Rights
- ICCPR – International Covenant on Civil and Political Rights
- MP – Member of Parliament
- MQM – Muttahida Qaumi Movement
- NCM – No Confidence Motion
- NSI – National Security Intelligence
- NTMC – National Telecommunication Monitoring Centre
- OHCHR – Office of the High Commissioner for Human Rights
- PDM – Pakistan Democratic Movement
- PM – Prime Minister
- PML-N – Pakistan Muslim League-Nawaz
- PML-Q – Pakistan Muslim League-Quaid
- PPP – Pakistan People’s Party
- PSO – Public Security Ordinance
- PTA – Prevention of Terrorism Act
- PTI – Pakistan Tehreek-e-Insaf
- RAB – Rapid Action Battalion
- SC – Supreme Court
- SJB – Samagi Jana Balawegaya
- SLBC – Sri Lanka Broadcasting Corporation
- SLPP – Sri Lanka Podujana Peramuna
- SPA – Special Powers Act, Bangladesh
- STF – Special Task Force
- TNA – Tamil National Alliance
- UN – United Nations

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1. Introduction

In recent years several South Asian countries ousted their sitting Chief Executive (CE), be it the President or the PM, either through established *de-jure* constitutional mechanisms or through the people's power, protected by the constitution. Sri Lanka saw peaceful protests spanning several months, which led to President Gotabaya Rajapakse fleeing the country and then resigning from his position in 2022.¹ Prime Minister (PM) Sheikh Hasina was forced to resign in 2024, following student-led protests which commenced peacefully, but subsequently devolved to violence due to aggressive state intervention.² The Parliament of Pakistan in 2022, removed PM Imran Khan through a no-confidence vote.³

The incongruence between the recent socio-political realities in these three countries, and their historically predestined autocratic trajectory coupled with negative global perception, necessitates a closer examination of the respective constitutional systems vis-à-vis the removal of CEs. In other words, what constitutional, and extra-constitutional dynamics enabled three countries which are constantly labelled as far from perfect democracies, to (democratically?) remove an incumbent CE in crisis contexts.⁴

Assessing constitutional frameworks available to remove CEs become significant, as these must be accessible, executable and resilient from interference, ensuring that in worst-case scenarios they can be used without further disrupting democratic and constitutional

¹ Emily Schmall, Skandha Gunasekara and Mujib Mashal, 'Sri Lanka's President Resigns After Months of Protest' *The New York Times* (14 July 2022) <<https://www.nytimes.com/2022/07/14/world/asia/sri-lanka-president-rajapaksa-resigns-protests.html>> accessed 10 June 2025.

² Saif Hasnat, and Andrés R Martínez, 'What We Know About the Ouster of Bangladesh's Leader' *The New York Times* (5 August 2024) <<https://www.nytimes.com/article/bangladesh-student-protests.html>> accessed 10 June 2025.

³ Christina Goldbaum and Salman Masood, 'Pakistan Parliament Ousts Imran Khan as Prime Minister' *The New York Times* (9 April 2022) <<https://www.nytimes.com/2022/04/09/world/asia/imran-khan-pakistan-ousted.html>> accessed 10 June 2025.

⁴ *Extra-constitutional approaches/ dynamics in this paper refer to actions or mechanisms undertaken outside the formal, codified procedures of a constitution, but not necessarily in violation of constitutional principles. While they may transgress the letter of the law, they may align with the spirit or culture of constitutionalism.*

governance. It is also crucial to explore the various extra-constitutional approaches available to remove the CE, when the constitutional mechanisms fail or are inadequate. With the current global trend of autocratization, there could be lessons for others.

The research question under consideration is: How does the adoption of constitutional mechanisms and extra-constitutional approaches by opposition forces to remove the CE during crises affect constitutional resilience?

This paper hypothesizes that in the context of social, economic and political crises, constitutional resilience depends on the successful restraining of the CE through a combination of constitutional mechanisms and extra-constitutional approaches by opposition forces. It hypothesizes that to ensure constitutional resilience during crisis situations in Sri Lanka, Pakistan and Bangladesh, opposition forces were compelled to employ *de-jure* constitutional mechanisms/ provision and the constitutional spirit or culture. At times, the latter permits the use of *de-facto* extra-constitutional approaches.

1.1. Selection of Countries

The paper focuses on three South Asian countries, Sri Lanka, Pakistan and Bangladesh. All three nations emerged from British colonial rule and inherited legal and institutional structures that shaped their early governance and have experienced persistent challenges to democratic governance, caused by overlapping crises such as economic instability, ethno-religious conflicts and political polarization. However, despite these commonalities, their political paths have diverged significantly, particularly in terms of constitutional evolution. For the purposes of this thesis, it is essential to briefly examine the historical and political rationales that informed the constitutional drafters' choice of the current formulation of the CE.

Sri Lanka currently operates a Semi-Presidential system, per Sri Lanka's second Republican Constitution of 1978 introduced by President J.R. Jayewardene. The office of the Executive President, however, was initially inserted to the Sri Lankan constitutional tradition through the Second Amendment to the 1972 Constitution.⁵ Influenced by the Gaullist French Fifth Republic, the 1978 Constitution sought to overcome disfunction and political instability causes by the Parliamentary system and achieve rapid development through efficient and decisive democratic governance spearheaded by an Executive President. "Jayewardene envisioned the executive presidency as a means to rescue Sri Lanka from the paralysis of unstable coalition governments and recurrent policy reversals" and argued that only a strong executive presidency "could provide firm but democratic governance."⁶ However, the change was also driven by Jayewardene's personal ambitions to concentrate power in his office.⁷ Historically, once elected, Presidents have been impervious to removal – with the exception of Gotabaya Rajapakse. This was a conscious and calculated constitutional design choice, as many Sri Lankan scholars observe; the impeachment procedure was deliberately made arduous to ensure a strong CE immune to frivolous political attacks and the instabilities of parliamentary politics, thereby entrenching the President as the locus of stability and authority within the constitutional order.⁸

Since independence, Pakistan has vacillated between civilian and military rule, with CE removals occurring through judicial interventions, legislative processes, and military coups. Pakistan has experimented with both parliamentary and presidential forms of democracy: the 1956 and the current 1973 Constitutions established a parliamentary system, while the 1962

⁵ Jayampathy Wickramaratne, 'The Executive Presidency: A Left Perspective' in Asanga Welikala (ed) *Reforming Sri Lankan Presidentialism – Provenance, Problems and Prospects Volume II* (CPA 2015) 902.

⁶ A J Wilson, *The Gaullist System in Asia: The Constitution of Sri Lanka (1978)* (Macmillan 1980) 2,11; Neil DeVotta, 'Illiberalism and Ethnic Conflict in Sri Lanka' (2002) 13(1) *Journal of Democracy* 84, 88.

⁷ Wickramaratne (n 5) 901.

⁸ Wickramaratne (n 5) 907-909.

Constitution was a presidential model. The passage of the 1973 was spearheaded by Zulfikar Ali Bhutto, who was the President from 1971 to 1973, and later the PM under the new 1973 Constitution. Unlike Jayewardene who hid his true motives for pushing for a strong CE, Bhutto was known to be an ‘elected civilian strongman who had little patience for the niceties of parliamentary democracy’.⁹ He preferred an executive centred presidential form of government, but was persuaded to accept a modified parliamentary system.¹⁰ The 1973 Constitution concentrated unprecedented power in the office of the PM, far greater than a typical Westminster style PM.¹¹ Kamal Azfar later observed that this was the first constitution in which all executive power was centralized in the PM, explicitly reflecting Bhutto’s ambition to dominate Pakistan’s political institutions and actors.¹² This all-powerful CE was criticized by the opposition parties, especially the mechanism for removal of the PM.¹³ The initial conceptualization of the no-confidence procedure required the nomination of a substitute, passage of the motion by a super majority and imposed certain time limitations.¹⁴ However, these did not translate to the constitutional text in force presently, due to push-back by the opposition, which insisted that a PM appointed by simple majority, should be removed by a simple majority.¹⁵

Bangladesh initially adopted a parliamentary system under the 1972 Constitution but transitioned to a presidential system in 1975 and reverted to a parliamentary democracy in 1991

⁹ Husain Haqqani, *Pakistan between Mosque and Military* (Vanguard Books 2005) 102; Mahboob Hussain, ‘Parliament in Pakistan 1971–77 and Chief Executive: An Analysis of Institutional Autonomy’ (2013) 20(1) *Journal of Political Studies* 83,85.

¹⁰ Hussain (n 9) 87; Shahid Javed Burki, *Pakistan: Fifty Years of Nationhood* (Routledge 1999) 46.

¹¹ Kamal Azfar, *Pakistan: Political and Constitutional Dilemmas* (Pakistan Law House 1987) 159; Hussain (n 9) 87.

¹² Ibid.

¹³ Rahat Zubair Malik, ‘Parliamentary System and Framing of the 1973 Constitution: Contest between Government and Opposition inside the National Assembly’ (2020) 25(1) *Pakistan Perspectives* 29, 38.

¹⁴ Ibid 38.

¹⁵ Ibid.

through constitutional amendments.¹⁶ Prior to the passage of the Constitution, the Proclamation of Independence of 1971 (from Pakistan) contained a presidential form of government with the founding father of Bangladesh, Sheikh Mujibur Rahman as the President.¹⁷ In the post-independence constitution drafting process, the preference for a parliamentary system over a presidential one was particularly significant, as Rahman, and his party, the Awami League, weighed political challenges faced within a former system with the authoritarian presidential rule under Pakistan's military regimes.¹⁸ The restoration of the Parliamentary system in 1991 was through bi-partisan agreement between the Awami League and PM Begum Khaleda Zia's Bangladesh Nationalist Party (BNP) – mainly since the latter enjoyed majority status in the Parliament following the 1991 elections, which would overpower a President who would become ceremonial once the system was changed.¹⁹ The 1972 Constitution introduced an anti-defection provision (Article 70) obligating MPs to vote strictly along party lines failing which they lost their seat – which effectively eliminates the possibility of a no-confidence motion.²⁰ The framers of the Constitution referred to the MPs' abusive voting history during the Pakistani period and frequent fall of cabinet governments due to Pakistan's various interventionist presidents, to justify this provision.²¹ Unlike the parliamentary system, which lacked a formal

¹⁶ Parshuram Sahoo and Arun Vishwanathan, 'Civil-Military Relations in Bangladesh: From Dominant Military Control to Dominant Civilian Control' (2023) 15(2) *Journal of Polity & Society* 65, 67.

¹⁷ M Jashim Ali Chowdhury, 'Making and Unmaking the Constitution of Bangladesh' in Ngoc Son Bui and Mara Malagodi (eds), *Asian Comparative Constitutional Law, Volume 1: Constitution-Making* (Cambridge University Press 2023) 367; See also M Jashim Ali Chowdhury, 'Parliament of Bangladesh: Constitutional Position and Contributions' in Ridwanul Hoque and Rokeya Chowdhury (eds), *A History of the Constitution of Bangladesh: The Founding, Development, and Way Ahead* (Routledge 2024).

¹⁸ Chowdhury (n 17) 369.

¹⁹ Craig Baxter, 'Bangladesh in 1991: A Parliamentary System' (1992) 32(2) *Asian Survey* 162, 165.

²⁰ Constitution of the People's Republic of Bangladesh (1972) art 70: A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he – (a) resigns from that party; or (b) votes in Parliament against that party; but shall not thereby be disqualified for subsequent election as a member of Parliament.

²¹ Chowdhury, (n 17) 370.

mechanism to remove the PM, the 1975 amendment contained a provision to impeach the President.²²

1.2. Defining Constitutional Resilience

The term ‘constitutional resilience’ has multiple definitions. Broadly, it refers to the abilities of constitutions to cope with attacks and finally to cope with a real crisis.²³ It is also defined as the capacity of a constitutional system to withstand attempts aimed at changing or violating its core elements.²⁴ The term is used mostly in ‘the context of protecting democracy and the rule of law’ and depends on ‘the interaction of the constitutional design and the political-social-cultural context in which a constitution operates’.²⁵ Grabenwarter states that resilience is subject to at least two factors i.e. the stability of the system and the aggressiveness of its surrounding.²⁶

This thesis defines constitutional resilience ‘as the capacity to recover from difficult circumstances’ and ‘a coping mechanism under taxing conditions’.²⁷ A common thread in this discourse is that well-designed constitutional provisions or mechanisms alone are insufficient to ensure Constitutional Resilience.²⁸ A broader ‘constitutional culture’ or ‘political culture’ or ‘political morality’ which protects individual and minority rights, democracy, rule of law and constitutionalism is also required.²⁹ Khaitan, Jhaveri and Samararatne identify that ‘the people’ are ‘a key driver for constitutional health and resilience’ and as ‘advocates for

²² Ali Ahmed, *Theory and Practice of Bangladesh Constitution* (HA Publisher, 1998) 85.

²³ Christoph Grabenwarter, ‘Constitutional Resilience’ (*Verfassungsblog*, 2018) <https://verfassungsblog.de/constitutional-resilience/> accessed 24 January 2025.

²⁴ András Jakab, ‘Constitutional Resilience’ (2023) SSRN Electronic Journal <https://www.ssrn.com/abstract=4656217> accessed 24 January 2025, para 1.

²⁵ Ibid para 1.

²⁶ Grabenwarter (n 23).

²⁷ Tarunabh Khaitan, Swati Jhaveri and Dinesha Samararatne, ‘Constitutional Resilience in South Asia: A Primer’ in Tarunabh Khaitan, Swati Jhaveri and Samararatne Dinesha (eds) *Constitutional Resilience in South Asia* (Hart Publishing 2023) 19.

²⁸ Grabenwarter (n 23); Khaitan, Jhaveri and Samararatne (n 27) 19-21; Jakab (n 24) para 25.

²⁹ Ibid.

constitutionalism'³⁰. Here constitutional culture refers to a combination of Seigel's³¹ and Mazzone's³² definitions of the term – basically that constitutional culture is a combination of firstly the citizens' recognition and acceptance that they are governed by a written constitution that unifies the citizenry, creates and limits government, and sets an 'ultimate result' and secondly the 'network of understandings and practices that structure constitutional tradition'.

1.3. Other Relevant Concepts: Theories on Executive Power

The definition of the term 'Executive' vis-à-vis constitutional and public law is extremely subjective. Some authors describe it in a broader sense as 'the power of governments'³³ or the power 'to give effect to the laws made by the legislature'³⁴. In this paper, the term 'Executive' is restricted to Cohn's definition the Head of the Executive Branch who 'is the key wielder of state power in the political sphere', 'is able to direct the legislature' often, and even when this political setup is (temporarily?) unavailable, 'retains dominance as the maker of policy and its implementer'.³⁵ This essay will refer to this Head of the Executive Branch as the Chief Executive.

Holding the Executive to account or 'Executive Accountability' is also a concept relevant to the paper. Monaghan states that accountability of the Executive is 'vital to ensure good government, respect of legal and constitutional principles, and public faith in the political culture of the state.'³⁶ Depending on the governmental system, the type of accountability

³⁰ Khaitan, Jhaveri and Samararatne (n 27) 27.

³¹RB Siegel, 'Text in Contest: Gender and the Constitution from a Social Movement Perspective' (2001) 150 University of Pennsylvania Law Review 297, 302.

³² Jason Mazzone, 'The Creation of a Constitutional Culture' (2005) 40(4) Tulsa Law Review 671,672.

³³ Paul Craig and Adam Tomkins, 'Introduction' in Paul Craig and Adam Tomkins (Eds) *The Executive and Public Law: Power and Accountability in Comparative Perspective* (OUP 2005) 1.

³⁴András Sajó and Renáta Uitz, *The Constitution of Freedom: An Introduction to Legal Constitutionalism* (OUP 2017) 268.

³⁵ Margit Cohn, *A Theory of the Executive Branch* (OUP 2021) 8.

³⁶ Chris Monaghan, 'How to Weaken Executive Accountability: Trump v United States' (2024) 29 Judicial Review 261, 261.

differs, such as ‘political/parliamentary accountability’ and ‘legal /judicial accountability’.³⁷ ‘Public accountability’ is owed to the general public or interested sections of it by the elected Executive with ‘political penalties’ to be paid at elections (or through other means?) if an adequate account is not offered.³⁸ The interplay between the CE and these types of accountability is relevant for this essay, especially to analyse whether accountability principle allows for the use of both constitutional and extra-constitutional means.

The ‘Doctrine or Theory of Emergency Powers’ has been extensively written on both by political and legal theorists. It is a concept that speaks of a strong Executive. DePlato defines ‘Executive emergency powers’ as ‘those powers the Executive has, gains, or uses during a time of crisis to end the event and preserve the state’³⁹. Lobel (somewhat imperfectly) divides the debates on Emergency Powers as being Absolutist – who argue that there are no emergency powers outside a country's written constitution, Relativists – who argue ‘that the Constitution is a flexible document that permits the President to take whatever measures are necessary in crisis situations’ and finally Liberalists – who recognize a distinction between "normal" and "crisis" times for purposes of government and the Executive may act extra-constitutionally during the latter.⁴⁰ However, exploring these debates in depth are beyond the scope of this essay.

Carl Schmitt’s theory of emergency powers, are often the basis of contemporary appeals for a strong Executive power unhampered by constraints of legality.⁴¹ Emergencies or crises contexts

³⁷ Craig and Tomkins (n 33) 4.

³⁸ Nicholas Bamforth and Peter Leyland, ‘Introduction: Accountability in the Contemporary Constitution’ in Nicholas Bamforth and Peter Leyland (Eds) *Accountability in the Contemporary Constitution* (OUP 2013) 4.

³⁹ Justin DePlato, ‘The Theory of Executive Emergency Power: Competing Thoughts and Models Supporting Extraordinary Executive Power in Times of Crisis’ (2021) 18 US-China Law Review 134,135.

⁴⁰ Jules Lobel, ‘Emergency Power and the Decline of Liberalism’ (1989) 98 The Yale Law Journal 1385; Brandon J Johnson, ‘Executives in Crisis: An Examination of Formal and Informal Emergency Powers’ (2020) 42(2) University of Pennsylvania Journal of International Law 341, 351–354.

⁴¹ Lars Vinx, ‘Carl Schmitt’ in Edward N Zalta (ed), *The Stanford Encyclopaedia of Philosophy* (Fall 2019, Metaphysics Research Lab, Stanford University 2019) <https://plato.stanford.edu/archives/fall2019/entries/schmitt/> accessed 1 February 2025: In essence, Schmitt

require the effective, decisive and rapid response of the Executive branch, unconstrained by the other branches of government, and even extra-constitutionally.⁴²

The view of a ‘Schmittian’ ‘unbound Executive’ has been extensively studied by Eric Posner and Adrian Vermeule in the context of the US’s response to crises.⁴³ Despite this understanding, there is ample literature to support that Executive in times of crises or emergency is often constrained. For instance, Ginsburg and Versteeg explore the ‘Bound Executive’ in the context of the pandemic, concluding that contrary to the ‘conventional accounts of emergency powers’ or ‘crisis governance in general’ which reinforces the notion of an ‘unbound’ Executive in situations of national security crises, in many democratic countries robust checks and balances remained in force rendering governance ‘decidedly Madisonian’.⁴⁴ Hence the Executive did not become ‘unbound’.⁴⁵ Posner and Vermeule themselves argue that in crisis situations ‘politics and public opinion’ restrain the Executive unbound by law or separation of powers, by ‘at least’ blocking ‘the most lurid forms of Executive abuse’.⁴⁶ They introduce the ‘popularity constraint’ as one of two political constraints – which incentivizes the CE to ‘satisfy the preferences of some sufficient fractions of the public’.⁴⁷ Although this concept is presented in the perspective of public’s behaviour in elections, it could potentially be extended to examine how popularity—or lack thereof—enables the removal of a CE in times of crisis.

contended that emergencies posing an existential threat to a state can only be addressed through unrestricted discretionary authority. He maintained that the normal legal processes are inadequate in such situations, largely because they lack the foresight and flexibility needed to respond effectively. Consequently, in times of acute crisis, the sovereign is justified in acting beyond legal constraints, mobilizing all state resources to confront the threat.

⁴² Tom Ginsburg and Mila Versteeg, ‘The Bound Executive: Emergency Powers during the Pandemic’ (2021) 19 *International Journal of Constitutional Law* 1498, 1455; ⁴³ Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge University Press 2006) 8.

⁴³ Ginsburg and Versteeg (n 42)1503.

⁴⁴ Ibid 1500.

⁴⁵ Ibid 1533.

⁴⁶ Eric A Posner and Adrian Vermeule, ‘Introduction’ in Eric A Posner and Adrian Vermeule (Eds), *The Executive Unbound: After the Madisonian Republic* (OUP 2011) 5–7.

⁴⁷ Ibid 16

2. The Chief Executive in Sri Lanka, Pakistan and Bangladesh.

This chapter will examine the constitutional and legal frameworks of Sri Lanka, Pakistan and Bangladesh – focusing on the type of CE that exists in the three countries and the constitutional mechanisms for removing the CE. As seen in Section 1.1. a strong-man CE was the constitutional choice of the drafter in all three countries.

2.1. Typology of the Chief Executive

According to Article 30(1) of the 1978 Constitution of Sri Lanka the President is ‘the Head of the State, the Head of the Executive and of the Government, and the Commander-in-Chief of the Armed Forces’. The initial formulation of the Executive Presidency, and the subsequent expansion of the office has been significantly criticized by academics.⁴⁸ Sri Lanka has created what is termed an ‘overmighty’ executive, in terms of constitutional power and authority laid, the influence over the legislature, and abuse of emergency regulations, capable of infringing individual liberties.⁴⁹

Under Article 90(1) of the 1973 Constitution of Pakistan the PM is declared the ‘CE of the Federation’. Unlike Sri Lanka, the PM of Pakistan has had a tumultuous relationship with the military, due to its heavy intervention in politics and the governance of the country.⁵⁰ Since independence, the military has ruled directly for over three decades (1958– 1971 under Generals Ayub Khan and Yahya Khan, 1977– 1988 under General Ziaul Haq, and 1999– 2007 under General Pervez Musharraf) and has wielded decisive shadow political for the rest of the

⁴⁸ Asanga Welikala (ed) *Reforming Sri Lankan Presidentialism – Provenance, Problems and Prospects Volume I & II* (CPA 2015).

⁴⁹ Chandra R. De Silva, ‘The Overmighty Executive Reconsidered’ in Asanga Welikala (ed) *Reforming Sri Lankan Presidentialism – Provenance, Problems and Prospects Volume II* (CPA 2015) 890.

⁵⁰ See Hina Altaf, ‘History of Military Interventions in Political Affairs in Pakistan’ (PhD thesis, City University of New York 2019).

time, thus practically making civilian control non-existent.⁵¹ There is ample literature on civil–military relations in Pakistan which explore political, sociological, external/internal threat-oriented and economic perspectives explaining why the military has assumed such political dominance.⁵² Thus, it can be argued that the power of the PM as the CE has been significantly curtailed by the military.

Compare this phenomenon to Sri Lanka, where during the latter stages of the Civil War and the Gotabaya Rajapakse presidency saw the consolidation of ‘a foundation of personal political–military alliances for dynastic rule’ of the President (and his family).⁵³ In Sri Lanka the military is yet another tool in the CE’s arsenal wielded to consolidate power. Pakistan’s complicated relationship with its military vis-à-vis democratic governance, could be compared to a certain extent to Bangladesh, which also has a history of tension between civil and military governance (see below section on Bangladesh).⁵⁴

Article 55(2) of the 1972 Constitution of Bangladesh vests the executive power of the Republic on the PM. Similar to the Indian Constitution – the PM in Bangladesh was initially inspired by the British Westminster style of parliamentary democracy.⁵⁵ Over time the role of the PM has increased exponentially, resulting in a system with ‘premiere domination’ and an ‘elective dictatorship’ of the PM through de jure and de-facto tactics such as constitutional amendments and weakening of the system through politicization, personalization of politics etc.⁵⁶ Similar to

⁵¹ Aqil Shah, *The Army and Democracy: Military Politics in Pakistan* (Harvard University Press 2014) 18; Aqil Shah, ‘Pakistan: Persistent Praetorianism’ in *Oxford Research Encyclopaedia of Politics* (OUP 2021)

⁵² F H Siddiqi, ‘Rescuing the Agency and Resilience of Civilian Political Actors: Civil–Military Relations in Pakistan, 2008–20’ in S Jhaveri, T Khaitan and D Samararatne (eds), *Constitutional Resilience in South Asia* (Oxford: Hart Publishing, 2023) 354–357; Sania Muneer and Saroj Aryal, ‘Cause and Effect: The Factors that Make Pakistan’s Military a Political Force’ ORF Issue Brief No. 694 (Observer Research Foundation 2024) 11 – 19.

⁵³ Øivind Fuglerud, ‘Militarization and impunity in Sri Lanka’ in Sten Widmalm *Routledge Handbook of Autocratization in South Asia* (Routledge 2022) 328.

⁵⁴ Sahoo and Vishwanathan (n 16) 66–71.

⁵⁵ Md Shairul Mashreque, ‘The Primacy of Political Leadership in Public Policy: A Focus on the Role of Prime Minister in Bangladesh’ (2019) 9(1) *Social Change* 1,1.

⁵⁶ Ibid 4; Chowdhury (n 17) 364.

Pakistan, since the early 1970s, the military has played a key role in the governance of Bangladesh, with power transferring between civilian and military leadership. It has been argued that ‘this situation began to change since the 1990 elections; however, the civilian leadership has been in a dominant position vis-à-vis their military counterparts since the 2008 elections.’⁵⁷

Craig and Tomkins declare that the ‘control of military power is likewise the preserve of the executive’.⁵⁸ Generally, the military are considered an agent of the executive arm under the constitutional doctrine of Separation of Powers. In Sri Lanka, the President is the commander in chief of the armed forces, and exercise considerable control over the military. Under the constitutions of Bangladesh and Pakistan, the President has the ‘supreme command’ of the armed forces or the defence service.⁵⁹ However, since Bangladesh is a parliamentary democracy, the parliament is responsible for raising and maintaining the armed forces, and as the CE the PM is the head of the defence service (at least in theory).⁶⁰ The constitutional position in Pakistan is the same – however, practically PMs have constantly struggled to bring the military under any form of effective control.⁶¹

2.2. Generic Constitutional Toolkit to Remove Chief Executives.

In presidential and semi-presidential constitutional systems, i.e. systems with a President directly elected by the public, he/she is generally not bound by the requirement of political support or confidence of the legislature.⁶² The tools for removal are often formulated as a) impeachment due to violations of laws/ the constitution, serious misconduct or abuse of

⁵⁷ Sahoo and Vishwanathan (n 16) 80-81.

⁵⁸ Craig and Tomkins (n 33) 1.

⁵⁹ Constitution of the Islamic Republic of Pakistan (1973) art 243(2); Constitution of Bangladesh (n 20) art 61.

⁶⁰ Ishfaq Ilahi Choudhury, ‘Civilian Control of the Military in Bangladesh: Moving towards a Democratic Tradition’ (1999) 20(1) BIJS Journal 68, 78.

⁶¹ Constitution of Pakistan (n 59) art 243.

⁶² Adem Kassie Abebe, *Removal of Presidents: International IDEA Constitution-Building Primer* 23 (International Institute for Democracy and Electoral Assistance 2022) 5.

power, b) removal due to incapacity or c) a recall vote based on lack of political or parliamentary confidence.⁶³ Legal or constitutional violations could include violation of eligibility criteria (age limits, dual citizenship etc.), corruption, conflict of interest, electoral fraud or violations, criminal convictions etc. Procedures for removal may be political or judicial depending in part on the grounds.⁶⁴ Removal procedures typically involve three stages: initiation and approval by the legislature—often requiring a qualified majority in the legislature—and, in some cases, confirmation by a court or hybrid tribunal, or a referendum. A presidential recall vote is typically initiated by a petition signed by a required percentage of voters and culminates in a nationwide vote. The grounds for and processes of removal affect the degree of difficulty in removing a president. The difficulty of removal in turn affects executive accountability.⁶⁵

In a parliamentary system, once appointed a PM is usually responsible to parliament – this meant that he/she can be removed mid-tenure by withdrawal of confidence by parliament.⁶⁶ This is through a vote of no confidence or censure, which requires a certain majority portion of MPs voting against the PM. In some systems, censure denotes parliamentary condemnation for misconduct, while no confidence signals a shift in political support without requiring any wrongdoing.⁶⁷ However, in practice, the distinction between the two is often minimal. A PM can also be removed through a leadership challenge within his/her political party, when its members no longer support him/her. Here the parliamentary members will select a new party leader, and the current leader resigns as PM.⁶⁸

⁶³ Ibid 11.

⁶⁴ Ibid 6.

⁶⁵ Ibid.

⁶⁶ Elliot Bulmer, *Government Formation and Removal Mechanisms: International IDEA Constitution-Building Primer 17* (International Institute for Democracy and Electoral Assistance 2017) 9.

⁶⁷ Ibid 10.

⁶⁸ Anne Twomey, 'Changing the Leader — The Constitutional Conventions Concerning the Resignation of Prime Ministers and Premiers' (2011) 39 *Federal Law Review* 329, 329.

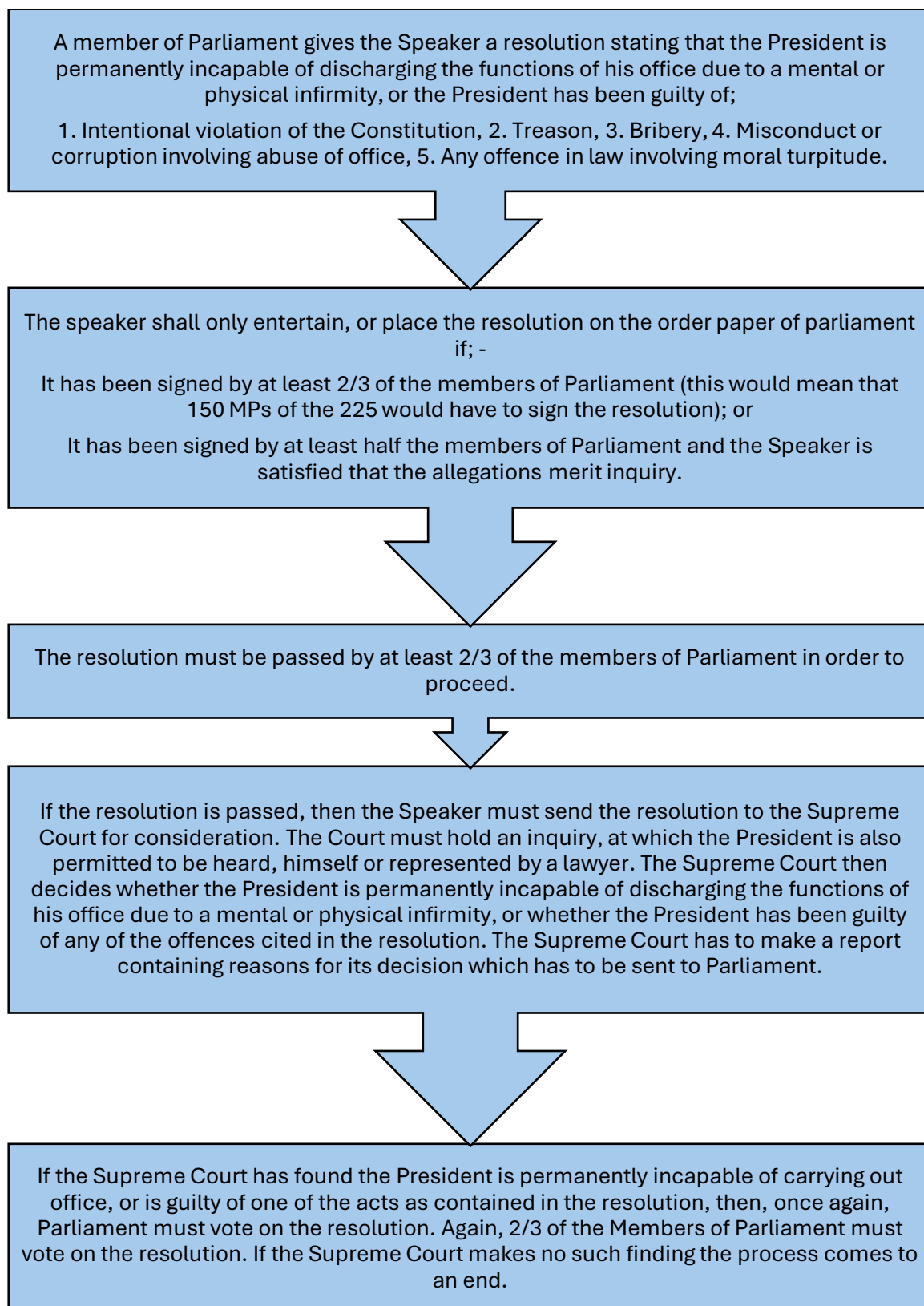
2.3. Constitutional Provisions on Removing the Chief Executive

Variations of the tools of CE removal discussed above are used in Pakistan, Sri Lanka and Bangladesh. The procedures and historical experiences in removing the CE in the three countries diverge greatly.

While Article 38 the Sri Lankan Constitution lays out the grounds and the procedure for the impeachment of the President, which is noted to be difficult to administer.⁶⁹ Accordingly, there are six grounds upon which the office becomes vacant i.e. the President's death; resignation through an addressed to the Speaker of Parliament; ceasing to be a citizen of Sri Lanka; wilfully failing to assume office within two weeks of the commencement of the term; impeachment; or the Supreme Court declaring the election of the President void.⁷⁰ Note that the Constitution does not use the term 'impeachment' at any point. The procedure for the removal of the President per Article 38(2) is as follows.

⁶⁹ Centre for Policy Alternatives, *Impeachment and No Confidence Motion Procedure and Protocol Explained* (CPA 2022) 2.

⁷⁰ Constitution of the Democratic Republic of Sri Lanka (1978): art 38(1).



Sri Lanka's past impeachment attempts show that it is nearly impossible to garner enough strength for such a Motion in Parliament where the Opposition can obtain the required numbers.

There were two instances in Sri Lanka where impeachment was seriously entertained. The first occasion was a strong attempt to impeach President Ranasinghe Premadasa in 1991, which the President outmanoeuvred by allegedly influencing the Speaker and some of signatories through financial bribes.⁷¹ Following a Constitutional Coup in 2018, several opposition parties contemplated the possibility of impeaching President Maithripala Sirisena for the violation of the Constitution and undermining democratic rule of law in the country.⁷²

According to the Constitution of Pakistan, the PM remains in office as long as he/she has the support of the President, but the latter can only dismiss the PM if he/she is convinced the PM no longer has majority support in the National Assembly.⁷³ This means that the President can only remove the PM if a successful motion of no-confidence is passed by parliament according to procedure shown below. The PM can also by writing under his hand addressed to the President, resign his office.⁷⁴ Article 95 lays down the procedure for a Vote of no-confidence against PM. The provisions have been further elaborated upon through Rule 37 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007.⁷⁵

⁷¹ Sugeeswara Senadhira, 'Implausibility of impeachment' (*Ceylon Today*, 17 April 2022)

<https://ceylontoday.lk/2022/04/17/implausibility-of-impeachment/> accessed 10 June 2025

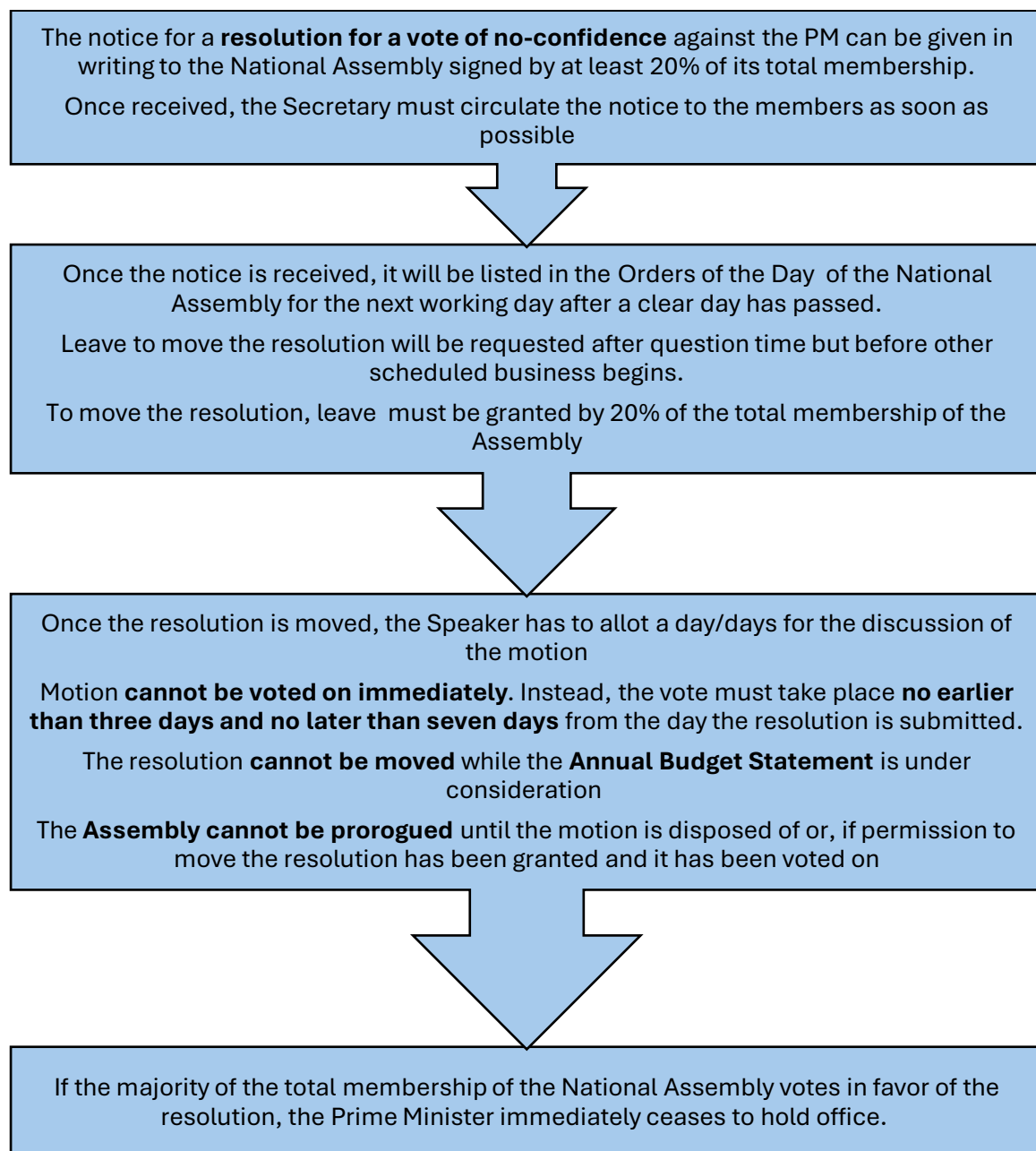
⁷² JVP Likely To Initiate Impeachment Motion Against Sirisena: Also Pledges To Initiate Investigation Against Coup Offenders' (*Colombo Telegraph*, 7 April 2025) <https://www.colombotelegraph.com/index.php/jvp-likely-to-initiate-impeachment-motion-against-sirisena-also-pledges-to-initiate-investigation-against-coup-offenders/> accessed 10 June 2025; See Binendri Perera, 'The Unresolved Constitutional Dilemma: Persisting Imbalance of Power Exposed by the Constitutional Coup 2018' (2021) 54 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 116; Zaheena Rasheed and Rathindra Kuruwita, 'Sri Lanka's Supreme Court overturns sacking of parliament' (*Al Jazeera*, 13 December 2018)

<https://www.aljazeera.com/news/2018/12/13/sri-lankas-supreme-court-overtorns-sacking-of-parliament> accessed 10 June 2025 for information on the Constitutional Coup in 2018.

⁷³ Constitution of Pakistan (n 59) art 91(7).

⁷⁴ Ibid art 91(8).

⁷⁵ Rules of Procedure and Conduct of Business in the National Assembly, 2007 (Pakistan), Rule 37: A no-confidence resolution against the Prime Minister requires written notice signed by at least 20% of Assembly members. The Secretary must circulate it promptly, and it is scheduled for discussion on the first working day after one clear day. Leave to move the resolution is sought after question hour. Once moved, the Speaker may allot debate time, except during budget discussions. A vote must occur between three and seven days after the motion is moved. The Assembly cannot be prorogued until the motion is resolved, and voting follows the Second Schedule procedure.



This procedure has been used twice against PMs before 2022 in Pakistan - against Benazir Bhutto in the 90s and Shaukat Aziz in 2007, but the oppositions was unsuccessful.⁷⁶

Unlike in Sri Lanka and Pakistan, where the parliamentary procedure to remove the CE has been constitutionally enumerated, the Constitution of Bangladesh has no such explicit

⁷⁶ Usman Khan, Murad Ali and Wali Ullah, 'An Analysis of the vote no-confidence against Imran Khan' (2024) 7(3) Pakistan Journal of International Affairs 130, 135; Hamid Iqbal, Dr. Muhammad Nawaz Shahzad, Usman Ali, Sundus Aslam, and Muhammad Asif, 'No Confidence Politics in Pakistan: A Historical Analysis' (2023) 7(1) Journal of Positive School Psychology 869, 871-872.

provision. This is one of the main criticisms against the current Constitution.⁷⁷ The office of the PM is vacated when the PM resigns voluntarily, he ceases to be a member of Parliament, or through a forced dissolution of Parliament.⁷⁸ Article 57(2) states that if the PM no longer has the support of the Parliamentary majority, she has to either first – voluntarily resign, or second, ‘advise’ the President to dissolve the Parliament. If the President is satisfied that no other member of Parliament commands the support of the parliamentary majority, he must (shall) dissolve Parliament. Accordingly, Articles 55(3) and 57(2) together requires the PM to resign if s/he ceases to retain the support of a majority of MPs. This means the PM cannot be removed by office without triggering the dissolution of Parliament – this is unlike the British Parliamentary style democracy which Bangladesh drew inspiration from. Additionally, no Bangladeshi PM has ever faced a no-confidence motion in the parliament, nor have they faced a leadership challenge from within their parties.⁷⁹ This is primarily due to Article 70, which prohibits Members of Parliament from voting against their party, engaging in free votes, or crossing the floor. Under this provision, any MP who does so automatically forfeits their seat. Article 70 renders a motion of confidence against the PM near impossible.

⁷⁷ ‘No scope in constitution to remove PM, reform a must: Ali Riaz’ (*The Daily Sun*, 20 April 2025) <https://www.daily-sun.com/post/789580> accessed 11 June 2025.

⁷⁸ Constitution of Bangladesh (n 20) art 57.

⁷⁹ Chowdhury, ‘Parliament of Bangladesh: Constitutional Position and Contributions’ (n 17)

3. Using Constitutional Mechanisms to Oust Chief Executives: Sri Lanka v Pakistan

This chapter contains an analysis of the use of the constitutional mechanisms discussed in the previous chapter for the ousting of the CE in Sri Lanka, and Pakistan. Of the three, Pakistan is the only country which succeeded in removing the PM through the parliamentary procedure.⁸⁰

3.1. Using Constitutional Mechanisms

A core demand of the 2022 *Aragalaya* protest was the resignation or removal of President Gotabaya Rajapakse (using chants such as “Go Home Gota”).⁸¹ A Motion of Censure was tabled in Parliament by the opposition party, Tamil National Alliance (TNA). TNA relied on Article 42 of the Constitution which obligates the President to be responsible to the Parliament for the ‘the due exercise, performance and discharge of his powers, duties and functions’ and Parliamentary Standing Order 83(1).⁸² The objective of the Motion was stated by the leader of TNA, M.A. Sumanthiran.

“Sir, this is a Motion of Censure, a Motion expressing what people have been expressing out in the country...By this Motion, the President does not step down; this is not an Impeachment Motion. But, as Representatives of the people, this is

⁸⁰ ‘Bangladesh: Prime Minister Hasina Resigns amid Mass Protests’ (*Human Rights Watch*, 6 August 2024) <https://www.hrw.org/news/2024/08/06/bangladesh-prime-minister-hasina-resigns-amid-mass-protests> accessed 11 June 2025; Hannah Ellis-Petersen, ‘Sri Lanka’s President Quits after Fleeing Protests in Crisis-Hit Country’ (*The Guardian*, 14 July 2022) <https://www.theguardian.com/world/2022/jul/14/sri-lanka-president-gotabaya-rajapaksa-quits-protests> accessed 11 June 2025.

⁸¹ Centre for Policy Alternatives (CPA), *A Brief Analysis of the Aragalaya: Final Report* (May 2023) <https://www.cpalanka.org/wp-content/uploads/2023/05/A-Brief-Analysis-of-the-Aragalaya-Final-Report.pdf> accessed 11 June 2025, 7; Dinesha Samararatne, ‘The People in the Palace’ (*Verfassungsblog*, 15 July 2022) <https://verfassungsblog.de/the-people-in-the-palace/> accessed 11 June 2025.

⁸² Ninth Parliament of the Democratic Socialist Republic of Sri Lanka, ‘Minutes of Parliament,— Second Session’ (17 May 2022) 11-12; Parliament of Sri Lanka Standing Order 83(1): “The personal conduct of the President, or other persons engaged in the administration of justice, shall not be raised, except upon a substantive motion.”

an opportunity for us to reflect, to mirror what is being said by the country at large...”⁸³

The motion was defeated in a vote split 119-68, as the parliament majority at the time was held by SLPP which is the Rajapakse loyalist party.⁸⁴

Neither the Standing Orders of the Parliament of Sri Lanka nor the Constitution define the parameters of a Motion of Censure. However, in the British Parliamentary tradition from which Sri Lanka heavily borrows from, such a motion is defined as ‘one that seeks to criticise the behaviour of the government, typically, the motion is critical of a specific government policy, or of the conduct of particular government minister’ and is distinguishable from a vote of no confidence brought by the opposition.⁸⁵ Also note that a motion de censure is available under Article 49 of the Constitution of the Fifth French Republic, which inspired the Sri Lankan Presidency. This is essentially a vote of no-confidence against the French PM (not the President who can only be impeached under Article 68).⁸⁶ However, the objective of TNA’s Motion clearly differentiated it from the French formulation, as it was aimed at initiating a parliamentary debate on the citizens’ demands and criticisms expressed in the *Aragalaya* protests. Furthermore, it was also not an Impeachment Resolution against the President under Article 38.

A No-Confidence Motion against the President was also submitted to the Speaker of Parliament on 4th May 2022 by the main Opposition Party *Samagi Jana Balawegaya* (SJB). It alleged that

⁸³Minutes of Parliament (n 82).

⁸⁴ ‘No-confidence motion against Sri Lanka leader fails in parliament’ (*Al Jazeera*, 17 May 2022) <https://www.aljazeera.com/news/2022/5/17/no-confidence-motion-against-sri-lanka-leader-fails-in-parliament> accessed 11 June 2025.

⁸⁵ ‘Censure motion’ (*UK Parliament*) <https://www.parliament.uk/site-information/glossary/censure-motion/> accessed 11 June 2025.

⁸⁶ ‘France: Motion of Censure and Votes of No Confidence’ (*Inter-Parliamentary Union*) http://archive.ipu.org/parline-e/reports/CtrlParlementaire/2113_F1.htm accessed 11 June 2025.

the ‘Parliament resolves that it has no confidence in the President’⁸⁷ However, the Speaker refused to accept SJB’s Motion and enter it into the Order Book of the Parliament citing that he needed to consult the Attorney General (AG) on its legality.⁸⁸

The terms ‘no-confidence motion’ and ‘impeachment motion’ seems to be at times used interchangeably (and incorrectly) with the ‘resolution alleging that the President is permanently incapable of discharging the functions of his office’ mentioned in Article 38 both by politicians and the media in Sri Lanka. According to Article 49(2) a ‘vote of no confidence’ can be passed to remove the PM, and not the President. Unlike in Pakistan where the opposition initiated a vote of no confidence against the CE with the intent to remove him, in Sri Lanka the opposition parties merely sought to symbolically showcase their displeasure towards the President.

Despite these confusions, the key takeaway is that even attempts at initiating a parliamentary debate on the actions of President Gotabaya according to the Constitution and parliamentary procedures failed in 2022 – mostly due to lack of political will in the Legislature. The majority in Parliament was controlled by the Rajapakse’s Sri Lanka Podujana Peramuna (SLPP) party and these loyalists continued to support the President.

Unlike in Sri Lanka, Pakistan’s leading opposition party was able to muster the required majority (at least 20% of the total members of the National Assembly). On 8th March 2022, a delegation of senior opposition lawmakers — including Marriyum Aurangzeb, Rana Sanaullah, Ayaz Sadiq and Shazia Marri submitted a Resolution of No Confidence at the Secretariat of the National Assembly, and also a requisition to summon the National Assembly under Article

⁸⁷ ‘Text of the Draft No Confidence Motion against President Gotabaya Rajapaksa’ (*Sri Lanka Brief*, 4 May 2022) <https://srilankabrief.org/text-of-the-draft-no-confidence-motion-against-president-gotabaya-rajabaksa/> accessed 11 June 2025.

⁸⁸ ‘The Speaker of a decrepit House’ (*The Morning*, 09 May 2022) <https://www.themorning.lk/articles/202013> accessed 11 June 2025.

54(3) of the Constitution as the Assembly was not in session on the day.⁸⁹ The Resolution was spearheaded by the Pakistan Democratic Movement (PDM), which is an alliance of political parties founded in 2020 as an opposition movement against PM Imran Khan's government.⁹⁰ Opposition Leader Shehbaz Sharif moved the Resolution at the National Assembly session on 28th March 2022, which stated that the PM had lost the confidence of the majority of the members of the National Assembly, and he should not continue in office.⁹¹ The Resolution was accepted and the No Confidence Motion (NCM) was tabled in the Assembly with 161 opposition members voting in favour. The debate for the motion was scheduled for 31st March 2022. During the proceedings for voting, the Law Minister speaking to the Assembly alluded to the workings of a foreign power manipulating the elected incumbent Government through conspiracy threatening sovereignty and violating Article 5 of the Constitution.⁹² The Speaker (through the Deputy Speaker) thereafter ruled that the NCM was against the Constitution, national sovereignty, and independence, and rejected it.⁹³ The members of the Opposition Parties accused by the Law Minister, supporting the Motion, were not granted an opportunity to respond or rebut the allegations against them.⁹⁴

Following the rejection of the NCM, the National Assembly was dissolved by the President on advice of the PM under Article 58(1). This dissolution was later deemed unconstitutional by the SC of Pakistan.⁹⁵ Subsequently as directed by the SC, the National Assembly on 9th April

⁸⁹ SMC 1 of 2022/Constitution Petition Nos 3-7 of 2022,7; Sana Chaudhry, 'A PM No More: How the Historic Move to Eject Imran Khan through a No-Trust Vote Unfolded' (*Dawn*, 8 April 2023) <https://www.dawn.com/news/1744819> accessed 11 June 2025.

⁹⁰ 'Pakistan Opposition No-Confidence Motion Against Imran Khan' (*Al Jazeera*, 29 March 2022) <https://www.aljazeera.com/news/2022/3/29/pakistan-opposition-no-confidence-motion-imran-khan> accessed 11 June 2025.

⁹¹ Muhammad Irshad and Roheen Zafar, 'Supreme Court Verdict in the No-Confidence Motion Against Prime Minister Imran Khan: A Critical Analysis' (2023) 62 *Pakistan Bi-Annual Research Journal* 98, 101.

⁹² SMC 1 of 2022 (n 89) para 10; Irshad and Zafar (n 91) 102.

⁹³ SMC 1 of 2022 (n 89) para 11; Irshad and Zafar (n 91) 102.

⁹⁴ SMC 1 of 2022 (n 89) para 11.

⁹⁵ 'Pakistan: Supreme Court Issues Detailed Judgment on Dismissal of Resolution of No-Confidence Motion Against Then-PM Imran Khan' (*Library of Congress*, 7 August 2022) <https://www.loc.gov/item/global-legal->

2022, voted on the NCM. 174 members of the National Assembly, out of 342 seats, voted against the PM.⁹⁶ This made Imran Khan the first PM removed from office through a NCM, since the birth of Pakistan.

3.2. Differences in Approaches

There are several differences between the use of constitutional approaches to oust the CE in Sri Lanka and Pakistan by the Opposition. First, in Pakistan, the opposition relied on the constitutional tool i.e. the Vote of No Confidence to outright remove the PM. Whereas in Sri Lanka the opposition attempted to use the Motion of Censure to contain the President through parliamentary oversight by questioning his actions. This can be considered an indirect approach to hold the CE accountable, in comparison to Pakistan's direct constitutional approach.

The second disparity is that in Pakistan the Opposition Parties had been united under a common and clear cause since 2020 – which was to oust the PM. PDM was a coalition comprised of eleven opposition parties which sought to reduce the interference of the military establishment in civilian government, and to remove Khan from the premiership.⁹⁷ The PDM was able to launch a co-ordinated attack against the PM. Parties such as the Grand Democratic Alliance (GDA), *Muttahida Qaumi* Movement (MQM), Balochistan Awami Party (BAP), and Pakistan Muslim League-Quaid (PML-Q), along with some defecting members of Khan's Pakistan *Tehreek-e-Insaf* Party (PTI) working together secured the necessary votes for the no-confidence motion.⁹⁸ Authors criticize this as being successful movement by the 'Pakistani

monitor/2022-08-07/pakistan-supreme-court-issues-detailed-judgment-on-dismissal-of-resolution-of-no-confidence-motion-against-then-pm-imran-khan accessed 11 June 2025.

⁹⁶ Khan, Ali and Ullah (n 76) 131.

⁹⁷ 'Nawaz Sharif' (*Encyclopaedia Britannica*, 25 February 2025) <https://www.britannica.com/biography/Nawaz-Sharif> accessed 11 June 2025; Michael Kugelman, 'Pakistan's Anti-Government PDM and the Security State' (*Foreign Policy*, 27 October 2020) <https://foreignpolicy.com/2020/10/27/pakistan-anti-government-pdm-security-state/> accessed 11 June 2025.

⁹⁸ Khan, Ali and Ullah (n 76) 132.

establishment’.⁹⁹ In comparison, Sri Lanka’s opposition parties, although critical of the President, were fragmented, ideologically divided, and largely reactive. Even at the height of the 2022 economic crisis, they failed to articulate a unified strategy to hold the President accountable.

The third key difference lies in the parliamentary numbers game, which is closely tied to each country’s constitutional design. In Sri Lanka, acceptance by a two-third or a ‘super’ majority (150 of 225 seats) is required both to table an Impeachment Resolution in Parliament and to successfully pass it. This process to impeach a sitting President is procedurally rigid and politically unfeasible generally. This means that even if the opposition parties had combined their efforts, they still would not have had the necessary numbers, as SLPP not only held the majority, but a near super majority in Parliament at the time - of the 225 parliamentary seats, the SLPP controlled 145.¹⁰⁰ A considerable portion of SLPP Rajapakse loyalists would have had to defect, for the opposition parties to succeed. Additionally, despite Gotabaya Rajapakse’s blatant mishandling of the economic crisis, his party members did not criticize or challenge his decisions. In contrast, Pakistan’s constitutional mechanism for removing a PM is institutionally more accessible. Meeting the threshold of 20% of the total members of the National Assembly (68 out of 336 seats) which is required to move a motion of no confidence, and the subsequent approval by a simple majority (169 out of 336 seats), is easier than in Sri Lanka. The NCM Vote benefitted from parties in Khan’s coalition government crossing over to the Opposition. The lack of a viable legal option, combined with the supermajority requirement, rendered impeachment in Sri Lanka virtually impossible. This reflects a deeper institutional constraint

⁹⁹ Ibid.

¹⁰⁰ ‘Party Composition of the Parliament’ (*Parliament of Sri Lanka*) <https://www.parliament.lk/en/members-of-parliament/party-comp> accessed 11 June 2025.

in Sri Lanka's constitutional framework, one that contrasts sharply with the relatively more flexible provisions available in Pakistan.

Another point of comparison in this push for removing the CE using constitutional mechanisms is the role of the Speaker in Parliament during these processes. In Pakistan, the Deputy Speaker (DS) Qasim Suri initially ruled that the NCM was “against the Constitution, national sovereignty, and independence”, consequently rejecting the resolution for violating Article 5 – this was later concurred by Speaker Asad Qaisar.¹⁰¹ It was this decision that triggered a suo moto action by the Pakistani SC – which deemed that the DS prima facie breached his constitutional duty and mandate under Article 95(2).¹⁰² The Court firstly in a Short Order on 7th April 2022 set aside both the DS's decision and the reasons therefore stating they were ‘contrary to the Constitution and the law and of no legal effect’.¹⁰³ In its extended judgement the SC opined that the DS's ruling ‘prima facie infringed the fundamental rights of the Opposition Parties and the public at large.’¹⁰⁴ In Sri Lanka, the Speaker - Mahinda Yapa Abeywardena's refusal to accept the NCM was criticized by the Opposition.¹⁰⁵

In both countries the Speakers used their constitutionally granted authority to block the respective Parliaments' attempts to hold the CE accountable. Both Suri and Yapa Abeywardena were accused of violating the customary constitutional duties of the office of the Speaker such as impartiality and representing the people.¹⁰⁶ Justice Khan Miankhel in his judgement explicitly states that the DS's actions ‘reflect his biased and prejudiced mind which ... is against

¹⁰¹ Irshad and Zafar (n 91) 102; Fahad Chaudhry and Nadir Guramani, ‘NA Speaker Dismisses No-Trust Move Against PM Imran, Terms It Contradictory to Article 5’ (*Dawn*, 3 April 2022) <https://www.dawn.com/news/1683067> accessed 11 June 2025.

¹⁰² Ibid; SMC 1 of 2022 (n 89) 17, para 14.

¹⁰³ SMC 1 of 2022 (n 89) 22.

¹⁰⁴ SMC 1 of 2022 (n 89), 31, para 28.

¹⁰⁵ ‘The Speaker of a decrepit House’ (n 88).

¹⁰⁶ Shehryar Awan, ‘The Speaker versus the Constitution’ (*Dawn*, 6 April 2022) <https://www.dawn.com/news/1683583> accessed 11 June 2025.

the norms and dignity of the chair of the Speaker'.¹⁰⁷ Austen states that a good Speaker is one that, conforms to parliamentary customs and usages and has the capacity to 'win for the man, through the objectivity and impartiality of his conduct...'¹⁰⁸

The comparison between Pakistan and Sri Lanka's use of constitutional mechanisms to remove the CE, or at the least hold the CE accountable, during political crises reveals how constitutional architecture, and political will converge to determine constitutional resilience. Sri Lanka's formal constitutional mechanisms for executive accountability with the supermajority requirement for impeachment, coupled with the SLPP's near-total control of Parliament, rendered removal unfeasible. In contrast, Pakistan's parliamentary system offered a more accessible constitutional mechanism through the vote of no confidence, which, despite attempted subversion by the Deputy Speaker, was ultimately upheld through judicial intervention. This reflects not just institutional flexibility, but the coordinated political will of a unified opposition. In both contexts, however, the conduct of the Speakers—tasked with upholding the integrity of parliamentary proceedings—highlighted how personal political allegiances can obstruct formal constitutional processes. Ultimately, the comparative analysis suggests that constitutional mechanisms are only as effective as the constitutional culture that sustains them. In systems where political actors remain loyal to power rather than principles of democratic governance, rule of law and general welfare of the populace, and where legal routes to accountability are structurally blocked or procedurally manipulated, extra-constitutional approaches, may be seen not as antithetical to constitutional resilience. This will be discussed in the next chapter.

¹⁰⁷ SMC 1 of 2022 (n 89): Judgment of Mazhar Alam Khan Miankhel, para 10.

¹⁰⁸ Albert A. Austen, 'The Impartiality of the Speaker of the House of Commons' (1960) 23 *Journal of the Rutgers University Libraries* 50,50.

4. Using Extra Constitutional Approaches to Oust the Chief

Executive: Sri Lanka v Bangladesh

Dr. Martin Luther King Jr. once observed that “a riot is the language of the unheard”—a sentiment that resonates with both Sri Lanka and Bangladesh. In both countries, public frustration had reached a tipping point after years of enduring unresponsive, corrupt, and increasingly authoritarian regimes, presiding over stagnant economic development, social inequalities, and recurring communal violence, leaving citizens feeling helpless.

The first section contains a comparative analysis of the constitutional and legal context of the right to protest or dissent in both countries – setting the stage for the constitutional culture within which the anti-CE protests took place. The second section explores how the opposition actors transgressed the constitutional bounds of the right to protest and whether such transgression is justified to ensure constitutional resilience.

4.1. The Right to Protest in Sri Lanka and Bangladesh

Both the Bangladeshi and Sri Lankan Constitutions contain the freedoms of speech, peaceful assembly and association – formulated distinctively. Article 14(1)(a) of the former combines the three rights – while the latter splits it into three provisions Articles 37 (assembly), 38 (association) and 39(2) (speech). Under customary and treaty-based human rights law, these three rights taken in combination ensure individuals the right to peaceful protest. The freedoms of speech, assembly and association are not absolute rights and are often subject to substantive and procedural constitutional limitations. This is the case in the constitutions of Sri Lanka and Bangladesh. Sri Lanka’s Article 15 allows for the imposition of legally prescribed restrictions in ‘the interests of national security, public order and the protection of public health or morality’

or to secure freedoms of others, or to ensure ‘general welfare of a democratic society’.¹⁰⁹ Similarly, in Bangladesh, Articles 37, 38, and 39(2) explicitly subjects the three rights to "reasonable restrictions" based on concerns like public order, health, morality, and state security. Unlike Sri Lanka, Bangladesh’s constitution also includes considerations like friendly relations with foreign states, contempt of court. and protection from defamation or incitement.¹¹⁰ While both frameworks reflect a common constitutional tension between fundamental rights and state control, Sri Lanka emphasizes a broader “democratic welfare” rationale for restrictions, whereas Bangladesh offers a breakdown of specific limitations. Both countries place importance on national security, public order, and morality.

In addition to the constitutional limitations imposed on the right to protest, there are also lesser laws in both countries which limit these rights. Owing to their shared colonial history and influence of the British legal tradition, such laws in Sri Lanka and Bangladesh are relatively similar in logic and scope. For instance, the Penal Codes of both countries criminalize sedition against the government (and the President – in the case of Sri Lanka) and contain provisions on ‘unlawful assembly’.¹¹¹ However, unlike the Bangladeshi provision on sedition, the Sri Lankan provision contains an explanation clarifying that the provision refers to a situation of insurgency or an unlawful attempt to overthrow a government, and excludes expressions of dissatisfaction or distrust or criticism against a government.¹¹² Both the Dhaka Metropolitan Police Ordinance and Sri Lanka’s Police Ordinance grant the police significant authority and discretion to regulate public assemblies, such as the requirement to provide prior notice to the police before holding any public gathering and the power to disperse such gatherings deemed

¹⁰⁹ Constitution of Sri Lanka (n 70) art 15.

¹¹⁰ Constitution of Sri Lanka (n 70) art 39(2).

¹¹¹ The Penal Code of Bangladesh 1860 (Act XLV of 1860), s 124A (Sedition): s 141, 143 & 145 (Unlawful Assembly); Penal Code of Sri Lanka Ordinance No 2 of 1883: s 120 (Sedition), s 138, 141, 142 (Unlawful Assembly).

¹¹² Ibid.

unlawful.¹¹³ Additionally, both the Sri Lankan Police Ordinance and the Police Act of 1861 contain provisions on powers and responsibilities of the police in maintaining public order .which are often used to manage public protests.¹¹⁴ Both countries also severely restrict online anti-government or anti-state activism and dissent. Bangladesh's the Cyber Security Act and Sri Lanka's Online Safety Act contain provisions restricting freedom of online speech and dissent.¹¹⁵ While substantively different in scope and origin, Bangladesh's Special Powers Act (SPA) and Sri Lanka's Public Security Ordinance (PSO) (as amended), provide broad and discretionary powers to the Executive, particularly the President or government led by the PM, in times of perceived threat to public order or national security to impose curfews, restrictions on public assemblies, and preventive detention.¹¹⁶ The two countries also have unique laws limiting the right to protest. For instance, in Sri Lanka the International Covenant on Civil and Political Rights (ICCPR) Act imposes specific restrictions on the freedoms of speech and expression, and the Prevention of Terrorism (Temporary Provisions) Act (PTA) allows for arrest without warrants – both of which have been used to suppress the right to protest.¹¹⁷

It is evident that both countries have over time considerably limited the constitutional scope and benefits of these freedoms. Hence it is crucial to place the right to protest in the two countries within the broader constitutional culture, which extends beyond the black letter

¹¹³ Dhaka Metropolitan Police Ordinance 1976: s 29, 30, 32; Police Ordinance No. 16 of 1865 (as amended): s77, 78.

¹¹⁴ Police Ordinance No. 16 of 1865 (as amended/ Sri Lanka):s 56; Police Act 1861 (Bangladesh): s 23.

¹¹⁵ Cyber Security Act 2023: s 25, 28, 29, 31; Amnesty International, *Repackaging Repression: The Cyber Security Act and the Continuing Lawfare Against Dissent in Bangladesh* (Amnesty International 2024). Online Safety Act No. 09 of 2024; 'Sri Lanka: Online Safety Act a Major Blow to Freedom of Expression' (Amnesty International, 24 January 2024) <https://www.amnesty.org/en/latest/news/2024/01/sri-lanka-online-safety-act-major-blow-to-freedom-of-expression/> accessed 14 June 2025 ; Centre for Policy Alternatives, 'Statement on the Online Safety Act, No. 09 of 2024' (CPA, 1 February 2024) <https://www.cpalanka.org/statement-on-the-online-safety-act-no-09-of-2024/> accessed 14 June 2025.

¹¹⁶ Special Powers Act 1974: s 3(1 and 2); Public Security Ordinance No. 25 of 1947 (as amended): s 5, s 16

¹¹⁷ International Covenant on Civil and Political Rights Act No.56 of 2007: s 3; Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979: s 9.

constitutional and legal provisions. How have the courts and other judicial bodies interpreted or guided the State on the freedoms of speech, peaceful assembly and association, and the attendant restrictions? What international commitments have the two countries made with regards to these specific rights? How are rights actually protected in these countries?

Firstly, the Sri Lankan SC has attempted to limit the scope and effect of the constitutional and legal restrictions imposed on the freedoms of speech, peaceful assembly and association. The court in several cases have held that restrictions or exceptions to the freedom of speech must be narrowly and strictly construed and they should not be unconstitutionally overbroad i.e. there should be a proximate or rational nexus between the restrictions and the object sought to be achieved.¹¹⁸ A similar approach has been taken by the courts of Bangladesh. With regard to freedom of assembly, speech and expression – legitimate imposition of restrictions which are consistent with constitutional values and are fair, reasonable and non-arbitrary are allowed.¹¹⁹ In *Oali Ahad v. Bangladesh* the SC held that an order banning public meetings which does not disclose any nexus between the prohibited act and the apprehension of danger to public order, it is inconsistent with the freedom of assembly guaranteed in the Bangladesh Constitution.¹²⁰ In *Khondaker Modarresh Elahi v. Bangladesh* the High Court held that mere disruption of public order is not enough to restrict peaceful assembly unless the protest poses a genuine threat, emphasizing that violence by some participants should not justify a blanket ban, and that only those individually responsible should face legal consequences.¹²¹

Secondly, the SC has consistently affirmed that the rights to dissent, disagreement, and protest—guaranteed under the Constitution’s fundamental freedoms of speech, peaceful

¹¹⁸ *Joseph Perera alias Brutten Perera v The Attorney General and Others* [1992] 01 SLR 199; *Sunila Abeysekera v Ariya Rubasinghe and Others* [2000] 1 SLR 314.

¹¹⁹ Tabassuma Jahan, ‘Reasonable Restrictions on Fundamental Rights in Bangladesh: Balancing Liberty and Social Order’ (SSRN, 29 October 2024) <https://ssrn.com/abstract=5161565> or <http://dx.doi.org/10.2139/ssrn.5161565> accessed 12 June 2025, 4.

¹²⁰ *Oali Ahad v Bangladesh* [1974] 26 DLR 376.

¹²¹ 54 DLR [2002] 47.

assembly, and association—are fundamental to the functioning of a democratic society. In the *Sunila Abeysekera Case*, the court held that ‘in a democracy, freedom of speech performs a vital role in keeping in check persons holding public office’.¹²² In the case of *Fernando vs SLBC* the court also stated that freedom of expression is ‘indispensable to the operation of a democratic system’.¹²³ The SC in *Wijeratne vs Vijitha Perera*, stated that the ‘right to dissent’ is a cornerstone of the Sri Lankan Constitution and should be respected, secured and advanced by the Executive.¹²⁴ In the landmark *Jana Ghosha (People’s Noise)* case where several political parties organized nationwide anti-government protests, the court held that the right to criticize the Government, political parties, policies and programmes is ‘fundamental to the democratic way of life’.¹²⁵ The Bangladeshi courts in comparison have taken an inconsistent approach to the right to dissent and protest. In the case of *S. Rangarajan etc. vs. P. Jagjivan Ram* the SC stated that right to criticize is a FR and that citizens can openly criticize a political party¹²⁶ However, the court has also held that criticism of the government unnecessarily annoys public order and that the state may order or forbid creating excessive noises in the streets and public places or regulate the places of public discussion to maintain public order.¹²⁷ The SC in the *Shahidul Alam Case* recently upheld the order passed by the High Court extending the stay on the investigation of photojournalist and human rights activist Dr. Shahidul Alam for posting a video on the 2018 students protests.¹²⁸ This case set a strong precedent in favour of journalists critiquing Government policy and action

¹²² *Sunila Abeysekera v Ariya Rubasinghe and Others* [2000] 1 SLR 314.

¹²³ *Fernando v Sri Lanka Broadcasting Corporation and Others* SC 81/95

¹²⁴ *Wijeratne v Vijitha Perera, Sub-Inspector of Police, Polonnaruwa and Others* [2002] 3 SLR 319.

¹²⁵ *Amaratunga v Sirimal and Others* [1993] 1 Sri LR 264

¹²⁶ *S. Rangarajan etc. v P. Jagjivan Ram* [1989] SCC (2) 574.

¹²⁷ *Abdul Latif Mirza v Bangladesh* [1979] 31 DLR AD; Mahmudul Islam, *Constitutional Law of Bangladesh* (1st edn, Bangladesh Institute of Law and International Affairs, 1995) 341.

¹²⁸ Columbia Global Freedom of Expression, ‘*The Case of Shahidul Alam*’ (*Global Freedom of Expression*) <https://globalfreedomofexpression.columbia.edu/cases/the-case-of-shahidul-alam/> accessed 12 June 2025.

Both countries are state parties to the International Covenant on Civil and Political Rights (ICCPR) in which Articles 19, 21 and 22 as applicable here.¹²⁹ Despite these commitments, there are not only considerable gaps in state protection but also active state repression of these rights. International HRs organizations have raised concerns regarding this. The use of laws such as Sri Lanka's PTA, PSO, and the Online Safety Act, and Bangladesh's SPA and the Cyber Security Act (previously the Digital Security Act or the ICT Act) to criminalize dissent, silence critics, and suppress protests have been consistently criticized by organizations.¹³⁰ International HRs organizations, have regularly reported on arbitrary arrests, excessive use of force against protesters, and a general climate of fear for civil society actors in both countries – often due to expansive police powers.¹³¹ Furthermore, both governments have been criticized for using surveillance, legal harassment, and vague notions like “hurting religious sentiment” or “public nuisance” to suppress free speech, particularly online.¹³² These observations by International HRs organizations underscore the ongoing challenges against freedoms of speech, peaceful assembly and association in both countries. It also shows the stark difference between the constitutional text and the ground reality when citizens attempt to access these rights.

¹²⁹ Article 19 – Freedom of Opinion and Expression, Article 21 – Right of Peaceful Assembly, Article 22 – Freedom of Association

¹³⁰ UN Human Rights Council, *'Situation of human rights in Sri Lanka: Comprehensive report of the United Nations High Commissioner for Human Rights'* (9 September–9 October 2024) UN Doc A/HRC/57/17, para 14; *'Sri Lanka 2024'* (Amnesty International) <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/sri-lanka/report-sri-lanka/> accessed 12 June 2025;

UN Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Sri Lanka* (21 March 2023) UN Doc CCPR/C/LKA/CO/6, para 14,16;

'Bangladesh 2024' (Amnesty International) <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/bangladesh/report-bangladesh/> accessed 12 June 2025;

Amnesty International, *Bangladesh: Dissent Under Attack – Submission to the 44th Session of the UPR Working Group, November 2023: Summary* (Amnesty International, 2023) para 7, 18.

¹³¹ *'Sri Lanka'* (Human Rights Watch) <https://www.hrw.org/asia/sri-lanka> accessed 12 June 2025; *'Bangladesh'* (Human Rights Watch) <https://www.hrw.org/asia/bangladesh> accessed 12 June 2025; *'Sri Lanka 2024'* (n 130); *'Bangladesh 2024'* (n 130); Amnesty International, *Bangladesh: Dissent Under Attack* (n 130) 14-17; UN Doc A/HRC/57/17 (n 130) para 21.

¹³² *'Sri Lanka: Online Safety Act a Major Blow to Freedom of Expression'* (Amnesty International, 31 January 2024) <https://www.amnesty.org/en/latest/news/2024/01/sri-lanka-online-safety-act-major-blow-to-freedom-of-expression/> accessed 12 June 2025; *'Bangladesh: Muzzling Dissent Online'* (Amnesty International, 1 November 2018) <https://www.amnesty.org/en/latest/press-release/2018/11/bangladesh-muzzling-dissent-online/> accessed 12 June 2025.

4.2. Justification for a Violent Right to Protest

Despite the constitutional guarantee and judicial recognition of the right to protest, in both countries the constitutional and political culture has historically and consistently proven to be non-conducive to healthy criticism or dissent against the CE. This reveals a disparity between the normative constitutional commitments to democratic freedoms and the on-the-ground political and legal realities. The difficulty in invoking constitutional mechanisms to remove a CE—an issue examined in previous chapters—further compounds this problem, effectively closing off legal and institutional pathways for executive accountability through removal (or the threat thereof) during crises. Citizens of both countries have consistently invoked the right to dissent or protest— and the courts have judicially recognized not only its existence but its importance.

As made evident by the *Aragayala* and the July Revolution protests – citizens expressing their right to dissent and protest often oscillate between the constitutional and extra-constitutional. Although determining the constitutionality of each action of the protest participants is beyond the scope of this essay, it will assess whether the protests exceeded the constitutionally prescribed limitations.

In both countries, the protests which started peaceful subsequently became violent – often due to external factors such as instigation by pro-government supporters or repressive actions by the state (see next chapter). Violence or disruption of ‘public order’ by opposition protestors manifested as either a) retaliation against pro-government or state forces in self-defence or defence of the common objective of the protests or b) a measure necessitated by the CE’s delays in resignation. Both push the actions of the protestors beyond the constitutionally and legally prescribed limitations of right to dissent.

The protests which broke out in March 2022 outside President Gotabaya's private residence lasted till 9th July 2022 and were spread across the island with varied levels of intensity.¹³³ On 9th May 2022, widespread violence broke out across Sri Lanka following an attack on the protestors by a pro-government mob which stormed the "GotaGoGama" (loosely translates to 'Gotabaya should resign village') protest site in Colombo, assaulted protesters, and dismantled their temporary structures.¹³⁴ This initial attack triggered retaliatory anti-government violence nationwide, targeting politicians linked to the President's party.¹³⁵ Eight individuals, including a Parliamentarian and two local officials, were killed, and the Government reported 244 incidents involving property destruction – including houses of Parliamentarians and properties linked to the Rajapaksa's.¹³⁶ During the last stages of the protests, massive crowds of citizens stormed the official residences of the President and the PM, and the Presidential Secretariat in Colombo overcoming large deployments of police and soldiers, and other obstacles on 9th July 2022.¹³⁷

In Bangladesh the external forces – be it the military, the police, the state or the supporters of the Awami League, such as the Bangladesh Chhatra League (BCL), were far more violent in comparison to Sri Lanka. This is evident from the sheer number of protest-related deaths, which the OHCHR estimates to be as many as 1400.¹³⁸ While the protests began with peaceful intent—led by Students Against Discrimination and supported by opposition parties like the BNP and Jamaat-e-Islami—some protestors escalated to violent actions beyond the initial calls

¹³³ UN Human Rights Council, 'Situation of Human Rights in Sri Lanka: Comprehensive Report of the United Nations High Commissioner for Human Rights' (6 September 2022) UN Doc A/HRC/51/5, para 5; International Federation for Human Rights (FIDH), *Anatomy of a Crackdown: The Repression of Sri Lanka's Aragalaya Protest Movement* (FIDH/CHRD 2023), 12-13.

¹³⁴ UN Doc A/HRC/51/5 (n 133) para 35; FIDH (n 133) 16.

¹³⁵ Ibid.

¹³⁶ Ibid; CPA (n 81) 34.

¹³⁷ Alan Keenan, 'Sri Lanka's Uprising Forces Out a President but Leaves System in Crisis' (*International Crisis Group*, 18 July 2022) <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lankas-uprising-forces-out-president-leaves-system-crisis> accessed 12 June 2025; CPA (n 81) 38-39

¹³⁸ Office of the High Commissioner for Human Rights (OHCHR), *Human Rights Violations and Abuses Related to the Protests of July and August 2024 in Bangladesh* (12 February 2025) 58.

for disruption by the organizers.¹³⁹ Acts of violence included vandalizing property, attacking media outlets perceived as pro-government, setting fire to buildings with people inside, lynching police officers and Awami League supporters, and coordinated assaults on police stations and government infrastructure.¹⁴⁰ Much of this violence appeared to be spontaneous and fuelled by public anger over longstanding abuses rather than centrally orchestrated, though members and supporters of BNP and Jamaat-e-Islami were involved.¹⁴¹ Additionally, some protest-related violence targeted minority communities—motivated by political revenge, discrimination, or local disputes—though this was subsequently condemned by protest leaders and not linked to national leadership directives.¹⁴² Despite isolated incidents of violence by students, the Students Against Discrimination leadership largely maintained a peaceful stance and publicly denounced violent acts.¹⁴³

As discussed above, the way the right to protest or dissent, was utilized by the citizens of Bangladesh and Sri Lanka against the CE raises normative questions. Is stepping out of the bounds demarcated for the exercise of the freedoms of speech, peaceful assembly and association (such as the requirement of ‘peaceful’ assembly or the maintenance of ‘public order’ or ‘public morality’) *per se* make the exercise extra-constitutional? Especially when such rights have been suppressed and retaliated against by the CE, nullifying their broader constitutional objective. In other words, can the need for removing an authoritarian or failed CE, to restore broader constitutional order in a country, justify the use of approaches by the public that momentarily depart from strict constitutional parameters?

¹³⁹ Ibid 68-69.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

Reports produced by international and national non-governmental HRs monitors such as Amnesty International, the CPA (in Sri Lanka), Human Rights Watch, UN Office of the High Commissioner for Human Rights (OHCHR) showcases the use of violence by protestors in both countries. According to international HRs standards as well as national FRs frameworks, the right to protest or dissent does not extend the right to violent protest.

The experiences of Bangladesh and Sri Lanka demonstrate the profound tensions between constitutional ideals and political realities in relation to executive accountability – specifically in removing the CE. In both countries there were long-standing public grievances against the state and the CE. Despite constitutional and legal protections of the right to protest, the repressive constitutional, legal and political cultures coupled with the near impossibility of invoking constitutional mechanisms (in Sri Lanka), or ambiguity of existing mechanisms (in Bangladesh) to remove the CE have left citizens with limited lawful avenues to express dissent or demand change during crises. Add to this the frustration of decades of entrenched corruption, economic mismanagement, stagnant development, and widening inequalities fuelling the citizens' desperate call for the CE to step down. As a result, protests often transgress constitutional boundaries in the short term—not necessarily by design, but because of state provocation, pro-government violence, or the sheer urgency of democratic (and even regular) survival.

While extra-constitutional approaches to oust the CE such as the violent use of the right to protest, may seem at odds with the constitutional text, their role in reasserting democratic order, rule of law, constitutionalism and positive constitutional culture—in the face of authoritarianism and failure of the CE—cannot be dismissed outright. As Greenwood-Reeves in his recent work *Justifying Violent Protest* argues, violent protests are not antithetical to the notion of liberal democracy but are, under certain circumstances, entirely justified and even

necessary.¹⁴⁴ He states that ‘Violent protest can act, like any other form of protest, as democratic dialogue’ and can be used to address perceived legitimacy deficits of a state.¹⁴⁵ In such contexts, the challenge lies not merely in judging these actions by the rigid constitutional black letter, but in understanding them within the broader struggle for democratic restoration.

¹⁴⁴ James Greenwood-Reeves, *Justifying Violent Protest: Law and Morality in Democratic States* (1st edn, Routledge 2023).

¹⁴⁵ As cited in Richard Gibson, 'Is Violent Protest Ever Justified?' (*The Prindle Institute for Ethics*, 16 August 2023) <https://www.prindleinstitute.org/2023/08/is-violent-protest-ever-justified/> accessed 12 June 2025.

5. Push Back by the Chief Executive

In both Sri Lanka and Bangladesh, the CE used several measures to counter the actions of opposition actors and to hold onto power for as long as possible. This chapter will explore some of these constitutional and extra-constitutional approaches.

5.1. State of Emergency

During the *Aragalaya* protests, Gotabaya Rajapakse declared a ‘State of Emergency’ twice – on 1st April 2022 and again on 6th May 2022, under Section 2 of the PSO and Article 155 of the Constitution.¹⁴⁶ The declaration on the 1st April, was revoked on the 5th April, with no Emergency Regulations promulgated thereunder. Following the 6th May declaration, the President enacted the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 2022, by way of Gazette Extraordinary No. 2278/23.¹⁴⁷ These regulations contained several provisions, the objective of which were to create a chilling effect on the people’s right to protests or dissent. For instance, Regulation 14 prohibited the public dissemination of printed material which had content ‘prejudicial to public security, public order or the maintenance of supplies and services essential to the life of the community.’ This can be deemed a clear violation of the freedom of expression, and the right to information under the Constitution. Regulation 40 imposed a prohibition on obstructing public spaces, essentially making it illegal for citizens to peacefully congregate, and exercise their freedoms of peaceful assembly and association.

¹⁴⁶ CPA (n 81) 21; Diego Abenante Sri Lanka 2022 374

¹⁴⁷ Centre for Policy Alternatives, ‘*Emergency Regulations Promulgated in May and July 2022*’ (CPA, July 2022) <https://www.cpalanka.org/wp-content/uploads/2022/07/Emergency-Regulations-promulgated-in-May-and-July-2022-Edited.pdf> accessed 12 June 2025; Centre for Policy Alternatives, ‘*CPA Statement on the Declaration of a State of Emergency – 6th May 2022*’ (CPA, 6 May 2022) <https://www.cpalanka.org/wp-content/uploads/2022/05/CPA-statement-to-State-of-Emergency-6th-May.pdf> accessed 12 June 2025.

Section 2 empowers the President to declare a State of Emergency in two situations; when the President is of the opinion that it is expedient to do so a) in the interest of public security and the preservation of public order, or b) for the maintenance of supplies and services essential to the life of the community.¹⁴⁸ Section 5 of the PSO read with Article 155 (2) and (3) of the Constitution grants the President the power to make emergency regulations ‘having the legal effect of over-riding, amending or suspending the operation of the provisions of any law, except the provisions of the Constitution’. According to the PSO, a declaration of a State of Emergency must be immediately communicated to Parliament for its ratification.¹⁴⁹ Failure to ratify the State of Emergency (and Emergency Regulations introduced thereunder) by Parliament within 14 days automatically annuls the declaration of a State of Emergency.¹⁵⁰ On 20th May 2022, the Presidential Secretariat confirmed that the government will not present the Emergency Regulations to Parliament and that the State of Emergency was lifted.¹⁵¹

Curfews were imposed by the CE in both Sri Lanka and Bangladesh. In Sri Lanka, island-wide curfews were imposed (and extended) several times – in the months of April, and May 2022.¹⁵² CE’s power to declare a curfew, is granted under Section 16 of the PSO, and not through the Sri Lankan Constitution. On 18th July, Hasina ordered a national curfew and deployed 27,000 Army soldiers.¹⁵³ This curfew was imposed under the SPA.¹⁵⁴ In April 2022, the Sri Lankan government also imposed an island wide 15-hour social media blackout.¹⁵⁵ Restrictions were

¹⁴⁸ Public Security Ordinance s 2; Radhika Coomaraswamy and Charmaine de los Reyes, ‘Rule by Emergency: Sri Lanka’s Postcolonial Constitutional Experience’ (2004) 2(2) International Journal of Constitutional Law 272, 276.

¹⁴⁹ Public Security Ordinance s 1(3- 4)

¹⁵⁰ Art 155(6); Ibid.

¹⁵¹ FIDH (n 133) 20.

¹⁵² Gazettes of the Democratic Socialist Republic of Sri Lanka Nos. 2273/89 (2 April 2022), 2279/11 (9 May 2022), 2279/13 (10 May 2022), 2279/19 (12 May 2022), and 2279/22 (13 May 2022).

¹⁵³ OHCHR (n 138) 8; Ethirajan Anbarasan and Yogita Limaye, ‘Bangladesh Imposes Curfew as Protests Continue’ (BBC News, 19 July 2024) <https://www.bbc.com/news/articles/cl4ymjrx10xo> accessed 12 June 2025.

¹⁵⁴ Arshiya Gupta ‘Bangladesh Imposes Nationwide Curfew amid Student Protests’ (JURIST News, 19 July 2024) <https://www.jurist.org/news/2024/07/bangladesh-imposes-nationwide-curfew-amid-student-protests/> accessed 12 June 2025.

¹⁵⁵ CPA (n 81) 58; Amnesty International, *From Bad to Worse: Rights Under Attack During Sri Lanka’s Economic Crisis* (Amnesty International, May 2022) 6.

also imposed on the use of social media under Regulation 15 of Gazette Extraordinary No. 2278/23.¹⁵⁶ Starting on 17th July, Hasina's government suspended nation-wide internet services for eleven days and also restricted access to social media.¹⁵⁷ These prohibitions can be considered a violation of the freedom of expression and the right to information.

These actions by the CE were heavily criticized by opposition actors in both countries.¹⁵⁸ For instance, The HRCSL stated that the social media ban in April, and the imposition of emergency laws sans proper assessment of an actual threat to national security, constitutes a violation of FRs.¹⁵⁹ CPA condemned the declaration of emergency twice within a five week span 'with no credible justification' being provided by the President.¹⁶⁰ The Bar Association of Sri Lanka stressed that the state of emergency must not be used to stifle peaceful protests and dissent, and the President should provide reasons for the declaration.¹⁶¹ Several opposition actors challenged the legality of the declarations of emergency under the fundamental rights jurisdiction of the SC of Sri Lanka.¹⁶² Amnesty International in an open letter to PM Sheikh Hasina demanded immediate lifting of curfew and restoration of full access to social media

¹⁵⁶ Gazette of the Democratic Socialist Republic of Sri Lanka No. 2278/23 (6 May 2022): Regulation 15.

¹⁵⁷ OHCHR (n 138) 8, 49-50.

¹⁵⁸ Savitri Hensman, 'Sri Lanka Under the Jackboot' (*Groundviews*, 05 August 2022) <https://groundviews.org/2022/05/08/sri-lanka-under-the-jackboot/> accessed 12 June 2025.

¹⁵⁹ 'HRCSL Summons Key Officials over Human Rights Violation' (*Daily FT*, 13 May 2022) <https://www.ft.lk/news/HRCSL-summons-key-officials-over-human-rights-violation/56-732971> accessed 12 June 2025.

¹⁶⁰ Centre for Policy Alternatives, 'CPA Statement on the Declaration of a State of Emergency – 6th May 2022' (CPA, 6 May 2022) <https://www.cpalanka.org/wp-content/uploads/2022/05/CPA-statement-to-State-of-Emergency-6th-May.pdf> accessed 12 June 2025.

¹⁶¹ 'President Must Explain Reasons for Declaring Emergency: BASL' (*News First*, 7 May 2022) <https://www.newsfirst.lk/2022/05/07/president-must-explain-reasons-for-declaring-emergency-basl> accessed 12 June 2025.

¹⁶² 'SC Permits Examination of FRs Against Emergency, Curfew, SM Ban' (*News First*, 7 April 2022) <https://www.newsfirst.lk/2022/04/07/sc-permits-examination-of-frs-against-emergency-curfew-sm-ban> accessed 12 June 2025; *Dr. Paikiasothy Saravanamuttu v The Attorney General and 3 others (Challenging the Proclamation of the State of Emergency)* <https://www.cpalanka.org/dr-paikiasothy-saravanamuttu-vs-the-attorney-general-and-3-others-challenging-the-proclamation-of-the-state-of-emergency/> accessed 12 June 2025.

platforms.¹⁶³ The London-based internet watchdog NetBlocks criticised the "nation-scale" internet shutdown in Bangladesh for hindering HRs observers and independent media at a 'critical time'.¹⁶⁴

Emergency Regulations promulgated by the CE that, which in their substance or effect, restrict the people's right to protest or dissent as examined in the previous chapter—may be considered extra-constitutional in nature. Notably, the CE's declaration of emergency and the introduction of related regulations lacked a legitimate need or genuine concern of public security. Instead, it was for political self-preservation, aimed at consolidating control and suppressing dissent to hold on to the office, amidst violent public dissatisfaction.

5.2. Use of Force and the State Security Apparatus

In both Sri Lanka and Bangladesh, the CE used force and deployed the state/ national security and military apparatus, which included the police, paramilitary and military forces, and intelligence actors to suppress the right to dissent. While the severity and consequences of these measures varied between the two countries—evident in statistics such as the number of arrests and deaths—the underlying objective of both CEs was the same: to retain power for as long as possible.

OHCHR reports that Hasina directly supervised and directed the operations of the various military, security and intelligence actors involved in curbing the protests – which included the Police, Border Guard Bangladesh (BGB), Rapid Action Battalion (RAB), state intelligence services (Armed Forces Intelligence, National Security Intelligence (NSI), National Telecommunication Monitoring Centre (NTMC)), specialised branches of the Police

¹⁶³ 'Bangladesh: Arbitrary Detentions and Crackdown on Student Protesters Must End' (Amnesty International, July 2024) <https://www.amnesty.org/en/wp-content/uploads/2024/07/ASA1383722024ENGLISH.pdf> accessed 12 June 2025.

¹⁶⁴ NetBlocks, 'Internet Blackout in Bangladesh Continues Amid Protests' (X/Twitter, 19 July 2024) <https://x.com/netblocks/status/1814698509112623270> accessed 12 June 2025.

(Detective Branch, Special Branch and Counter Terrorism and Transnational Crime unit) and the Bangladesh Army.¹⁶⁵ In Sri Lanka, the police and the military were deployed to control the protests, including the Special Task Force (STF), a police unit specialized in counterterrorism and counter-insurgency.¹⁶⁶

Shoot on sight orders, which according to the UN Special Rapporteur on the right to freedom of peaceful assembly and of association ‘must never be issued, as they constitute authorisation for extrajudicial executions’ were issued in both countries—manifestly violating the right to life protected under the respective constitutions and the non-derogable Article 6 of the ICCPR, to which both are signatories.¹⁶⁷ This underscores the CE’s willingness to disregard even the most fundamental of HRs in the pursuit of retaining power. In Bangladesh OHCHR found that the Hasina, her government and its security and intelligence apparatus, together with supporters of the Awami League (see below), systematically engaged in serious HRs violations, including extrajudicial killings, other use of force violations involving serious injuries to protesters, extensive arbitrary arrest and detention, and torture and other forms of ill-treatment, in pursuance of a coordinated strategy to suppress dissent.¹⁶⁸ Compared to this, the behaviour of the Sri Lankan police and military was relatively tempered. However, Sri Lankan authorities also used unnecessary and/or disproportionate force to disperse peaceful assemblies including the use of firearms causing death and injury, and engaged in systematic campaign of arrests, prosecutions, and other acts of harassment, including judicial harassment, intimidation, and surveillance.¹⁶⁹ These violent pushback-measures used by the CE were condemned by

¹⁶⁵ OHCHR (n 138) 6.

¹⁶⁶ FIDH (n 133) 29.

¹⁶⁷ OHCHR (n 138) 28; FIDH (n 133) 32; Constitution of Bangladesh (n 20): art 32; Sri Lankan Constitution does not explicitly recognize the right to life, though it has been established by the courts that Article 11 read with Article 13(4) recognizes, by necessary implications, the right to life.

¹⁶⁸ OHCHR (n 138) I; ‘Bangladesh: Security Forces Target Unarmed Students’ (Human Rights Watch, 22 July 2024) <https://www.hrw.org/news/2024/07/22/bangladesh-security-forces-target-unarmed-students> accessed 12 June 2025.

¹⁶⁹ FIDH (n 133) 4-5; HRC para 34 and 35

international actors, who highlighted that all operations of law enforcement agencies should comply with international HRs norms and standards, particularly regarding the policing of protests, including use of force.¹⁷⁰

The CE's deployment of subordinate actors within the executive branch to suppress protests escalated tensions, contributing to the transformation of peaceful protests into violent confrontations. In Sri Lanka, the military remained loyal to Gotabaya facilitating his escape from the country, as protestors stormed the presidential residence.¹⁷¹ In contrast, in Bangladesh, the military, under Army Chief General Waker-Uz-Zaman, refused Hasina's orders to continue enforcing the curfew or open fire on civilians, signalling a withdrawal of support for Hasina.¹⁷² This behaviour of the Sri Lankan military—reflected a continuation of its entrenched role in defending executive (and presidential) power rather than upholding constitutional or democratic norms. It reinforced historical patterns of militarization and the use of armed forces as tools of political survival, that was intensified under President Gotabaya, particularly with the increased militarization of the civil service.¹⁷³

In both cases, the excessive and unlawful use of force under the behest of the CE—played a central role in escalating rather than diffusing the unrest. The CE's resort to violence, including authorizing potentially lethal tactics against unarmed protesters, not only violated international HR obligations and constitutionally protected FRs, but also further eroded public trust and legitimacy. Especially in Sri Lanka, the use of the military which has historically served Far

¹⁷⁰ 'Bangladesh Must Immediately End Crackdown Against Protesters' (*Amnesty International*, 2024) <https://www.amnesty.org/en/petition/bangladesh-must-immediately-end-crackdown-against-protesters/> accessed 12 June 2025.

¹⁷¹ 'Bangladesh: UN Urges Restraint, End to Violence During Protests' (*UN News*, 24 July 2024) <https://news.un.org/en/story/2024/07/1152506> accessed 12 June 2025.

¹⁷² 'Bangladesh Army Refused to Suppress Deadly Protest, Curfew Imposed, Hasina Flees' (*Channel News Asia*, 28 July 2024) <https://www.channelnewsasia.com/asia/bangladesh-army-refused-suppress-deadly-protest-curfew-sheikh-hasina-flees-4531606> accessed 12 June 2025; 'Bangladesh Army Refused to Suppress Protest, Sealing Hasina's Fate' (*The Hindu*, 28 July 2024) <https://www.thehindu.com/news/international/bangladesh-army-refused-to-suppress-protest-sealing-hasinas-fate/article68497932.ece> accessed 12 June 2025.

¹⁷³ Fuglerud (n 53) 322.

from quelling dissent, these measures provoked outrage, catalysed further mobilization, and, in the case of Bangladesh, resulted in significant loss of life.

In contrast to Sri Lanka and Bangladesh, the military in Pakistan adopted a more restrained position during the removal of PM Khan, allowing formal constitutional and parliamentary processes to unfold. The evolution—and eventual breakdown—of the military’s relationship with PM Khan highlights the military’s pivotal role in shaping and sustaining executive power in Pakistan. Many contend that the military played an ‘instrumental role’ in Khan’s electoral success in 2018 through interventions in the election process, and that essentially Khan was the military’s project at undermining civilian leadership.¹⁷⁴ However, once elected, Khan attempted to play a more hands-on role with the military- especially in relation to appointments.¹⁷⁵ This interference led the military to withdraw support to Khan, and play a neutral role while the PDM executed the no-confidence process.¹⁷⁶ This strategic neutrality allowed opposition forces to access constitutional mechanisms effectively to remove the CE. This is significant for two reasons. First, it shows that in all three countries the military played a key role in the removal of the CE, either as pushback tools used by the CE to retain control or as tacit facilitators of the opposition forces. Second, even in situations where constitutional

¹⁷⁴ Farhan Hanif Siddiqi, ‘Rescuing the Agency and Resilience of Civilian Political Actors: Civil–Military Relations in Pakistan, 2008–201’ in Swati Jhaveri, Tarunabh Khaitan and Dinesha Samararatne (eds), *Constitutional Resilience in South Asia* (Hart Publishing 2023) 366; Gul Bukhari, ‘Imran Khan and the Military: Allies Today, Foes Tomorrow?’ (*Al Jazeera*, 8 August 2018) <https://www.aljazeera.com/opinions/2018/8/8/imran-khan-and-the-military-allies-today-foes-tomorrow> accessed 12 June 2025; Mehreen Zahra-Malik, ‘Pakistan Elections: Imran Khan’s Rise Marred by Arrests and Intimidation’ (*The Guardian*, 21 July 2018) <https://www.theguardian.com/world/2018/jul/21/pakistan-imran-khan-elections-arrests-intimidation> accessed 12 June 2025; Samra Hameed and Gulshan Majeed, ‘Civil-Military Relations in Pakistan: Reasons of Imran Khan’s Downfall’ (2023) 7(3) *Pakistan Languages and Humanities Review* 588, 589.

¹⁷⁵ Hameed and Majeed (n 174) 589.

¹⁷⁶ Ibid ; Niha Dagia, ‘A “Neutral” Military Establishment Risks Collapse of Imran Khan’s Government’ (*The Diplomat*, 24 March 2022) <https://thediplomat.com/2022/03/a-neutral-military-establishment-risks-collapse-of-imran-khans-government/> accessed 12 June 2025; Madiha Afzal, ‘What’s Next for Pakistan’s Politics After the Ouster of Imran Khan?’ (*United States Institute of Peace*, 14 April 2022) <https://www.usip.org/publications/2022/04/whats-next-pakistans-politics-after-ouster-imran-khan> accessed 14 June 2025.

mechanisms are used to remove a CE, there could be extra-constitutional forces manipulating or facilitating certain outcomes.

5.3. Mobilizing Party Supporters

CEs first and foremost, are politicians. As such, they naturally rely on party supporters to defend their position. This phenomenon was present in all three countries – where the CE utilized party supporters in varied levels of intensity to pushback against removal. In Bangladesh, ‘violent elements’ linked to Hasina’s political party the Awami League and its student wing – the Chhatra League, supported the state security and intelligence apparatus engage in systematic and serious HRs violations in their coordinated efforts to suppress protests. Starting on the evening of 14 July, senior Awami League figures incited Chhatra League and other violent Awami League supporters to launch armed attacks on student protesters at multiple universities.¹⁷⁷ The attackers were consistently allowed to act with impunity by authorities, and they acted in alignment with, and in support of, the security forces’ efforts to suppress protests.¹⁷⁸ The UN urged the Bangladeshi government to protect protestors against these factions.¹⁷⁹ In Sri Lanka, On 9 May 2022, supporters of then PM and the President attacked peaceful protestors in Colombo, despite large presence of authorities who did not intervene.¹⁸⁰ Subsequently, there was a wave of retaliatory violence island wide against politicians affiliated with the President’s party. Compared to Sri Lanka, the violence in Bangladesh was more organized, prolonged, and closely coordinated between party supporters and state institutions, both manipulated by the CE to ensure her survival.

¹⁷⁷ OHCHR (n 138) 6.

¹⁷⁸ Ibid 14.

¹⁷⁹ OHCHR, ‘Bangladesh: Türk Decries Government Crackdown, Urges Respect for International Law’ (25 July 2024) <https://www.ohchr.org/en/press-releases/2024/07/bangladesh-turk-decries-government-crackdown-urges-respect-international> accessed 12 June 2025.

¹⁸⁰ UN Doc A/HRC/51/5 (n 133) para 35; FIDH (n 133) 16.

Khan's party supporters protested the vote on the NCM and its outcome.¹⁸¹ Unlike in Sri Lanka and Bangladesh where the Gotabaya's and Hasina's supporters have quietened since the removal, Khan continues to mobilize PTI supporters.

¹⁸¹ 'Imran Khan's Removal as PM Triggers Protests Across Pakistan' (*Al Jazeera*, 11 April 2022) <https://www.aljazeera.com/news/2022/4/11/imran-khan-removal-as-pm-triggers-protests-across-pakistan> accessed 12 June 2025.

6. Conclusion and Findings

6.1. Aftermath of Removing the Chief Executive

Does the removal of a CE, be it through constitutional mechanisms or extra-constitutional approaches lead to a complete breakdown of the constitutional system of the country? As the findings of this essay are extremely context-specific, the author refrains from making any generalized recommendations. However, the three case studies can inspire opposition forces in other polities, especially those experiencing acute crises under authoritarian regimes.

In Bangladesh, following Sheikh Hasina's resignation on 5th August 2024, and departure from the country, the military announced the formation of an interim government.¹⁸² Subsequently parliament was dissolved by the President and Nobel laureate Muhammad Yunus was sworn in as Bangladesh's interim PM, establishing the interim government in consultation with the student-led movement.¹⁸³ It is composed of prominent civil society figures, including student protest leaders, lawyers, academics, and former government officials.¹⁸⁴ In situations where the parliament stands dissolved and elections are to be held, the constitutional bridge would be the 'non-party caretaker government' per the 13th Amendment, tasked with overseeing general elections with the Election Commission and "carry on the routine functions of such government" in the interim period.¹⁸⁵ A court decision in 2011 declared this Amendment 'void and ultra-vires' but allowed the system to be in place under the doctrines of necessity and state safety.¹⁸⁶ Subsequently, Hasina's government in 2011 abolished the caretaker system under the

¹⁸² 'Bangladesh Prime Minister Hasina Resigns Amid Mass Protests' (*Human Rights Watch*, 6 August 2024) <https://www.hrw.org/news/2024/08/06/bangladesh-prime-minister-hasina-resigns-amid-mass-protests> accessed 14 June 2025.

¹⁸³ Ruth Levush, 'Interim Government and the Constitution of Bangladesh' (*Library of Congress Blogs*, 29 August 2024) <https://blogs.loc.gov/law/2024/08/interim-government-and-the-constitution-of-bangladesh/> accessed 12 June 2025.

¹⁸⁴ OHCHR (n 138) 9-10.

¹⁸⁵ Article 58D.

¹⁸⁶ *CIVIL APPEAL No 139 of 2005 with Civil Petition for Leave to Appeal No 596 of 2005* (Bangladesh Supreme Court)

15th Amendment.¹⁸⁷ Hence the current interim government does not operate under a constitutional provision. However, prior to the new government taking oaths, the President, sought an opinion from the Supreme Court per Article 106 “asking whether an interim government could be formed under the circumstances’ following which the court ruled “in favour of the formation of the interim government”.¹⁸⁸ There are ongoing debates in Bangladesh as to the nature (whether it’s a revolutionary government or an ordinary interim government, also called a caretaker, provisional, or transitional government), legitimacy, term-limit (vis-à-vis when the next parliamentary elections should be held) and reform agenda (including constitutional reform) of the interim government which are beyond the scope of this essay.¹⁸⁹ Since its appointment, the interim government has faced challenges including an evolving leadership crisis, driven by a trust deficit with key stakeholders—especially the military—due to delays in announcing an election date (at the time of writing this essay in June 2025 – they are scheduled for the first half of 2026). Bangladesh has also initiated legal proceedings at the country’s International Crimes Tribunal against Hasina (who is currently in self-exile) on charges of crimes against humanity and genocide for coordinated, widespread and systematic attacks committed against the protestors.¹⁹⁰ The interim government also banned Hasina’s party under the Anti-Terrorism Act.¹⁹¹

Compared to Bangladesh, Sri Lanka provides contextual insights of the aftermath of a CE removal. Following Gotabaya’s resignation on 14th July 2022, Ranil Wickramasinghe (who

¹⁸⁷ Omitted by the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011), section 21.

¹⁸⁸ ‘Interim government headed by Yunus is legal, says Supreme Court’ (*bdnews24*, 9 August 2024) https://bdnews24.com/bangladesh/2327f7caf7f8#google_vignette accessed 12 June 2025.

¹⁸⁹ International Crisis Group, A New Era in Bangladesh? *Bangladesh’s First Hundred Days after Hasina* (Report No 344, 2024) 7–9.

¹⁹⁰ ‘Bangladesh Ex-PM Hasina Charged with “Systematic Attack” as Trial Opens’ (1 June 2025) <https://www.aljazeera.com/news/2025/6/1/bangladesh-ex-pm-hasina-charged-with-systematic-attack-as-trial-opens> accessed 12 June 2025.

¹⁹¹ ‘Bangladesh Bans Activities of Awami League, the Party of Ousted PM Hasina’ (11 May 2025) <https://www.aljazeera.com/news/2025/5/11/bangladesh-bans-activities-of-awami-league-the-party-of-ousted-pm-hasina> accessed 12 June 2025.

was the PM at the time following Mahina Rajapakse's resignation earlier) became the acting president and was subsequently elected as the President by Parliament on 20th July 2022.¹⁹² This was under Articles 38 and 40 of the Constitution and the Presidential Elections (Special Provisions) Act No. 2 of 1981 which provide for the parliament to elect a member of parliament as President. Despite seeking to establish an all-party government, recognizing the transformative power of *Aragalaya*, promising a consultative mechanism to guide constitutional, political and social reform, Wickramasinghe continued to shield the previous regime and abused powers of the CE.¹⁹³ For instance, he declared a State of Emergency with expanded regulations under which the state security apparatus including the military was deployed to violently suppress further protests.¹⁹⁴ A presidential election followed in November 2024, within the timeframe set by the constitution, avoiding significant delays which saw a peaceful transition of power. Meanwhile, petitions were filed in the Supreme Court challenging alleged constitutional violations related to both Gotabaya's departure and the parliamentary process by which Ranil became President, particularly concerning the scope of parliamentary discretion and the interpretation of succession clauses (information about these cases are not available). Gotabaya was also subsequently found responsible for the socio-economic crisis by the Supreme Court but has evaded any form of accountability.¹⁹⁵

Following Khan's removal, on 11th April, Shehbaz Sharif was elected the PM unopposed by the National Assembly since Khan's party PTI boycotted the proceedings and resigned, refusing to nominate a candidate.¹⁹⁶ He secured the simple majority, receiving 174 votes in the

¹⁹² 'News from Parliament - June 2025' (*Parliament of Sri Lanka*, 2025) <https://www.parliament.lk/en/news-en/view/2663/?category=6> accessed 12 June 2025.

¹⁹³ UN Doc A/HRC/51/5 (n 133) 6-7

¹⁹⁴ Amnesty International, "Ready to Suppress Any Protest": Sri Lanka – Unlawful Use of Weapons During Protests (Amnesty International, April 2024) 13.

¹⁹⁵ Kelly Ng, 'Sri Lanka: Rajapaksa brothers among 13 leaders responsible for crisis' *BBC News* (15 November 2023) <https://www.bbc.com/news/world-asia-67423516> accessed 14 June 2025.

¹⁹⁶ Shah Meer Baloch, 'Pakistan Assembly Elects Shehbaz Sharif as New Prime Minister' (*The Guardian*, 11 April 2022) <https://www.theguardian.com/world/2022/apr/11/pakistan-assembly-elects-shehbaz-sharif-as-new->

342-member house under Article 91 of the Constitution. Khan refused to accept the legitimacy of his ouster, claiming it was the result of a foreign-backed conspiracy—allegedly involving the United States—and orchestrated by domestic political rivals.¹⁹⁷ He began mobilizing mass protests and rallies across Pakistan from 2022 to 2024. He also faced multiple legal challenges, including corruption charges and allegations of unlawfully selling state gifts, contempt of court, and later, sedition and terrorism-related accusations.¹⁹⁸ These legal issues resulted in multiple court appearances, arrest warrants, and periods of protective bail.¹⁹⁹ Following the February 2024 parliamentary elections—marked by widespread allegations of election rigging, Pakistan Muslim League-Nawaz (PML-N), along with the Pakistan People’s Party (PPP) and other coalition partners, formed a government with Sharif as the new PM, despite PTI-backed independents winning the most seats.²⁰⁰ The transfer of power following the removal of the CE was constitutionally lawful, but it is marked with public distrust and civil unrest, as PTI and Khan continues to mobilize supporters against the government.²⁰¹

[prime-minister](#) accessed 14 June 2025; ‘Shehbaz Sharif Elected 23rd Prime Minister of Pakistan’ (*Dawn*, 11 April 2022), <https://www.dawn.com/news/1684501> accessed 14 June 2025.

¹⁹⁷ Rhea Mogul and Sophia Saifi, ‘Imran Khan Claims There’s a US Conspiracy Against Him. Why Do So Many Pakistanis Believe Him?’ (*CNN*, 27 May 2022) <https://edition.cnn.com/2022/05/27/asia/pakistan-imran-khan-us-conspiracy-intl-hnk> accessed 15 June 2025.

¹⁹⁸ ‘What are the cases against Pakistan’s former PM Imran Khan and his wife?’ (*Reuters*, 17 January 2025) <https://www.reuters.com/world/asia-pacific/what-are-cases-against-pakistans-former-pm-imran-khan-his-wife-2025-01-17/> accessed 14 June 2025.

¹⁹⁹ ‘Former ex-PM Imran Khan likely to be released on June 11, party colleague says’ (*The Economic Times*, 8 June 2025) <https://economictimes.indiatimes.com/news/international/world-news/former-ex-pm-imran-khan-likely-to-be-released-on-june-11-party-colleague-says/articleshow/121708136.cms?from=mdr> accessed 14 June 2025.

²⁰⁰ ‘Shehbaz Sharif sworn in as prime minister of Pakistan’ (*The Guardian*, 3 March 2024), <https://www.theguardian.com/world/2024/mar/03/shehbaz-sharif-sworn-in-as-prime-minister-of-pakistan> accessed 14 June 2025.

²⁰¹ Abid Hussain, ‘Pakistan’s political deadlock deepens as PTI withdraws from negotiations’ (*Al Jazeera*, 24 January 2025) <https://www.aljazeera.com/news/2025/1/24/pakistans-political-deadlock-deepens-as-pti-withdraws-from-negotiations> accessed 14 June 2025; Helen Regan and Catherine Nicholls, ‘Pakistan protests: Imran Khan supporters clash with police in Islamabad’ (*CNN*, 27 November 2024) <https://edition.cnn.com/2024/11/26/asia/pakistan-protests-imran-khan-islamabad-explainer-intl-hnk> accessed 14 June 2025.

In Bangladesh, there was no explicit constitutional provision providing the basis for the interim government – but it was granted legitimacy through the broader constitutional framework under the doctrine of necessity by the Supreme Court, thus rendering it extra-constitutional. This supports the argument that even in situations where, following the removal of a chief executive (CE), the letter of the constitution fails, constitutional resilience is maintained through opposition forces embedded in a constitutional culture committed to broader constitutional values. The Bangladeshi solution of an interim government was accepted by the student protestors as it aligned with their aspirations for democratic governance and long-term reform.

In comparison, the appointment of Wickremesinghe, who has been long accused of protecting the Rajapaksas and is himself a product of the corrupt political establishment, was seen as a gross violation of public trust and the protestors' demands. This resulted in further public dissatisfaction and unrest, which he suppressed violently. In the Sri Lankan case, the existence of a constitutional fail-safe post CE removal worked against the benefit of the opposition forces. The parliamentary majority that previously supported Gotabaya merely shifted their loyalties to Wickremesinghe, signalling the dissonance between the people and their elected representatives. This contrasts with Bangladesh, where the opposition student forces were offered a seat at the table of the interim government. In Pakistan, the opposition forces which removed Khan, led by Sharif—was able to gain control of the post of the CE and the legislature through constitutional mechanisms. However, this was followed by protests and accusations of elite collusion, reflecting a trust deficit between Pakistan's public and the ruling establishment.

Subsequently in Sri Lanka the people rejected parties from the traditional political establishment both at the Presidential and Parliamentary elections signalling their dissatisfaction of Gotabaya and his regime, in the most democratic of actions – through voting. Unlike in Pakistan, where the electoral transition of power to PM Sharif and his coalition

government has been tarnished with allegations of election stealing and continued public unrest, raising doubts about the representativeness of the new regime, the election results and the new CE have been accepted by Sri Lankans. In Bangladesh, this is yet to be witnessed as elections have not been held.

In all three countries, the opposition forces initiated legal action against the removed CE. In Pakistan and Bangladesh, this path was pursued aggressively, with legal proceedings being led by the new governments. Hasina continued to evade arrest, while Khan remains jailed. Although the motives behind the legal proceedings are at times questioned, they at least signal a break from the previous CE's regime and attempts at judicial executive accountability. In contrast, in Sri Lanka, it was civil society and public-spirited individuals who pursued legal action—neither Wickremesinghe nor the new government have initiated action (or even investigations) against Gotabaya.

6.2. Conclusion

As mentioned in the introduction this essay hypothesizes that in the context of social, economic and political crises, constitutional resilience depends on the successful restraining of the CE through a combination of constitutional mechanisms and extra-constitutional approaches by opposition forces. In other words, to ensure constitutional resilience during crisis situations in Sri Lanka, Pakistan and Bangladesh, opposition forces employed *de-jure* constitutional mechanisms and the constitutional spirit or culture which permits the use of *de-facto* extra-constitutional approaches. The key findings are as follows.

Firstly, constitutional mechanisms available to remove CEs are often inaccessible for opposition forces due to the formulation of the constitutional tools themselves. In Sri Lanka the requirement of a super majority to initiate impeachment proceedings against the President and Bangladesh's anti-defection provision which prohibits MPs from voting against party-lines

(effectively preventing a no-confidence vote against the PM) coupled with an ambiguous provision on removing the PM, render these mechanisms virtually unusable.

Secondly, the accessibility and effectiveness of constitutional mechanisms to remove the CE, especially in a crisis, also depend on the constitutional culture. In Pakistan and Sri Lanka, the Speakers of Parliament impeded access to constitutional mechanisms of executive accountability. If not for the Pakistani Supreme Court stepping in, the efforts of the opposition forces would have failed. Additionally, in Pakistan the military establishment withdrawing support to the PM and the combined efforts of the opposition political parties created a conducive environment for the successful NCM. Compared to the Pakistani opposition, the Sri Lankan opposition parties were not even able to unite to initiate a parliamentary debate on the CE's actions. This shows that the success of formal constitutional tools often depends on institutional behaviour and broader power dynamics/ relationships within the constitutional culture.

Thirdly, access to the right to protest and dissent, as a constitutional mechanism of holding the executive accountable to the public—also depends on the prevailing constitutional culture. Although the constitutions of both Sri Lanka and Bangladesh formally guarantee freedoms of speech, peaceful assembly, and expression (which collectively form the basis of the right to dissent), these are not absolute rights. Their scope and application have been restricted both through constitutional provisions and through supporting legislation i.e. through the black-letter law itself. The constitutional cultures of both countries reveal a complex and often contradictory landscape: a) Courts have explicitly recognised the right to protest and, in some cases, have sought to expand its scope; b) State institutions, particularly the security apparatus, systematically ignore, undermine, or violate both constitutional and international standards relating to this right; and c) Citizens continue to exercise this right peacefully, only to be

violently suppressed by the CE. (b) effectively neutralises the meaning of the right to protest and dissent in practice in both countries.

Hence citizens may be driven to transgress constitutional boundaries, not out of disregard for democracy, but in pursuit of it. In such extreme conditions, violent protest may emerge as a last-resort extra-constitutional forms of democratic dialogue, operating within and aimed at restoring broader constitutional objectives. Such actions cannot be deemed unconstitutional. For instance, the Preamble of the Bangladeshi Constitution affirms the people's 'sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy' and refers to norms such as 'rule of law, fundamental human rights and freedom, equality and justice'. The *Svasti* of the Sri Lankan Constitution also refers to similar norms.

Finally, in contexts where constitutional mechanisms for removing the CE are inaccessible or ineffective and the right to dissent/ protest is systematically suppressed, be it due to the constitutional formulation (supported by repressive legislation) or hostile constitutional culture, extra-constitutional approaches to remove the CE, including violent protest, may emerge not as a rejection of the respective Constitutions, but as a last-resort expression of the constitutional culture itself. Although such approaches, deviate temporarily from the formal bounds of the constitution they may be justified or accepted as attempts by citizens (or forces opposing the CE) to restore the constitutional spirit and values. Accordingly, these extra-constitutional approaches may reflect a form of constitutional resilience, enabling the constitutional system to withstand the process of removing a CE and recovering in its aftermath. Rather than signifying democratic breakdown, these extraconstitutional moments working with constitutional mechanisms enables constitutions to cope under taxing conditions, protecting the broader objectives of the constitution.

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