

# Sri Lankan court jails senior opposition politician for contempt

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Sri Lanka's highest court last week found S.B. Dissanayake, a leading parliamentarian and the chief organiser for the opposition United National Party (UNP), guilty of contempt of court and sentenced him to two years imprisonment. Despite the island's often-turbulent politics, it is the first time since formal independence in 1948 that a sitting MP has been convicted of such a charge.

The unanimous verdict, brought down on December 7 by a five-judge bench of the Supreme Court, relates to statements made by Dissanayake in the midst of the country's acute political crisis at the end of last year. The UNP was then the leading party in the ruling United National Front (UNF) coalition and engaged in a bitter conflict with President Chandrika Kumaratunga for control of the levers of state power.

Dissanayake had, until October 2001, been a senior minister in Kumaratunga's Peoples Alliance (PA) government, before breaking away, along with three other ministers, to join the UNP. Their actions, which brought the government down, were bound up with growing frustrations in ruling circles over the PA's failure to end the country's protracted civil war. Sections of the Sri Lankan elite viewed the Bush administration's declaration of a "global war on terrorism" as a means of implicitly threatening the Liberation Tigers of Tamil Eelam (LTTE) and forcing it to the negotiating table on Colombo's terms.

The UNF won the snap elections in December 2001 and in February 2002 signed a ceasefire with the LTTE in order to facilitate peace talks under Norwegian mediation. Dissanayake became a minister in the new government and an increasingly trenchant critic of Kumaratunga, who continued to hold her post as president. While verbally supporting the so-called peace process, Kumaratunga increasingly turned to the military and Sinhala chauvinist organisations such as the Janatha Vimukthi Peramuna (JVP), which denounced the peace talks as a "betrayal" of the unitary state.

The bitter debate over the peace talks rapidly evolved into an open confrontation between Kumaratunga and the government. Even though the UNF had won the general election, Kumaratunga, as president, held far-reaching executive powers under the 1978 constitution, including the right to appoint and sack ministers, and to assume ministerial roles herself. In early 2003, she colluded with the military in a series of provocations against the LTTE that played a significant part in finally scuttling negotiations in April of that year.

The president openly ignored the UNF defence minister, insisting that she had the right as commander-in-chief and under the constitution to direct the military. A sharp battle ensued throughout the remainder of 2003 with the president and the government vying for control of the military, the police and other key segments of the state apparatus. In May 2003, Kumaratunga seized the Development

Lotteries Board (DLB)—a lucrative slush fund for dispensing political favours.

The government attempted to counter the president's moves by extending the service of senior military figures, sympathetic to the UNF, who were due to retire. Kumaratunga "consulted" the Supreme Court to determine whether the president or the defence minister had the power to do so. The chief justice was one of her own appointees—Sarath N. Silva—whose installation in 1999 provoked a public outcry. Kumaratunga had passed over several more senior judges and disregarded allegations of malpractice against Silva to choose someone who was considered to be her close confidante.

The Supreme Court proceedings in October 2003 took place in a highly-charged political atmosphere. With the LTTE about to announce its proposals for the resumption of peace talks, Kumaratunga, her Sri Lanka Freedom Party (SLFP) and the JVP waged a vicious communal campaign, declaring the government was undermining national security and preparing to sell out the country. For its part, the UNF was threatening to move against the chief justice and the president through parliament.

On October 31, Chief Justice Silva engaged in a heated exchange with Attorney General K.C. Kamalasabesan who argued that the court had no power to intervene. Silva rejected the argument, declaring in a partisan manner: "The inquiry on the issue that has emerged in relation to national security is a matter related to the country's sovereignty. At present the powers of the executive president are in jeopardy."

Several days later, the court upheld Kumaratunga's control of the military and declared the defence minister's actions to be, "ultra vires, invalid and of no force or avail in law."

It was in this context that Dissanayake criticised the actions of the Supreme Court. Speaking at an annual agricultural ceremony on November 3, 2003 in Habaraduwa, he said the government opposed the involvement of the Supreme Court and would not accept the outcome.

Political events, however, were moving rapidly. At midnight on the same day, Kumaratunga, emboldened by the Supreme Court decision, formally took over three key ministries—defence, interior and mass media. The following day she dispatched soldiers to government installations and embassies and announced her intention of imposing a state of emergency. Her anti-democratic moves had all the hallmarks of a constitutional coup, which she justified in the name of defending "national security".

Under pressure from Washington and New Delhi, Kumaratunga backed away from imposing emergency powers but she retained the three ministries. After protracted talks with the UNF failed to reach a

compromise, the president unilaterally sacked the government and called fresh elections for April 2004. Her SLFP, in alliance with the JVP and several smaller parties, narrowly won and formed a minority government.

Dissanayake's remarks were not forgotten. Two SLFP activists from the Habaraduwa area petitioned the Supreme Court over his speech, which then became the basis for the contempt of court charge against him. Dissanayake at first denied making the statements then tendered an apology, saying that he had intended no disrespect for the judiciary. The Colombo media reported that a backroom deal had been done via mediators, and a lenient sentence was expected.

But the Supreme Court bench, headed by Silva, declared that Dissanayake had ridiculed the judiciary and tried to intimidate and whip up public opinion against it. Its judgement reconfirmed the wide powers that the president and the highest courts enjoy under the 1978 constitution and rejected arguments based on the British and Indian constitutions. The Supreme Court in Sri Lanka had the "sole and exclusive jurisdiction to hear and determine any question relating to the interpretation of the Constitution," it declared.

The Supreme Court decision has far-reaching political implications. For Dissanayake, it means not only two years in jail but the loss of civil rights, including the right to stand for parliament and to vote, for seven years. His only redress is an appeal to Kumaratunga for a presidential pardon. But since his crossover to the UNP, Kumaratunga has been bitterly hostile to him and is unlikely to free her political enemy.

More fundamentally, the Supreme Court decision reasserts its right to decide on constitutional matters and confirms the powers of the president, right at the point when Kumaratunga is contemplating controversial and anti-democratic amendments that would allow her to hold on to office. By jailing Dissanayake, the court has sent a strong warning to any future critics of its actions.

Under the present constitution, Kumaratunga, who has been in power since 1994, is restricted to two terms of office as president. After winning the 1999 presidential election, she was formally installed for a second term. One year later, however, she took a second oath of office, in a secretive ceremony before Chief Justice Silva, and now insists that she can hold office until 2006, rather than the end of 2005.

To retain power beyond 2006, Kumaratunga is also seeking change the constitution to abolish the executive presidency and replace it with a parliamentary system. The amendments, which would also modify the proportional voting system, are aimed at strengthening the position of the SLFP in parliament and allow her to take office as prime minister.

At present, the ruling coalition—the United Peoples Freedom Alliance (UPFA)—does not have the necessary two-thirds majority in parliament to make a constitutional amendment. Kumaratunga and her allies, however, have been floating a number of proposals to circumvent this constitutional requirement by convening a bogus constituent assembly or holding a referendum.

The JVP went even further, arguing that the election had been an expression of "the people's will", which had been subverted by the unfair electoral system. Claiming that the UPFA had received two-thirds of the vote—a patently untrue assertion—it declared that the government had a moral right to push through the amendments, even against the formal requirements of the constitution.

Until recently, the UPFA did not even have a simple parliamentary majority. Its candidate for the powerful position of speaker was

defeated and the post went to the opposition. Without control of the speaker's chair, it is virtually impossible to initiate moves to declare parliament to be a "constituent assembly". In September, the Ceylon Workers Congress (CWC), a political party/trade union based among Tamil-speaking plantation workers, defected to the government, in return for two ministerial posts, and gave the government a slender majority.

Now constitutional change, through the most contentious methods, is back on the agenda. During the budget debate last week, constitutional affairs minister D.E.W. Gunasekera revived the amendment plans, declaring that the present constitution was the root of all the problems confronting the country.

The UPFA also announced its intention last week to bring a motion of no confidence in the present speaker. By installing one of its MPs as speaker, the government hopes to regain control of the parliamentary agenda. The move has temporarily stalled because of reservations expressed by several of the UPFA partners.

The JVP is playing a key role in these anti-democratic moves. When UNP MPs created uproar in parliament last week in protest over the jailing of Dissanayake, JVP leader Wimal Weerawansa demagogically denounced the speaker and the right-wing UNP for failing to uphold procedure. He then held a press conference on December 8 to call for the speaker's removal.

In a speech last Sunday in Matara, Kumaratunga issued a menacing warning to the UNP. She called on opposition leader Ranil Wickremesinghe to rein in his MPs and stop them from trying "to change a correct and independent judgment delivered by the supreme court". She declared that the government would be compelled to control the UNP MPs if he was unable to do so.

The jailing of Dissanayake has breathed some life back into the UNP after its defeat at the April election. The conservative party has a long history of anti-democratic actions of its own. Wickremesinghe has nevertheless seized the opportunity to declare that "democracy" is under threat and to launch a campaign to free the party's jailed organiser.

All of this manoeuvring is taking place in an unstable political situation. Sharp tensions exist within the ruling coalition over Kumaratunga's decision, after the elections, to attempt to restart peace talks. The government is facing a serious financial crisis and has failed to carry out its election promises. Having exploited widespread opposition to the economic restructuring plans of the previous UNF government, the UPFA just eight months later faces a growing number of protests and strikes over declining living standards.

In these conditions, there are dangers of major new political crises such as the breakup of the ruling coalition or political and legal clashes over the government's attempts to change the constitution. In the final analysis, the Supreme Court's jailing of Dissanayake has the effect of strengthening its position and that of the ruling class as a whole for the political storms ahead—above all against any movement of the working class.



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