COEXISTENCE AND VIOLENCE: THE CASE FOR EQUALITY OF OPPORTUNITY IN SRI LANKA

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Equality of opportunity reflects the availability of opportunities to all individuals in a society to enable them to advance their interests on an equal footing. This article discusses the concept of equality of opportunity in the Sri Lankan context. It explores Sri Lanka's post-Independence socio-political and constitutional history and examines the nexus between the denial of formal and substantive equality of opportunity and the emergence of violent conflict. This article presents a case for making formal and substantive equality of opportunity integral to advancing sustainable coexistence and ensuring the non-recurrence of violent conflict in Sri Lanka. It analyses Sri Lanka's commitment to equality of opportunity in its formal constitutional framework and socio-political practice. First, it analyses Sri Lanka's constitutional framework and the formal guarantees of equality of opportunity. Second, it critically evaluates the extent to which these guarantees are realized in practice and problematizes the ostensible gap between formal law and socio-political practice. Finally, it explores some of the major structural factors that motivate the denial of formal and substantive equality of opportunity in Sri Lanka: entitlement complexes, existential fears, and institutional decay. The article concludes that equality of opportunity can be formally and substantively guaranteed only through a multi-pronged approach of constitutional, cultural, and institutional reform. Such reform is crucial to facilitate meaningful coexistence in Sri Lanka and to ensure the non-recurrence of violent conflict.

I. INTRODUCTION

Equality is a contested concept.[1] Nevertheless, it remains a core value of many democratic societies and is one of the ideals that underlie individual rights.[2] Equality of opportunity is often considered to be an integral part of the broader ideal of equality.[3] It essentially reflects the availability of opportunities to all individuals in a society to enable them to advance their interests on an equal footing.

This article discusses the concept of equality of opportunity in the Sri Lankan context. It seeks to explain the relevance of this concept to ensure the non-recurrence of violent conflict in Sri Lanka. It is presented in four sections. The first section discusses the basic conceptual features of equality of opportunity and explores the ideas of formal and substantive equality of opportunity. The second section discusses Sri Lanka's post-Independence history and the nexus between the denial of equality of opportunity and the emergence of violent conflicts. This section presents a historical case for why equality of opportunity is integral to advancing sustainable coexistence and ensuring the non-recurrence of violent conflict in Sri Lanka. The third section discusses Sri Lanka's current constitutional framework and the formal guarantees of equality of opportunity. Moreover, it critically evaluates the extent to which these guarantees have been realized in practice. The final section of this article explores some of the structural factors that motivate systemic denial of formal and substantive equality of opportunity in Sri Lanka. Three such factors are discussed: entitlement complexes of majority communities, existential fears of majority communities, and institutional decay. The article concludes with some thoughts on the processes of cultural transformation and institutional reform that are necessary to meaningfully guarantee formal and substantive equality of opportunity to all persons in Sri Lanka.

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[1]   Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Harvard University Press 2000) 2.

[2]   The Universal Declaration of Human Rights, for example, recognizes: 'All human beings are born free and equal in dignity and rights'. See Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) ('UDHR') art 1. This same ideal is found in the preamble of the International Covenant on Civil and Political Rights. See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR') preamble.

[3]   See, for example, Richard Arneson, 'Equality and Equal Opportunity for Welfare' (1989) 56(1) Philosophical Studies 77; Gerald A Cohen, 'On the Currency of Egalitarian Justice' (1989) 99(4) Ethics 906.

II. CONCEPTUALIZING EQUALITY OF OPPORTUNITY

Equality of opportunity does not mean that all individuals in a society must be categorically identical in every conceivable way. For example, it does not mean that all individuals must receive an identical income regardless of their capabilities and skill level. Instead, it ensures that all members of society are eligible to compete on equal terms and that their positions in a social hierarchy are determined through a competitive process.[4] There are two conceptions of equality of opportunity that are worth discussing: formal equality of opportunity and substantive equality of opportunity.

Formal equality of opportunity is generally opposed to assigning privilege or advantage based on birth or some other form of affiliation. It is based on the Aristotelian idea that we must "treat like cases as like".[5] This notion of equality postulates a "presumption against treating people differently".[6] The presumption simply means that everyone should be treated in the same manner unless there is a sound justification for treating someone differently. Importantly, the onus to justify differential treatment rests on whoever makes the distinction.[7] Many bases for differential treatment would be impermissible under this notion of equality. For example, casteism (i.e., where one's privilege is predetermined by the caste group one belongs to) and nepotism (i.e., where positions are offered based on membership in a family or social group) would generally be impermissible. Political patronage, whereby political patrons offer socio-economic benefits to their constituents, is also antithetical to the concept of formal equality of opportunity. Formal equality of opportunity requires respect for the principle of non-discrimination.[8] According to this principle, all individuals must be able to advance their interests regardless of identity markers, such as sex, ethnicity, religion, place of birth, age, or political affiliation.[9] This principle, for instance, would apply to an individual's access to

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[4]   Richard Arneson, 'Equality of Opportunity', *The Stanford Encyclopaedia of Philosophy* (Summer edn, 2015) <https://plato.stanford.edu/archives/sum2015/entries/equal-opportunity/> accessed 22 March 2020.

[5]   Aristotle, 'Nicomachean Ethics' in Jonathan Barnes (ed), *The Complete Works of Aristotle*, vol 3 (Princeton University Press 1985).

[6]   SI Benn and RS Peters, *Social Principles and the Democratic State* (Allen and Unwin 1959) 111.

[7]   ibid; Gerald F Gaus, *Justificatory Liberalism: An Essay on Epistemology and Political Theory* (OUP 1996) 163; Isaiah Berlin, 'Equality as an Ideal' in Frederick A Olafson (ed), *Justice and Social Policy: A Collection of Essays* (Prentice-Hall 1961).

[8]   Evadre Grant, 'Dignity and Equality' (2007) 7(2) Human Rights Law Review 300; Christopher McCrudden, 'Equality and Non-Discrimination' in David Feldman (ed), *English Public Law* (OUP 2004). See also Larry Alexander, 'What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes, and Proxies' (1992) 141 University of Pennsylvania Law Review 149.

[9]   International treaties and national constitutions, including the Sri Lankan and Indian Constitutions, often contain lists of grounds based on which a person may not be discriminated against. See ICCPR, art 2(1); Constitution of the Democratic Socialist Republic of Sri

means of generating income. While it does not guarantee an identical income to everyone, it guarantees that all individuals are permitted to generate an income without facing any discrimination. For example, the refusal to employ a person or transact with a person based solely on an identity marker, such as sex, ethnicity, or religion would amount to discrimination and a violation of formal equality of opportunity. According to scholars such as Christopher McCrudden, the principle of merit underlies formal equality of opportunity, and selecting candidates on this basis would conform to the principles of formal equality of opportunity.[10] Factors such as quality of a good or service, academic qualifications, specifically acquired skills (such as language skills), and experience can be used as criteria for determining merit.

Substantive equality of opportunity goes further than formal equality of opportunity. This conception is not based solely on meritocracy but also requires that "sufficient opportunity to develop the qualifications needed for successful application is available to all".[11] Substantive equality of opportunity focuses on the discriminatory effect of a criterion and on the structural factors that underlie that effect. For example, formal equality of opportunity may require candidates to be competent in the English language; it may then select those candidates who possess that competence. This requirement does not appear to have a discriminatory intent, as all candidates are judged equally. However, if social stratification and poverty deprives certain segments of society of the opportunity to learn English and acquire this competence, the criterion may have a discriminatory effect. Substantive equality of opportunity requires that the opportunity to develop skills is provided to everyone equally. It, according to Sandra Fredman, "aims to equalize the starting point rather than the end result".[12] For example, in a situation where English competence is necessary for accessing employment, substantive equality of opportunity would ensure that prospective candidates receive an equal opportunity to learn English. The extent to which such opportunities are afforded to everyone remains open for discussion. John Rawls, for instance, discusses "fair equality of opportunity" in this context.[13] Rawls observes that fair equality of opportunity refers to the idea that "positions are to be not only open in a formal sense, but that all should have a fair chance to attain them"; "those with similar abilities and skills should … have the same prospects of success regardless

Lanka 1978, art 12(2); Constitution of India 1950, art 15(1). See also Paul Brest, 'In Defense of the Antidiscrimination Principle' (1976) 90 Harvard Law Review 1.

[10] Christopher McCrudden, 'Merit Principles' (1998) 18(4) Oxford Journal of Legal Studies 543.

[11] Arneson (n 4).

[12] Sandra Fredman, 'Substantive Equality Revisited' (2016) 14(3) Intl Journal of Constitutional Law 723.

[13] John Rawls, *A Theory of Justice* (2nd edn, Harvard University Press 1999) 63. Rawls famously framed the 'difference principle' in the following terms: 'Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of *fair equality of opportunity'*. (emphasis added)

of their initial place in the social system".[14] Substantive equality of opportunity requires everyone to at least have fair equality of opportunity to acquire the skills that are necessary for accessing benefits. However, it also requires the elimination of structural impediments to acquiring such skills. It would ordinarily justify certain forms of affirmative action when a certain group is structurally denied an equal opportunity to gain skills. For example, if social stratification and historical circumstances deprive a child of the opportunity to learn English, substantive equality of opportunity may require special measures to be taken to ensure that the child receives this opportunity. The conception of substantive equality of opportunity that I have in mind is similar to Fredman's conception of substantive equality. Fredman proposes a four dimensional approach to substantive equality: first, it should "aim to redress disadvantage"; second, it should "counter prejudice, stigma, stereotyping, humiliation, and violence based on a protected characteristic"; third, it should "enhance voice and participation, countering both political and social exclusion"; and fourth, it should "accommodate difference and achieve structural change".[15] Such a holistic and multidimensional conception may be crucial to ensuring meaningful equality of opportunity in Sri Lanka.

III. THE SRI LANKAN CONTEXT

Sri Lanka's post-Independence history features the denial of both formal and substantive equality of opportunity to certain sections of society. This section explores three historical examples: the denial of citizenship to the Hill Country Tamil community; the exclusion of the Tamil speaking community from public sector employment and tertiary education; and the marginalization of Southern youth from economic opportunities. The latter two cases can be directly linked to violent conflict in Sri Lanka.

When Sri Lanka (then Ceylon) gained Independence in 1948, one of the first legislative measures adopted by the new legislature concerned citizenship. The criteria set out in the Citizenship Act, No. 18 of 1948 effectively denied citizenship to a large number of Tamils living on plantations located in what is called the Hill Country of Sri Lanka.[16] The community comprised persons of Indian origin who had migrated to Sri Lanka to work on British-owned

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[14]   ibid.
[15]   Fredman (n 12) 727.
[16]   According to Section 2(2) of the Act:
        a person shall be or become entitled to the status of a citizen of Sri Lanka in one of
        the following ways only: (a) by right of descent as provided by this Act; (b) by virtue
        of registration as provided by this Act or by any other Act authorizing the grant of
        such status by registration in any special case of a specified description.
      The provision effectively denied citizenship to many Hill Country Tamils who were not born
      in Sri Lanka. Citizenship by descent was based on paternal ancestry, and persons born outside

coffee and tea plantations. Close to a million members of this community were denied voting rights due to the Ceylon Parliamentary Elections (Amendment) Act, No. 48 of 1949, which made citizenship status a requirement for voting in elections.[17] These legislative measures denied formal equality of opportunity to the Hill Country Tamil community, which resulted in their long-term socio-economic marginalization. For instance, the denial of voting rights to the community resulted in an inability to elect local government institutions. This inability eventually led to exclusion from receiving basic state services, such as transportation, postal services, and roads within the plantations that they resided in.[18] Even after the legislative reform that began in the 1980s and eventuated in the Grant of Citizenship to Persons of Indian Origin Act, No. 35 of 2003,[19] the community continues to face major challenges in terms of acquiring the skills and qualifications that are necessary for upward social mobility. For instance, the community remains the least developed in terms of accessing primary, secondary, and tertiary education in Sri Lanka when compared to the populations residing in urban and rural areas.[20] Such structural discrimination has denied the Hill Country Tamil community substantive equality of opportunity.

Government policies on language have denied 'Tamil-speaking communities'[21] equal access to public sector employment and tertiary education. In 1956, the Sri Lankan government enacted the Official Language Act, No. 33 of 1956, which made Sinhala the official language. Sinhala was spoken by

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Sri Lanka had to prove a longer line of paternal ancestry than those born in Sri Lanka. Meanwhile, acquiring citizenship by registration imposed several conditions such as evidence of either parent being a citizen of Sri Lanka and the presentation of other documentary evidence that was difficult to obtain in practice. For example, it required the support of three citizens by descent who must be acquainted intimately with the person applying for citizenship.

[17] See Section 3(1) of this Act. The Act amended Section 4 of the Ceylon (Parliamentary Elections) Order in Council, 1946 and added citizenship as a qualification to be a voter. See also *Mudanayake v Sivagnanasunderam,* (1952) 53 NLR 25 (Supreme Court of Sri Lanka); Nira Wickramasinghe, *Sri Lanka in the Modern Age: A History* (OUP 2014) 181; Luwie Ganeshathasan and Asanga Welikala, 'Report on Citizenship Law: Sri Lanka' (2017) <https://cadmus.eui.eu/bitstream/handle/1814/46448/RSCAS_GLOBALCIT_CR_2017_10.pdf?sequence=1&isAllowed=y> accessed 22 March 2020.

[18] 'Hill Country Tamils of Sri Lanka: Towards Meaningful Citizenship' (Verité Research and Institute on Statelessness and Inclusion 2019) 19, 28 <https://www.veriteresearch.org/wp-content/uploads/2019/09/Verit%C3%A9-Research-Hill-Country-Tamils-of-Sri-Lanka-Towards-Meaningful-Citizenship-1.pdf> accessed 22 March 2020.

[19] Section 2 of the Act grants citizenship to a person who has been a permanent resident of Sri Lanka since 30 October 1964 or is a descendant of a person who has been a permanent resident of Sri Lanka.

[20] Verité Research and Institute on Statelessness and Inclusion (n 18) 29. See also 'Laying the Foundation for Early Childhood Education in Sri Lanka' (World Bank Group June 2014) <https://openknowledge.worldbank.org/bitstream/handle/10986/23362/Laying0the0Fou0nd0investing0for0all.pdf?sequence=1&isAllowed=y> accessed 22 March 2020.

[21] 'Tamil-speaking communities' is a general reference to the Tamil community (including the Hill Country Tamil community) and the Muslim community.

more than two-thirds of the population at that time.[22] By implication, a large number of non-Sinhala speakers were denied employment in the public sector. By the 1970s, Sinhala speakers dominated employment in the public sector, to the near exclusion of other linguistic groups.[23] The government later adopted a standardization policy in the 1970s, which replaced the existing system of determining university admissions solely based on competitive examinations. The new policy prescribed that the number of admissions from a particular linguistic group must be proportionate to the number of students attempting the university entrance examination in that language. Since more candidates attempted examinations in Sinhala, more university places were reserved for Sinhala-speaking candidates.[24] Therefore, the new policy placed non-Sinhala speakers at a disadvantage and denied university admissions to many Tamil-speaking candidates despite some of them having obtained higher grades than some Sinhala-speaking candidates.

The language policy of the state also underscored a class divide. To a large extent, public sector employment and political patronage privileged the Sinhala-speaking community[25] in the country during the first three decades following Independence. However, these structures failed to create a pathway for this community to acquire the skills that are necessary for private sector employment, following economic liberalisation in the 1970s. One of the primary reasons for this phenomenon was the lack of competence in English, which was highly valued in the private sector. As fluency in English was not prioritized in primary and secondary schools, candidates from the 'English-speaking' community gained an advantage when seeking private sector employment. The English-speaking community comprised persons who were fluent in English due to various reasons, including historical affluence. The disparity in access to private sector employment exacerbated the class divide and contributed towards the denial of substantive equality of opportunity to the Sinhala-speaking community. Thus, an official language policy that was principally designed to benefit the Sinhala-speaking community failed to deal with

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[22] The Sri Lankan population can be classified on ethnic and religious bases. The Sinhalese constitute 74.9% of the population, Tamils constitute 15.2% (including Hill Country Tamils, who constitute 4%), and Moors constitute 9.2% of the population. Over 70% of the population is Buddhist. Hindus, Muslims (i.e., adherents of Islam), and Christians constitute 12.6%, 9.7%, and 7.6% of the population, respectively. See 'Census of Population and Housing, 2012' (Department of Census and Statistics 2015) <statistics.gov.lk/PopHouSat/CPH2011/Pages/Activities/Reports/FinalReport/FinalReportE.pdf> accessed 22 March 2020.

[23] Stanley J Tambiah, *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (University of Chicago Press 1986) 75.

[24] Sasanka Perara, 'The Ethnic Conflict in Sri Lanka: A Historical and Sociopolitical Outline' (World Bank Group 2001) <http://documents.worldbank.org/curated/en/727811468302711738/pdf/677060WP00PUBL0io0political0Outline.pdf> accessed 22 March 2020.

[25] While the 'Sinhala-speaking community' refers to the linguistic group that comprises ethnically Sinhalese persons, the 'English-speaking community' refers to a multi-ethnic group that comprises persons fluent in English.

deeper structural inequalities linked to class. The policy eventually impeded the community's employability in the private sector.

Two of the three phenomena described above have directly contributed towards violent conflict in Sri Lanka. The systemic denial of equal opportunities to Tamils drove many of them (particularly in the Northern and Eastern provinces) towards militancy, which eventuated in an armed struggle that lasted three decades – between the early 1980s and 2009.[26] Meanwhile, the growing frustration in the Sinhala-speaking community led to two insurrections in the South – one in 1971, and one between 1987 and 1989. Some scholars have also noted that ethnic riots perpetrated by Sinhala mobs are sometimes connected to deeper frustrations with respect to unemployment and class stratification.[27] We have not seen a direct link between the denial of equal opportunities to the Hill Country Tamil community and any major violent conflict. Yet we can link systemic denials of formal and substantive equality of opportunity to the armed conflicts in the North and East by Tamils, and in the South by the Sinhala-speaking community.

IV. CURRENT CONSTITUTIONAL FRAMEWORK

Despite historical denials of formal equality of opportunity, Sri Lanka's current constitutional framework articulates this norm fairly clearly. This section explores Sri Lanka's constitutional framework and critically assesses some of the lingering gaps that require further legislative intervention.

Article 12(1) of the Sri Lankan Constitution provides: "All persons are equal before the law and are entitled to the equal protection of the law". Article 12(2) provides: "No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds". This framework guarantees formal equality of opportunity to all Sri Lankan citizens. However, two provisos to Article 12(2) authorize the state to impose certain language requirements for public service appointments. The first proviso stipulates that it shall be lawful to "require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification" for employment or office in the public service. However, such qualification must be "reasonably necessary for the discharge of the duties of such employment or office". The second proviso stipulates more generally that a person can be required to "have a sufficient knowledge of any language as a qualification for any such employment or office where no function of that

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[26] Alfred Jeyaratnam Wilson, *Sri Lankan Tamil Nationalism: Its Origin and Development in the Nineteenth and Twentieth Centuries* (UBC Press 2000) 114.

[27] Newton Gunasinghe, 'The Open Economy and its Impact on Ethnic Relations in Sri Lanka' in Deborah Winslow and Michael D Woost (eds), *Economy, Culture, and Civil War in Sri Lanka* (Indiana University Press 2004) 99.

employment or office can be discharged otherwise than with a knowledge of that language". For example, if Tamil is the language used by a majority of customers in a particular area in which a government service is provided, it may be reasonably necessary that the relevant government officer is competent in Tamil.

Article 12(3) of the Constitution provides: "No person shall, on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion". Therefore, persons have the right not to be discriminated against when accessing even privately-owned establishments listed in the Article.

Meanwhile, Chapter IV of the Constitution guarantees a range of language rights. Many of these provisions were introduced through the Thirteenth Amendment to the Constitution, which was enacted in 1987. Article 18 provides that Sinhala and Tamil shall be the official languages, with English as a "link" language. Article 19 then provides that Sinhala and Tamil shall be "National Languages". Article 21(1) provides: "A person shall be entitled to be educated through the medium of either of the National Languages: Provided that the provisions of this paragraph shall not apply to an institution of higher education where the medium of instruction is a language other than a National Language". Article 22 provides that any person shall be entitled to receive communications from and to communicate and transact business with any official in his official capacity in Sinhala, Tamil, or English, regardless of the language of administration in that area.

Despite these broad guarantees of equality and equality of opportunity, the current constitutional framework contains certain weaknesses. For example, the constitutional provisions that permit limitations on the right to equality and non-discrimination are quite broadly worded. The state is permitted, under Article 15(7) of the Constitution, to restrict the rights recognized under Article 12 on several grounds: "the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society". These broad grounds are not unusual in limitation clauses, and are found in both, international treaty law and national constitutions.[28] However, such limitation clauses usually allow the restriction of exercise of certain freedoms, such as

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[28] For example, Article 18(3) of the ICCPR authorizes states to limit the freedom to manifest religion or belief on the grounds of public safety, order, health, or morals, or the fundamental rights and freedoms of others. Also see Article 19(2) of the Indian Constitution, which authorizes the state to place 'reasonable restrictions' on certain freedoms on the basis of 'the sovereignty and integrity of India, the security of the state, friendly relations with foreign states,

the freedom of expression, the freedom of religion or belief, and the freedom of association. It is relatively rare to find such broad restrictions applying to the right to equality and non-discrimination. The Sri Lankan Constitution, by contrast, appears to permit the state to legally limit guarantees of equality and non-discrimination for these broad purposes. "Law" for the purpose of Article 15(7) includes emergency regulations promulgated under the Public Security Ordinance, No. 25 of 1947. This combination of factors can legitimize specific discriminatory measures that are covertly designed to target specific minority groups. For example, regulations that ban attire that conceal a part of the face are likely to be deemed valid on the grounds of national security, despite having a discriminatory effect on Muslim women who wear the *niqāb* (a cloth that covers the face of a woman). Thus, the constitutional framework allows for indirect discrimination on the basis of religion.

Many of Sri Lanka's historical challenges with respect to citizenship and access to education and employment have been remedied (at least to some extent) through constitutional and legislative reform. However, as specified above, some forms of discrimination, such as discrimination on the grounds of religion, are still permitted within the current constitutional framework and are largely sustained due to Article 15(7) of the Constitution. Meanwhile, serious denials of substantive equality of opportunity still continue. For instance, the denial of language rights to Tamil speakers persists in practice.[29] Serious gaps remain in providing state services to Tamil speakers in a language of their choice. According to a survey conducted by the Centre for Policy Alternatives in 2017, "the lack of Tamil language proficiency of [state] officers" remains a core concern.[30] Moreover, despite formal guarantees of non-discrimination, Muslims and Christians are routinely discriminated against in matters pertaining to the freedom of worship.[31] In essence, ethno-religious minorities are denied the opportunity to construct places of worship and engage in teaching their religion. Moreover, public campaigns were recently launched, calling for the boycott of Muslim-owned businesses, thereby denying Muslims equality of

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public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence'.

[29] 'Survey on the Implementation of Official Languages Policy at Ministerial Level in Sri Lanka' (Centre for Policy Alternatives 2017) <https://www.cpalanka.org/wp-content/uploads/2018/05/Language-Survey-Summary-Report-2017E.pdf> accessed 23 March 2020.

[30] ibid 13.

[31] Gehan Gunatilleke, *The Chronic and the Entrenched: Ethno-religious Violence in Sri Lanka* (International Centre for Ethnic Studies 2018); Roshini Wickremesinhe, 'Confronting Intolerance: Continued Violations Against Religious Minorities in Sri Lanka' (Minority Rights Group International 2016) <https://minorityrights.org/wp-content/uploads/2016/12/MRG_Rep_SriLan_Dec16.pdf> accessed 23 March 2020; Sabrina Esufally, 'Judicial Responses to Religious Freedom: A Case Analysis' (Verité Research and National Christian Evangelical Alliance of Sri Lanka 2015) <https://minormatters.org/storage/app/uploads/public/5b5/6f3/859/5b56f3859e9b2293487491.pdf> accessed 23 March 2020.

opportunity in the marketplace.[32] As would be discussed later in this article, on some occasions, state institutions have actively and passively supported such denials of equality of opportunity to minority groups. Therefore, despite formal guarantees of equality of opportunity, certain communities in Sri Lanka face serious structural challenges in terms of experiencing equality. We next turn to the question of why a gap between formal law and socio-political practice still persists in Sri Lanka.

V. STRUCTURAL FACTORS

The previous sections of this article have respectively dealt with the conceptual features of equality of opportunity, Sri Lanka's history concerning the denial of equality of opportunity and its relationship to violent conflict, and the current constitutional framework on equality of opportunity. The present section turns to the question of what drives contemporary denials of equality of opportunity.

We have learnt thus far that formal guarantees of equality of opportunity do not always translate into practice. In the context of Sri Lanka, this failure can be attributed to at least three major socio-political (and cultural) factors: entitlement complexes, existential fears, and institutional decay. Each of these structural factors has unique historical and contemporary roots and, in some way, mutually reinforces the others.

A. Entitlement complexes

Certain communities in Sri Lanka are socialized into believing that they are entitled to political power and socio-economic benefits by virtue of their identity alone. Such socialization takes place through long-term historical nationalist discourses.

Nationalist discourses often frame Sri Lanka as 'belonging' to the Sinhala-Buddhist community. A number of scholars point out that the *Mahāvamsa* (Great Chronicle) offers a powerful mythological basis for the belief that Sri Lanka is a Buddhist country and that Sinhala-Buddhists are divinely protected

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[32] Joanna Slater and Hafeel Farisz, 'After Sri Lankan attacks, Muslims Face Boycotts and Violence' *The Washington Post* (Minuwangoda, 7 July 2019) <https://www.washingtonpost.com/world/asia_pacific/after-easter-sunday-attacks-muslims-face-boycotts-and-violence-in-sri-lanka/2019/07/06/3e4a405a-91f6-11e9-956a-88c291ab5c38_story.html?noredirect=on> accessed 23 March 2020.

at the request of the Buddha himself.[33] Thus, this community is often framed as the 'host' of the country, and all other communities are their 'guests'.[34]

This narrative of entitlement has been advanced in two principal ways. First, ideologues such as Hikkaḍuwe Sri Sumangala Thera,[35] Anagarika Dharmapala, and Piyadasa Sirisena advanced this narrative during the late 19th and early 20th centuries.[36] Their works were, in fact, crucial to the formation and galvanization of Sinhala-Buddhism as a distinct and powerful identity strand. Contemporary ideologues such as Gunadasa Amarasekera and Nalin de Silva have meanwhile written prolifically on the proclaimed existence of a "single, overarching Sinhala-Buddhist culture" wherein minorities were respected, provided they accepted "the norms of the dominant culture as their own".[37] This ideology has given rise to a distinct political movement based on Sinhala-Buddhist nationalism.[38] One of the chief proponents of this movement was Gangodawila Soma Thera, whose message in the late 1990s and early 2000s further galvanized the Sinhala-Buddhist nationalist constituency in Sri Lanka. Political parties such as the *Sihala Urumaya*, and later the *Jathika Hela Urumaya* ('JHU'), emerged in the 2000s as political alternatives to the mainstream political parties – the United National Party and the Sri Lanka Freedom Party. The JHU has remained an ideologically powerful party since and has exerted notable influence over the state.

Second, as a corollary to successful ideological and political projects, school history curricula unquestioningly incorporate narratives of Sinhala-Buddhist entitlement to the country. For example, chapter six of the government-issued

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[33] Neil DeVotta, *Sinhalese Buddhist Nationalist Ideology: Implications for Politics and Conflict Resolution in Sri Lanka* (East-West Centre 2007) 5; Gananath Obeyesekere, *The Work of Culture: Symbolic Transformation in Psychoanalysis and Anthropology* (University of Chicago Press 1990) 147.

[34] Gehan Gunatilleke, 'The Constitutional Practice of Ethno-Religious Violence in Sri Lanka' (2018) 13(2) Asian Journal of Comparative Law 373, 359-387.

[35] See Anne M Blackburn, *Locations of Buddhism: Colonialism and Modernity in Sri Lanka* (University of Chicago Press 2010) for an in-depth discussion on the work of early revivalists such as Hikkaḍuwe Sri Sumangala Thera.

[36] Richard Gombrich and Gananath Obeyesekere, *Buddhism Transformed: Religious Change in Sri Lanka* (Princeton University Press 1988) 202-238.

[37] Ayesha Zuhair, 'Dynamics of Sinhala Buddhist Ethno-Nationalism in Post-War Sri Lanka' (Centre for Policy Alternatives 2016) 13 <https://sangam.org/wp-content/uploads/2016/11/CPA-Dynamics-of-Sinhala-Buddhist-Ethno-Nationalism-in-Post-War-Sri-Lanka.pdf> accessed 23 March 2020. See also Kalana Senaratne, 'Jathika Chinthanaya and the Executive Presidency' in Asanga Welikala (ed), *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Centre for Policy Alternatives 2015) 208.

[38] For an incisive discussion on the influence of Sinhala-Buddhist nationalist politics on constitution-making, see Benjamin Schonthal, 'Buddhism and the Constitution: The Historiography and Postcolonial Politics of Section 6' in Asanga Welikala (ed), *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Centre for Policy Alternatives 2012) 202-218; Benjamin Schonthal, 'Phases of Buddhist Nationalism in Sri Lanka' in John C Holt (ed), *Buddhist Militants and Muslim Minorities in Sri Lanka* (OUP 2016).

history textbook for grade six students contains an account of Dutugemunu, a Sinhalese ruler, who defeats Elara, a Tamil ruler, who is described as "foreign"; the Sinhalese ruler is portrayed as aiming to "liberate the country from foreign rule", "reunite the country", and "protect Buddhism".[39] According to a study by UNESCO, Sri Lankan secondary school history textbooks are largely confined to a Sinhalese-centric history of the country.[40] These textbooks often fail to recognize alternative interpretations of historical events to prompt students to critically reflect on the past. Instead, they reinforce the socialization of the Sinhala-Buddhist entitlement.

Similar narratives of entitlement can underlie regional host-guest dynamics. For example, in the Northern Province, the Tamil community may perceive itself as the host and other communities, including the Muslim community, as guests. Such host-guest dynamics can underlie ethno-religious tensions and denial of equality of opportunity to regional minorities. For example, the denial of equality of opportunity to construct religious institutions may be grounded in the idea that religious institutions of the minority threaten the dominant status of the majority religion in that area.[41]

B. Existential fears

The entitlement complexes of majority communities can also underlie certain existential fears. These fears are often framed in the context of the host community's status being threatened by the guest community's actions. For Sinhala-Buddhists, these fears often operate at the national level as they are related to a national-level entitlement complex. Similarly, certain members of the Hindu, Muslim, and mainline Christian communities may have existential fears linked to their regional entitlement complexes.

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[39] Shamara Wettimuny, 'The Danger in Distorted Education: Sri Lanka's History Curriculum' *Groundviews* (29 October 2016) <https://groundviews.org/2016/10/29/the-danger-in-distorted-education-sri-lankas-history-curriculum/> accessed 23 March 2020; Sasanka Perara, 'The Ethnic Conflict in Sri Lanka: A Historical and Sociopolitical Outline' (World Bank Group 2001) <http://documents.worldbank.org/curated/en/727811468302711738/pdf/677060WP00PUB-L0io0political0Outline.pdf> accessed 22 March 2020. According to Gunawardana, these campaigns were more likely to be aimed at capturing territory than at uniting and advancing a Sinhala-Buddhist nation. See RALH Gunawardana, 'The People of the Lion: The Sinhala Identity and Ideology in History and Historiography' (1979) 5(1) and (2) The Sri Lanka Journal of the Humanities 1.

[40] 'Textbooks Pave the Way to Sustainable Development' (UNESCO December 2016) <https://unesdoc.unesco.org/ark:/48223/pf0000246777> accessed 23 March 2020. See also MTAL Cardozo, 'Sri Lanka: In Peace or in Pieces? A Critical Approach to Peace Education in Sri Lanka' (2008) 3(1) Research in Comparative and International Education 19.

[41] *Re Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation),* SC Special Determination No 19/2003 (Supreme Court of Sri Lanka). It is noted that Buddhism is afforded a privileged status under Article 9 of the Constitution, which provides: 'The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the state to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)'.

Muslims' population growth, so-called Islamic 'radicalization', and the perceived Muslim dominance over trade underscore the existential fears of other communities with regard to their own numerical majority, general safety, and economic prosperity. The slight statistical increase in the overall population share of Sri Lankan Moors between 1981 and 2012 – from 7% to 9.2%[42] – has contributed to the fear over Muslim population growth. This fear has driven campaigns that accuse Muslim restaurants of mixing sterilization pills in the food consumed by Sinhalese customers.[43] Meanwhile, increased competition between certain Islamist groups, often described as "radical",[44] has led to overt assertions of Muslim identity and piety, thereby increasing the overall visibility of Muslim religious practices.[45] Such competition is often driven by the availability of and the need to attract funding from Middle Eastern – particularly Saudi Arabian – sources.[46] Typical examples of such external manifestations of identity and piety include Muslim women wearing the *hijab* (various forms of head covering) and *niqāb*, and men wearing the white *jubba* (a long outer garment resembling an open coat). This visibility has "created an illusion of an increase in the Muslim population, adding to the fear and suspicion of the majority towards the motives of the Muslim community".[47] Highly visible assertions of Muslim identity through particular forms of attire have also

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[42] 'Census of Population and Housing, 2012' (Department of Census and Statistics 2015) <statistics.gov.lk/PopHouSat/CPH2011/Pages/Activities/Reports/FinalReport/FinalReportE.pdf> accessed 22 March 2020.

[43] Shamara Wettimuny, 'On Kandy: How Myths about Minorities Underlie Violence' *Groundviews* (3 September 2018) <https://groundviews.org/2018/03/09/on-kandy-how-myths-about-minorities-underlie-violence/> accessed 23 March 2020.

[44] According to Bart Klem, Muslims in the Eastern Province have emerged as 'heterogeneous and divergent'. See Bart Klem, 'Islam, Politics and Violence in Eastern Sri Lanka' (2011) 70(3) Journal of South Asian Studies 730.

[45] Mohamed Faslan and Nadine Vanniasinkam, 'Fracturing Community: Intra-group Relations among the Muslims of Sri Lanka' (International Centre for Ethnic Studies 2015) 22 <http://ices.lk/wp-content/uploads/2016/03/Fracturing-Community.pdf> accessed 23 March 2020.

[46] Gehan Gunatilleke, 'The Chronic and the Entrenched: Ethno-religious Violence in Sri Lanka' (International Centre for Ethnic Studies 2018) <http://ices.lk/wp-content/uploads/2018/04/The-Chronic-and-the-Entrenched-Mr.-Gihan-Book-FINAL-WEB-PDF.pdf> accessed 23 March 2020. It is noted that Islamist groups with South Asian fundamentalist influences, such as the Jamatee Islami and the Thablighi Jamaat, initially spearheaded the so-called 'purification of Islam' in Sri Lanka. These groups clashed with Sufi groups such as the Abdur Rauf Group. Global developments, such as the rise of Saudi Arabian oil wealth, enabled large-scale funding of Islamic resurgence. Since the late 1970s, militant strands of Islam have reached Sri Lanka through increased scholarly interaction between local Muslim groups and Saudi Arabian thinkers. For example, groups such as Thawheed Jamaat have strong Saudi Arabian Wahabi influences. The Thawheed Jamaat later splintered into multiple sub-groups, including Dharus Salaf, All Ceylon Thawheed Jamaat, Sri Lanka Thawheed Jamaat, Dharul Adhar, and the National Thawheed Jamaat ('NTJ'). The NTJ is possibly the most militant of the Thawheed Jamaat groups and is associated with the Easter Sunday Attacks that took place on April 21, 2019. See also Faslan and Vanniasinkam (n 45) 14-16; Gilles Kepel, *Jihad: On the Trail of Political Islam* (Belknap Press 2002) 69-70; Kumar Ramakrishna, 'The Easter Sunday Attacks: Struggle for the Soul of Sri Lankan Muslims' (RSIS Commentaries 2019) 87 <https://www.rsis.edu.sg/wp-content/uploads/2019/05/CO19087.pdf> accessed 23 March 2020.

[47] Faslan and Vanniasinkam (n 45) 1.

driven regional inter-communal disputes.[48] For example, the recent dispute in Trincomalee over Muslim teachers wearing *abaya* (a loose garment that typically covers the head as well) has revealed certain existential fears among the Tamil Hindu community that Muslims pose a cultural threat.

These general fears are now likely to be compounded following the Easter Sunday Attacks of April 21, 2019, which claimed the lives of over 250 persons.[49] It is generally accepted that a militant Islamist group perpetrated the violence. This is likely to prompt broader existential fears among multiple non-Muslim communities and reinforce prejudices against the Muslim community. The manner in which these attacks can spawn new sources of existential fears and ethno-religious violence is demonstrated in the communal tensions that have emerged in some of the areas affected by the attacks. On May 5, 2019, several Muslim homes and businesses were attacked in Negombo, a district with a large Roman Catholic population. One of the churches targeted in the Easter Sunday Attacks is located in Negombo, and it is plausible that the attacks created tensions between the Catholic majority and the Muslim minority in the area. A dispute over a roadside accident on May 5, 2019 (reportedly involving a Muslim person) quickly spiralled into anti-Muslim violence. The state declared curfew in the area and eventually deployed security forces to neutralize the violence.[50] A few days later, anti-Muslim mob-violence erupted in the districts of Kurunegala and Gampaha. The violence lasted for more than 24 hours and left scores of Muslim-owned homes and businesses destroyed. The timing of the violence suggests that these were acts of reprisal for, or at least opportunistically connected to, the Easter Sunday Attacks.[51]

Another source of existential fear relates to the perception that Muslims are economically successful. Such fear has prompted calls for the denial of equal opportunities to Muslim-owned enterprises. Calls to boycott Muslim businesses or to prevent Muslim vendors from selling their products in certain localities are often driven by fears that Muslims are dominating an economy that Sinhala-Buddhists are entitled to dominate. For example, campaigns

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[48] For a useful discussion on the relationship between intra-religious disputes and general ethno-religious violence, see Dennis McGilvray, 'Sri Lankan Muslims: Between Ethno-Nationalism and the Global Ummah' (2011) 17(1) Nations and Nationalism 45.

[49] Pamela Constable and Joanna Slater, 'Brothers of Sri Lanka Bombing Mastermind Said to be Killed in Safe House Battle; Catholics Watch Mass on TV' *The Washington Post* (Colombo, 28 April 2019) <https://www.washingtonpost.com/world/asia_pacific/brothers-of-sri-lanka-bombing-mastermind-said-to-be-dead-in-safe-house-battle-catholics-watch-mass-on-tv/2019/04/28/426d1e9c-6932-11e9-a698-2a8f808c9cfb_story.html> accessed 23 March 2020.

[50] DBS Jeyraj, 'Anti – Muslim Violence Erupts in Negombo With Attacks Occurring on Sunday Night Despite Curfew Being in Force: Situation Reported Calm on Monday' (*DBS Jeyraj*, 8 May 2019) <http://dbsjeyaraj.com/dbsj/archives/63925> accessed 23 March 2020. See also 'Police Curfew Imposed in Negombo' *Daily Mirror* (5 May 2019) <http://www.dailymirror.lk/breaking_news/Police-curfew-imposed-in-Negombo/108-166478> accessed 23 March 2020.

[51] 'Sri Lanka: Muslims Face Threats, Attacks' (*Human Rights Watch*, 2 July 2019) <https://www.hrw.org/news/2019/07/04/sri-lanka-muslims-face-threats-attacks> accessed 23 March 2020.

against *halal* certification (a system of certifying that certain products are fit for consumption as per Islamic religious teachings) have sought to create public antagonism towards Muslim-manufactured products.[52] The propaganda has attempted to characterize the certification process as a means of compelling Muslim consumers to only purchase the products of Muslim-owned enterprises. This propaganda also underscores the systemic exclusion of Muslim vendors from markets. On occasion, even local government institutions engage in such discrimination. For example, a local government institution in Wennappuwa, in the Western Province, temporarily banned Muslim vendors from selling goods at a public market citing security concerns.[53] The decision was prompted by complaints received by Sinhala residents and business groups that Muslim vendors with possible links to terrorism were selling goods in the market.

Christian proselytization is also perceived as a threat to the numerical and cultural dominance of other communities. This threat has historical roots, as the propagation of Christianity is associated with European colonial missionary projects, which converted many Buddhists and Hindus to Christianity.[54] It also evokes historical memories of physical, non-physical, and structural violence by European colonial administrators against Buddhists and Hindus.[55] While mainline churches, such as the Roman Catholic Church, rarely engage in proselytization in Sri Lanka today,[56] smaller churches continue to engage in the practice. Other communities often perceive this practice as an existential threat. These existential fears underlie violence targeting Christian groups and systemic discrimination against Christians in the realm of religious practices and worship. According to the National Christian Evangelical Alliance of Sri Lanka, a Christian civil society organization, 190 incidents of religious violence against churches, clergy, and Christians were recorded from 2015 to mid-2017.[57] This organization also observed an "increase in … the active

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[52] Gehan Gunatilleke, 'The Chronic and the Acute: Post-War Religious Violence in Sri Lanka' (International Centre for Ethnic Studies 2015) 35 <http://ices.lk/wp-content/uploads/2016/01/The-Chronic-and-the-Acute-Post-War-Religious-Violence-in-Sri-Lanka.pdf> accessed 23 March 2020.

[53] 'Wennapuwa – A Land of Its Own? Pradeshiya Sabha Bans Muslim Vendors' *Colombo Telegraph* (24 June 2019) <https://www.colombotelegraph.com/index.php/wennapuwa-a-land-of-its-own-pradeshiya-sabha-bans-muslim-vendors/> accessed 23 March 2020.

[54] Benjamin Schonthal, *Buddhism, Politics and the Limits of Law: The Pyrrhic Constitutionalism of Sri Lanka* (Cambridge University Press 2016) 224.

[55] KM de Silva, *A History of Sri Lanka* (Penguin 2005) 258.

[56] Nirmal Ranjith Dewasiri, 'New Buddhist Extremism and the Challenges to Ethno-Religious Coexistence in Sri Lanka' (International Centre for Ethnic Studies 2016) 16 <http://ices.lk/wp-content/uploads/2016/12/New-Buddhist-Extremism-and-the-Challenges.pdf> accessed 23 March 2020. The author observes: 'Although there is a history behind the tension between Buddhism and Christianity in Sri Lanka, the two religious establishments have come to a tacit agreement not to penetrate each other's sphere of influence in recent decades'.

[57] 'Increase in Attacks on Religious Minorities in Sri Lanka' (*National Christian Evangelical Alliance of Sri Lanka*, 27 May 2017) <http://mailchi.mp/0f02c4911569/press-release-increase-in-attacks-on-religious-minorities-in-sri-lanka-1208153> accessed 23 March 2020.

involvement of local government officials" in violence against Christians in 2017.[58] Moreover, the selective enforcement of regulatory mechanisms, such as the 2008 Circular that requires religious places of worship to be registered with the government, have been used to discriminate against Christian groups.[59]

Sinhala-Buddhist militant groups such as *Bodu Bala Sena* have capitalized on existential fears to justify and instigate violence against religious minority groups. Campaigns against these minority groups are carefully designed to resonate with the existential fears of majority groups – particularly of Sinhala-Buddhists. For example, the call for banning certain Muslim attire, including the *niqāb*,[60] and the campaign to prohibit "unethical conversions" by Christians resonates with such existential fears. These fears also underlie the rise of Tamil Hindu groups such as *Siva Senai*, which has vowed to campaign against Christian proselytization and perceived Muslim cultural dominance, particularly in the Eastern Province of Sri Lanka.[61]

C. Institutional Decay

Entitlement complexes and existential fears are phenomena that have emerged over generations and are now somewhat entrenched in Sri Lanka's social fabric. One of the primary drivers of this entrenchment is what scholars such as Neil DeVotta call "institutional decay".[62] According to DeVotta, institutional decay sets in when "the state's rule-making, applying, adjudicating and enforcing institutions shower preferential treatment on a particular group

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[58] ibid.

[59] Ministry of Religious Affairs and Moral Upliftment, Circular on Construction of New Places of Worship (16 October 2008).

[60] Incidentally, the *niqāb* was temporarily banned in Sri Lanka (alongside any attire that conceals the face of a person) following the declaration of a state of emergency after the Easter Sunday Attacks. See Emergency (Miscellaneous Provisions and Powers) Regulations 2019, reg 32A.

[61] 'Siva Senai in Sri Lanka Gets Shiv Sena Support' *The Island* (14 October 2016) <http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=153748> accessed 23 March 2020.

[62] Neil DeVotta, 'Sri Lanka's Political Decay: Analysing the October 2000 and December 2001 Parliamentary Elections' (2003) 41(2) Commonwealth and Comparative Politics 115; Neil DeVotta, *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka* (Stanford University Press 2004); Gehan Gunatilleke, 'The Structural Limits of Depoliticisation in Sri Lanka' (2019) 108(6) The Round Table: The Commonwealth Journal of International Affairs 613. The idea of 'institutional entropy' has been discussed as far back as the 1970s by scholars such as RD Auster, Barry Keating and Maryann Keating. This phenomenon is often understood as the process that an institution undergoes as it becomes older and functions less effectively. The phenomenon of 'institutional decay' that I propose is similar to, yet distinct from 'institutional entropy'. The phenomenon is similar in that it involves gradual deterioration in the effectiveness viewed from the perspective of the entirety of society. However, it is distinct because the deterioration is not due to passage of time, but because of certain incentives created by majoritarian socio-political dynamics. See RD Auster, 'The GPITPC and Institutional Entropy' (1974) 19 Public Choice 77; Barry Keating and Maryann Keating, 'Institutional Entropy' (1975) 21 Public Choice 105.

while disregarding the legitimate grievances of other groups".[63] The simple fact that over 70% of Sri Lanka's population can be classified as Sinhala-Buddhist has, over the decades, shaped the very nature of the state. The deep entrenchment of the will of an identity group that forms two-thirds of the population has incentivized and sustained decay within institutional structures. Institutions of the state, including law enforcement agencies, public service institutions, and, to some extent, the judiciary have grown to display certain predispositions towards privileging this majority community. Such predispositions undermine the objectivity of institutions and lead to their decay in terms of safeguarding meaningful equality of opportunity.

Institutional decay is clearly evident in the way ethno-religious violence is dealt with in Sri Lanka. Law enforcement authorities have been wilfully reluctant to hold perpetrators from the majority community accountable, thereby perpetuating a culture of impunity. This impunity has in turn reinforced the ability of militant groups, and the majority community they represent, to use violent means to reinforce their dominant status when minority communities threaten that status. There have been four major incidents of anti-Muslim mob violence in Sri Lanka in the past six years: Aluthgama in June 2014, Gintota in November 2017, Digana and Teldeniya in March 2018, and Kurunegala and Gampaha in May 2019.[64] In each episode, the attackers have specifically targeted Muslim businesses, and law enforcement authorities have displayed reluctance to quell the attacks and arrest perpetrators.[65] Prosecutors have remained hesitant to indict the perpetrators responsible for inciting violence. For instance, Section 3(1) of the International Covenant on Civil and Political Rights Act, No. 56 of 2007 criminalizes the incitement of violence against a religious group. Yet there have been no successful convictions of any instigator of anti-Muslim violence in the twelve years since this law was enacted. Such violence has severely harmed the ability of minority groups such as the Muslim community to enjoy equal economic opportunities. Thus, institutional decay contributes to the sustenance of anti-minority violence in Sri Lanka and eventually to the denial of substantive equality of opportunity.

These mutually reinforcing phenomena can generate frustration among communities that are denied formal and substantive equality of opportunity. The emergence of new forms of inter-communal violence, similar to outbreaks in the North-East and South in the past, remains a distinct possibility. For example, Islamist radicalization in the Eastern Province is likely to draw

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[63] Neil DeVotta, *Sinhalese Buddhist Nationalist Ideology: Implications for Politics and Conflict Resolution in Sri Lanka* (East West Centre 2007) 146.

[64] Human Rights Watch (n 51).

[65] This inaction was recently observed by Sri Lanka's Human Rights Commission in a letter to the Inspector General of Police. See Letter from Human Rights Commission of Sri Lanka to the Acting Inspector General of Police (23 May 2019) <https://srilankabrief.org/2019/05/sri-lanka-hrc-provides-evidence-of-police-implicitly-of-anti-muslim-attacks-in-a-letter-to-the-igp/> accessed 23 March 2020.

from perceptions (real and imagined) of systemic discrimination and violence against the Muslim community. There is a plausible connection between widespread anti-Muslim violence and the motivation of Muslims to join militant Islamist groups seeking to recruit disenchanted young followers. This development creates new fissures in Sri Lanka's social fabric and sets the stage for future cycles of communal tension and violence.

VI. CONFRONTING THE CHALLENGE

This article presented a case for promoting formal and substantive equality of opportunity in Sri Lanka. A reading of Sri Lanka's contemporary socio-political experience suggests that, in practice, legal guarantees have not ensured meaningful equality of opportunity to minority groups. This article accordingly discussed three factors that drive this problem. First, deeply-rooted entitlement complexes of majority communities tend to motivate violent and discriminatory discourses aimed at privileging the majority and denying equality of opportunity to minority groups. Second, existential fears often underlie militant calls for the denial of equal opportunities to minority groups and the perpetration of violence against such groups. Third, institutional decay has led to the systemic privileging of the Sinhala-Buddhist majority and has led to institutional failure to ensure that minority groups enjoy equality of opportunity and are protected from violence. These contemporary phenomena present a serious risk of future inter-communal violence. I conclude with some brief thoughts on how these challenges may be confronted.

Affording all communities in Sri Lanka equality of opportunity involves certain legislative reform. For example, Article 15(7) of the Constitution ought to be substantially revised to ensure that the state cannot easily restrict the right to equality and non-discrimination for broad purposes. However, such formal legal reform is unlikely to translate into meaningful substantive equality of opportunity without a process of cultural transformation and institutional reform. Therefore, the real domain of change is likely to be outside formal constitutional structures. On the one hand, deeply entrenched entitlement complexes and existential fears need to be addressed through a process of cultural transformation. Such a process must encompass reform of school curricula, public education, and broader cultural discourses that advance equal citizenship, egalitarianism, and meritocracy. Furthermore, these initiatives must be multidimensional. For instance, they must not only motivate majority communities to perceive 'the other' as equal citizens but also empower socio-economically disadvantaged members of that majority community to gain the necessary skills to benefit from a meritocratic society. Such socio-economic disadvantage can often underlie existential fears that translate into majoritarian attitudes.

For example, transformative initiatives must create avenues for Sinhala speakers to gain competence in English so that they can meaningfully compete for employment in the private sector. On the other hand, radical institutional reform may be needed alongside cultural transformation. Institutions must be depoliticized so as to remove the impetus among institutional actors to appease and appeal to majoritarian sensibilities. Such a process of institutional reform is likely to be successful only if it can draw from (and reinforce) a parallel process of cultural transformation.

Equality of opportunity in Sri Lanka can be formally and substantively guaranteed only through a multi-pronged approach of constitutional, cultural, and institutional transformation. Such a transformative project is likely to be difficult and time-consuming, and may extend over an inter-generational time span. Yet, it is probably indispensable if we are serious about facilitating meaningful coexistence and ensuring the non-recurrence of violent conflict in Sri Lanka.