

# A critical human rights perspective on the Sri Lankan government's forced cremation policy of COVID-19 deceased in the context of religious majoritarianism

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## Abstract

The State-sanctioned forced cremation of COVID deceased in Sri Lanka was a policy which blatantly discriminated the religious rights of certain minority communities – the Muslims, for whom cremation is forbidden by their religion, and certain sections of the Christian community who consider burial as the traditional way of farewell to the dead.

This paper analyzes how COVID-19 was used as a tool for State intervention in the religious matters in a Constitutional context where religious majoritarianism prevails. It is suggested that more secular features, would improve the respect for human rights of the country.

## Keywords

religious majoritarianism, secularism, forced cremation of COVID deceased, religious rights.

## 1. Introduction

In Sri Lanka, with a population of 21.41 million as of 2020, Sinhalese make up the majority with 74.9 percent predominantly the Buddhist<sup>2</sup> and a minority Christian community. Tamils comprise approximately 15.3 percent of the population and are mainly Hindus,<sup>3</sup> with some belonging to Christian churches. The Muslim

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2 United Nations Human Rights Office of the High Commissioner, (2019) *Preliminary findings of Country Visit to Sri Lanka by the Special Rapporteur on Freedom of Religion or Belief*. Available at: <https://bit.ly/3hs3GMv>.

3 *Ibid.*

community forms the third largest ethnic group of 9.2 percent<sup>4</sup> of the population – mainly Sunni. There are also the Veddas, an indigenous community, who practice a traditional belief.

Sri Lanka, being a country enriched with different peoples, has a high probability of challenges – as it is diversity which creates the necessary condition for contestation<sup>5</sup> as seen in the recent blatant discrimination of the rights of certain minority communities based on their religious beliefs during the height of the pandemic. The policy adopted by the government of Sri Lanka requiring compulsory cremation of the COVID-19 deceased, is a continuation of the history of Sri Lankan government policies tilted towards Sinhala-Buddhist majority and hence discriminatory towards the minorities in the country. The structural amendments made to the supreme law of the land, the Constitution of Sri Lanka, since the independence of 1948 strongly identified with a single religious denomination – Buddhism – which made ‘religious othering’ apparent. Despite religious rights being guaranteed under the fundamental rights chapter, contesting prejudicial laws directed towards ‘other’ religious beliefs and practices is made an arduous task in the Sri Lankan context which has now jeopardized its human rights status quo.

Religion and the State function in two fundamentally different areas of human activity, each with its own objectives and methods.<sup>6</sup> It is not the function of the State to promote, regulate, direct or otherwise interfere in religion.<sup>7</sup> However, it may do so on exceptional circumstances to ensure ‘equality’ among religious groups. It is stated that in States which identify themselves strongly with a single religious denomination as well as States which identify themselves negatively in relation to a religion, there is no scope for human rights compliance.<sup>8</sup> In order to strike a balance between the two, secularism emerged as a concept in the West.

The term secularism was first coined by the British free thinker George Jacob Holyoke in 1851 and had the meaning of ‘non-religious’. The normative principle of secularism is to ensure equality by the State being neutral toward religions. The Eastern part of the world was intrigued by the concept towards the end of the 19th century. However, its incorporation into the constitutional architectures of certain countries happened in its own time and with its own distinctiveness. While some countries embraced the concept fully, some have totally avoided it based on their histories.

4 Ibid.

5 Kathryn Harvey, (2012) *Democratic Agonism: Conflict and Contestation in Divided Societies*, E-International Relations. Available at: <http://bit.ly/3fVxGQh>.

6 Rajeev Bhargava, (ed.) (1998) *Secularism and its Critics*, (New Delhi: Oxford University Press), 180.

7 Ibid.

8 Jeroen Temperman, (2006) “The neutral state: optional or necessary? A triangular analysis of State-Religion relationships, democratization and human rights compliance,” *Religion & Human Rights*, 1(3):269. Available at: <https://bit.ly/3zYga4U>.

The 1978 Constitution of Sri Lanka has not adopted the secular approach. Buddhism predominates. This has ignited certain tensions, especially 'anti-Muslim hatred', particularly after the end of the civil war in 2009. Violent incidents against Muslims were recorded in cities such as Aluthgama in 2014, Ampara and Kandy in 2018. All these outbreaks of violence were manifested in several dimensions: campaigns against Halal, Muslim attire, and cattle slaughter, as well as attacks on mosques and Muslim-owned businesses. These sustained the campaign of Sinhala Buddhist hardline elements, which resulted in enormous damage both on the lives and properties of Muslims.<sup>9</sup> The matter intensified after the 'Easter Attacks' in 2019, which paved the way for the incumbent President Gotabaya Rajapaksha to win the election. He pledged justice to be served for all who suffered from the 'Easter Attack' and secure national security from Muslim extremism. This election marks a clear return to majoritarian politics.

In such a socio-political and legal background, the State functions within a tension where it struggles to strike a balance between the non-secular character of the Constitution and its obligation towards protection and promotion of religious rights of the minorities. The government's pandemic response is identified as another extension of this polarization process. This paper is structured in two sections: the forced cremation policy of Sri Lanka and religious majoritarianism vs. religious rights of minorities.

## 2. COVID-19 and the forced cremation policy of Sri Lanka

### 2.1. Issue

The COVID-19 pandemic has wreaked havoc worldwide and smaller countries have been hit particularly badly. In Sri Lanka, the first confirmed case of COVID-19 was reported on 27 January 2020. Ever since then, the matter has been escalating its impact on multiple sectors. While the government's robust action helped contain the spread of COVID-19 initially, certain elements of the plan were unnecessary, conflicted with human rights laws and were arguably acts of violence.<sup>10</sup> One of these included the mandatory cremation policy which blatantly discriminated by restricting certain religious rights of minority communities – the Muslims, for whom cremation is forbidden by their religion and certain sections of the Christian community who consider burial as the traditional way of farewell to the dead. It is a total contrast to the initial stance adopted by the government which was well in line with the WHO standards. The Provincial Practice Guidelines on

9 Mohamed Anifa Mohamed Fowsar, Mohamed Abdullah Mohamed Rameez, and Aboobacker Rameez, (2020) "Muslim minority in post-war Sri Lanka: A case study of Aluthgama and Digana violences," *Academic Journal of Interdisciplinary Studies*, 9(6):56. Available at: <https://bit.ly/3EgJshB>.

10 Megara Tegal, (2021) *Sri Lanka's double pandemic: State sanctioned forced cremations during the COVID-19 Pandemic*, People's Rights Group Sri Lanka. Available at: <https://bit.ly/3fMG44L>.

COVID-19 Suspected and Confirmed Patients published by the Ministry of Health on 27 March 2020<sup>11</sup> allowed for burial under certain conditions. Turning a blind eye on the existing legal establishments, the first critical incident was marked on 30 March where the first Muslim COVID-19 related death occurred at the Negombo Base Hospital and the body was cremated. This incident was questioned by many and was interpreted as violating the existing law of the country which emphasizes the religious rights of the people.

Following this initial incident, the Ministry of Health revised the existing guidelines on the matter the next day which enabled compulsory State sanctioned forced cremation of COVID-19 deceased. Later this was turned into a policy through the Gazette Extraordinary No. 2170/8 on 11 April 2020<sup>12</sup> and was swiftly included in the Ministry of Health's Provisional Clinical Practice Guidelines on COVID-19 Suspected and Confirmed Patients. This was a total contrast to the WHO Health Guidelines. Civil society organizations, human rights activists and citizens directed multiple appeals towards the government requesting an immediate revision of the policy, which is a direct violation of human rights.

## 2.2. *The Supreme Court judgment*

A petition was filed in the Supreme Court of Sri Lanka soon after the cremation of the first Muslim COVID-19 victim challenging the Sri Lankan government's forcible cremation policy. The grounds for the legal challenge included that it violates the right to freedom of religion and belief of some faiths and that the regulation violates the law under which the regulation was made as the law itself permits either burial or cremation.<sup>13</sup> However, by a majority decision the court refused to grant leave to proceed to the 11 applications filed by petitioners belonging to Muslim, Christian and Catholic communities.

The judges upheld the government's policies, resulting in a more politically and socially tense environment for the people. Some criticized the policy on the basis that the State apparatus is controlled by the dominant ethnic and religious group, and policies that are implemented by the State are largely in favor of the dominant ethnic group. Hence, these policies disregard other minority groups in the society.<sup>14</sup>

11 Extraordinary Gazettes No. 2167/18 (2020) Quarantine and Prevention of Disease Ordinance. Friday, 20 March 2020. Available at: <https://bit.ly/3UjRBrl>.

12 Extraordinary Gazettes No. 2170/8 (2020) Quarantine and Prevention of Disease Ordinance, Saturday, 11 April 2020. Available at: [http://documents.gov.lk/files/egz/2020/4/2170-08\\_E.pdf](http://documents.gov.lk/files/egz/2020/4/2170-08_E.pdf).

13 Center for Policy Alternatives, (2020) *Statement on Forced Cremations*. Available at: <https://www.cpalanka.org/statement-on-forced-cremations/>.

14 Sakina Moinudeen, (2021) "Ethno-centric pandemic governance: The Muslim community in Sri Lanka's COVID response." in Pradeep Peiris (ed.) *Is the cure worse than the disease? Reflections on COVID governance in Sri Lanka*, (Colombo: Center for Policy Alternatives), 111-124. Available at: <https://bit.ly/3UjSmkb>.

### **2.3. National and international pressure**

The voices of scientists and medical professionals in the field who advocated for the need to follow WHO guidelines – as mandatory cremation had no scientific base – were sidelined and rejected. Publicity in both print and electronic media aligned with the State.<sup>15</sup> Sri Lanka received significant pressure from the international community for immediate reversal of the policy<sup>16</sup>. The UN special rapporteurs<sup>17</sup> made several references to the Sri Lankan government on the matter. It was tabled for debate at the 46th session of the United Nations Human Rights Council in February 2021 by the 57-member Organization of Islamic Cooperation (OIC). However, amidst all pressures, the government kept the policy in effect till 10 February 2021.

## **3. Religious majoritarianism vs. religious rights of the minorities**

### **3.1. Constitutional protection for religious rights**

From a human rights perspective, the forced cremation policy is a total violation of Sri Lanka's international commitment to protect the values and practices of religions. Sri Lanka ratified the International Covenant on Civil and Political Rights (ICCPR) in 1980. Article 18 (1) of the ICCPR states:

Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

It elaborates that the concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including ritual formulae or ceremonial acts.<sup>18</sup> Funeral practices and customs are well within the definition.

In accordance with international standards, Article 10 of the Constitution of 1978 of Sri Lanka carries a similar undertone – the right to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or

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<sup>15</sup> Ibid.

<sup>16</sup> See also Rossella Bottoni, "Implications of the COVID-19 pandemic for religious minorities from the UN perspective," *International Journal for Religious Freedom* 16(1):3-18.

<sup>17</sup> Quoting Mr. Ahmed Shaheed, Special Rapporteur on freedom of religion or belief; Mr. Fernand de Varennes, Special Rapporteur on minority issues; Mr. Clément Nyaletsossi Voule, Special Rapporteur on the rights of peaceful assembly and association; and Ms. Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stated on "Sri Lanka: Compulsory cremation of COVID-19 bodies cannot continue, say UN experts", Press Releases of United Nations Human Rights Office of the High Commissioner, Available at: <http://bit.ly/3Xz9H9i>.

<sup>18</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4. Available at: <https://www.refworld.org/docid/453883fb22.html>.

belief of his choice. It is an absolute right and exempted from the limitations provided for fundamental rights under Article 15.<sup>19</sup> The right has been given a broad interpretation in the case of *Premalal Perera v. Weerasuriya*,<sup>20</sup> where the Supreme Court held that beliefs rooted in religion are protected in their absolute senses and they need not be logical, acceptable, consistent, or comprehensible to be protected.

Article 14(1)(e) guarantees to every citizen the freedom to either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice, or teaching. This general provision on religious rights is subjected to 'proportional' and 'necessary' restrictions prescribed under Article 15(7) of the Constitution in the interest of public security and to protection of rights and freedom of the others.

Apart from these articles which have a direct bearing on the matter; many other provisions of the Constitution have also contributed towards enhancing religious rights of the people. Article 12(2) protects individuals from discrimination on grounds of religion, whilst Article 12(3) prevents any person from being subject to any disability, liability, restriction or condition with regard to access to public places on grounds of religion. All organs of the government are held responsible as per Article 4(d) of the Constitution to respect, secure and advance all fundamental rights recognized by the Constitution.

It is the duty of the State under Article 27(5) – the Directive Principles of State Policy – to strengthen national unity by promoting co-operation and mutual confidence among all sections of the people of Sri Lanka, including all racial, religious, linguistic and other groups. The State is required to take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice. Article 27(6) mandates the State to ensure equal opportunities to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation. Finally, Article 27(11) requires the State to create necessary economic and social environment to enable people of all religious faiths to fully engage in their religious principles.

Although Directive Principles are not justiciable in a court of law, the Constitution envisages that they will guide the Government and the Legislature in good governance. The Supreme Court in *Bulankulama and Others v. Minister of Industrial Development and Others*<sup>21</sup> held that the Directive Principles of State Policy place an obligation on the State to ensure progressive realization of the rights.

<sup>19</sup> This stance was reiterated in the case *Sunila Abeysekera v. Ariya Rubasinghe, Competent Authority and Others* [2000] 1 Sri. L.R. 314.

<sup>20</sup> (1985) 2 Sri. L.R. 177.

<sup>21</sup> [2000] 3 Sri. L.R. 243.

Based on this rationale, it is reasonable to argue that the State has a positive obligation to create the necessary economic, political, and social environment to enable people of all religious faiths to practice their beliefs.

Conversely, the rights enumerated in the Fundamental Rights portion of the Constitution are justiciable in the Supreme Court of Sri Lanka. Yet, they can only be enforced when there is an infringement or imminent infringement of such rights by executive or administrative action. Therefore, every person who alleges that the fundamental rights provided in Article 10, 12 and 14(1)(e) of the Constitution have been violated or is in danger of being violated by executive or administrative action, is entitled under the terms of Article 126(2) within one month thereof, to apply to the Supreme Court by way of petition seeking relief or redress in respect of such infringement. However, as elaborated in *Mohamed Faiz v. Attorney General*,<sup>22</sup> where a private individual was acting as a functionary of the State or where an executive or administrative authority should have, but failed to, prevent the actions of a private individual, which would amount to the infringement of a fundamental right, the Supreme Court has been willing to consider an application regarding the violation of fundamental rights under Article 126 of the Constitution. With this wide scope of affairs, the State as well as individuals could now be held liable for breaching the religious rights of the people.

On such grounds, the forced cremation policy was challenged as a discriminatory health decision, arousing hostility against minorities, exacerbating existing prejudices and intercommunal tensions. However, the Sri Lankan Constitution gives prominence to the majoritarian religion, which is Buddhism and Buddha Sasana. The country has ignored the interests of religious minorities, and hence policies which were adopted violating minority religious rights were defended from the Constitution itself. In such a context, State is in a difficult situation where it is required to promote the interests of the majority religion and hence ignore the minority religions.

### **3.2. The constitutional evolution of majoritarianism**

The current Sri Lankan Constitution of 1978 is not secular in nature; it protects the religion of the majority in Article 9 of the Constitution where it grants Buddhism the “foremost place”. It obliges the state to “protect and foster Buddha Sasana”.<sup>23</sup>

However, a close study of the Constitutional evolution of Sri Lanka indicates how Sri Lanka moved from a secular to a non-secular state. The first Constitu-

<sup>22</sup> [1995] 1 S.L.R 372.

<sup>23</sup> “Buddha Sasana” refers to a wider range of Buddhist practices and ideology, not limiting to teaching and practices but also including temples, relics, temple lands and lay devotees and this indirectly postulated pre-eminence for Buddhism.

tion<sup>24</sup> after independence in 1948 prevented the State from encroaching on the domain of religion. More precisely, the law concerning religion in Section 29(2) prohibited the Parliament from enacting bills that would:

- a) prohibit or restrict the free exercise of any religion;
- b) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable;
- c) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religion; or
- d) alter the constitution of any religious body except with the consent of the governing authority.

As intended by its drafters, section 29(2) tried to remove religion from governance, so that each would flourish in the absence of the other. However, section 29(2) was soon subject to strong criticisms. One side of the argument pertained to the inadequacy of section 29(2) to protect Buddhism – the most victimized religion during colonization necessitating resuscitation after independence. Hence, the minority communities expected a direct reference to their rights under the Supreme Law. The insufficiency of the Constitution to protect racial and religious stratum in the society was emphasized as a lacuna in the law. It further reiterated the importance of a State's positive obligations to uphold individual and group freedoms and to enhance religious liberty through government action.<sup>25</sup> These two types of demands for religious rights were articulated in different discourses and in respective anticolonial movements.

In 1945, both the island's largest political party, the Ceylon National Congress (CNC), and the All Ceylon Tamil Congress (ACTC), cautioned that section 29(2) is not strong enough to protect the freedoms and rights of non-Sinhala communities. Meanwhile, some Buddhists in Ceylon, particularly lay Buddhist organizations such as the All Ceylon Buddhist Congress (ACBC), objected to section 29(2) because it did not redress the injuries that had been done to Buddhism during the colonial period, and voiced the “disappointment, almost resentment, growing among the Buddhists of Ceylon,” and prevailed on the government to “extend to Buddhism the same patronage as was extended to it by Sinhalese rulers of old.”<sup>26</sup>

Rooted in such historical reasonings, the State adopted a more of an interventionist stance for the protection of religious rights. However, in the process of

<sup>24</sup> 1947 Soulbury Constitution of Sri Lanka.

<sup>25</sup> Neil DeVotta, (2004.) *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka*. (Stanford: Stanford University Press).

<sup>26</sup> All Ceylon Buddhist Congress (1951) *Buddhism and the State: Resolutions and Memorandum of the All Ceylon Buddhist Congress*, Maradana: Oriental Press, 3.



constitutionalizing religious rights, the religion of the majority Buddhist population was granted special protection over other religious rights.

The first home-grown Constitution of 1972 altered drastically some fundamental constitutional structures – securing special status for Buddhism but only general reference to religious rights of other citizens. It did not establish Buddhism as the State religion – but granted a foremost place where it is now a duty of the State to foster Buddhism while assuring to all ‘other’ citizens their religious rights under Section 18(1)(d) of the Constitution. For some, this seemed a victory; demands for religious freedom that had been gestating for decades were now recognized in the highest law of the land. However, a mechanism to reconcile a conflict of interest between the special status of Buddhism and the general status of the minority religious rights is an important matter that has been omitted in the Constitution. State patronage for Buddhism is largely a compromise between secularism and Buddhist majoritarianism whereas the ‘other’ religions were only protected under the fundamental rights chapter in the constitution. It is a high hurdle for religious minorities to enforce their rights, with all the procedural limitations attached to it.

The initiative taken in 1972 has been continued in 1978 when the Second Republican Constitution of Sri Lanka was enacted. It only changed a single word in the Buddhism chapter; ‘Buddhism’ to ‘Buddha Sasana’, which again is alleged to have reference to a much wider range of Buddhist practices and ideology, not limiting to teaching and practices but also including temples, relics, temple lands and lay devotees. This indirectly granted pre-eminence to Buddhism.<sup>27</sup>

Meanwhile, religious rights were stated under Article 10 of the Constitution as: “Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.” Thus, it was made an absolute freedom, not subject to the limitations imposed on other fundamental rights<sup>28</sup> and was listed first among the fundamental rights, making it by implication, the most primary and it was given the status of an entrenched clause just like the Buddhism chapter. Therefore, it is claimed that neither part is given any distinct legal priority as the State’s duties to protect Buddhism and the State’s duties to guarantee religious rights are both entrenched sections of the Constitution and very difficult to amend.<sup>29</sup>

<sup>27</sup> *Ibid.*, 55.

<sup>28</sup> These limitations included “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.” Sri Lanka Constitution, chap. III, Art.15(7). A similar list can be found in the Sri Lanka Constitution of 1972, Chap. VI, Art. 18(2).

<sup>29</sup> Michael Siam Heng, and Ten Chin Liew, (eds.) (2010) “State and Secularism: Perspectives from Asia,” *World Scientific Publishing*. Available at: <https://ssrn.com/abstract=1588443>.

However, there still exists a “differential burdening,”<sup>30</sup> on the majority religion over the minority religions – especially depicted through State imposed regulations, State practices and court decisions. “Differential burdening” can be well witnessed through assessing the extent to which given religious beliefs can or cannot function freely, and the space allowed for unbelief. Regulating a religion and thereby privileging certain groups and dis-privileging ‘others’, is seen as burdening it. Similarly, in Sri Lanka the majority religion is privileged by the State. It is why certain critics argue that the solution to Sri Lanka’s religious tensions lies within the apparatus of law and hence Buddhist exclusivism plays a great role in it.

### **3.3. *The persistent tensions between constitutional majoritarianism and protection of religious rights***

The tensions between the minority-majority religious rights which has been a common occurrence within Sri Lanka’s majoritarian constitutional framework has raised two problematic areas of concern. First, how should the state reconcile the special status granted to Buddhism with the Constitution’s assurance of religious freedom for all? Second, how much authority should the State exercise over Buddhism?

Tensions between the two views were manifested in various forms since the start and the relationship between the special status of Buddhism and general religious rights remained very much in question, subject to negotiation, contest, and debate. There has been constant dialogue among and between religious groups to determine the relationship between Buddhist prerogatives and fundamental religious rights. Contesting claims about the relative status of Buddhism vis-à-vis other religions or the necessity of equal religious rights vis-à-vis special Buddhist protections<sup>31</sup> is still persistent but has emerged particularly favoring the Buddhist side.<sup>32</sup>

In such a scenario of explicitly creating a special status for Buddhism, the Constitution has, in effect, produced the category of “The Other”.<sup>33</sup> “The Other” refers to the second component, the less evident, the subordinate and the inferior affiliation. It excludes “The Other” from the mainstream human rights discourse and suppresses their religious traditions, beliefs and encounters with God as less

<sup>30</sup> A term adopted from US Supreme Court jurisprudence in the case *Sherbert v. Verner*, 374 U.S. 398.

<sup>31</sup> Neil DeVotta, (2007). *Sinhalese Buddhist Nationalist Ideology: Implications for Politics and Conflict Resolution in Sri Lanka*. (Washington: East West Center). Available at: <https://bit.ly/3zZ9e7n>.

<sup>32</sup> Ayesha Wijayalath, (2018) “Constitutional Contestation of Religion in Sri Lanka,” NUS Centre for Asian Legal Studies Working Paper, No. 18/03, 8. Available at: <https://bit.ly/3hfDcor>.

<sup>33</sup> *Ibid*, 1.

than the truth, which deserves less importance or prevalence.<sup>34</sup> It is a result of the discursive process of drawing an identity boundary asserted by politics and hence used as a democratic defense of cultural diversity within a universalistic perspective.<sup>35</sup> It implies a power relationship where the dominant in-group constructs one or many dominated out-groups by stigmatizing differences, either real or imaginary, and using it as motive for discrimination.<sup>36</sup> Dominated out-groups are “others” precisely because they are subjected to the categories and practices of the dominant in-groups<sup>37</sup> and frequently subjected to the oppression of them. The creation of this distinction has the potential to subject communities to discrimination in a pluralistic society and to undermine the fundamental principle of equality. Article 9 has thereby become one foundation for the religious tensions and divisions within the Sri Lankan society where discriminatory legislation such as the forced cremation policy was easily made a reality.

#### 4. Conclusion

The historical narration of certain post-colonial states (like Sri Lanka) countered the remnants of imperialism by embracing the idea of nationalism. In the process of their endeavor to create a modern nation or homogenous population, they have often undertaken state-sponsored models of nationhood, which adopted various elements such as culture, language, and religion as tools of homogenization. These elements are more often attributes of the dominant or majority community. This has resulted in tensions – fostering social and political instability, growing separatist tendencies and disconnecting people from one another. The quick-fix solutions to these complex issues have downplayed the root causes of them so they reoccur when and where there is an opportunity.

As elaborated in the paper, the same line of argument is reflected in the issues encountered by Sri Lanka. Since 1972, Sri Lankan lawmakers have responded to popular demands of Buddhist prerogatives. However, it has created some space for “other” religious rights in the Constitution. At the same time, for reasons of political expedience, they have left the relationship between the two undetermined. In the constitutions of 1972 and 1978, as well as the proposed constitution in 2000 (although it was never ratified), lawmakers succeed in entrenching and deepening the legal foundation for protection of Buddhism and other religious rights in Sri Lanka, yet this left an ambiguity in failing to strike a balance between the two. This has paved the way for enactments of discriminatory legisla-

34 DeVotta, *Sinhalese Buddhist Nationalist Ideology*, 8.

35 Riva Kastoryano, (2010) “Codes of Otherness,” *Social Research*, 77(1):79-100.

36 Jean-Françoise Staskaz, J. (2000), “Other/ Otherness,” *International Encyclopedia of Human Geography* n.p. Available at: <https://archive-ouverte.unige.ch/unige:77582>.

37 *Ibid.*

tion such as the forced cremation policy to dismantle the socio-political stability of the country. Experts argue that the removal of the foremost place to Buddhism will result in derailing the entire Constitution and conversely, the failure to do so will heavily question the legitimacy of the government.

The answer to this dilemma is to incorporate principles of secularism – the thick wall dividing the State and religion within the Constitutional framework, which would guide the legislature and the other organs of the State to embrace pluralism. The idea of secularism would enable three principal philosophies – liberty, equality, and neutrality. The first is the principle of liberty, which requires the State to facilitate practice of any religion; the second is the principle of equality, which requires the State to prevent any preference of one religion over another and paves the way for State neutrality, the third important principle. Eventually, overthrowing the Sinhala-Buddhist nationalism and managing to establish the traditions of pluralism, tolerance and accommodation within the Constitutional framework of Sri Lanka will enable a conducive environment for human rights protection for all religious adherents, be they majority or minority religions.