

**CONFLICT BETWEEN THE GOVERNOR AND A MINISTER IN PRE-INDEPENDENT SRI LANKA (CEYLON): CONSTITUTIONAL PROBLEMS IN A CROWN COLONY**

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The early 1940s in Sri Lanka (Ceylon) was a period of political ferment. These years heralded the transfer of power by the British into Sri Lankan hands. They were also years of intense political strife arising from the multiethnic character of Sri Lankan society.<sup>1</sup> A contentious issue that plagued constitution-makers of the time was the position of the Indians in a free Sri Lanka. Many a Sinhalese politician feared that the Indians would swamp the Sinhalese electorates, especially in the tea and rubber growing central Kandyan highlands and with their right to vote they would eclipse the position of the indigenous Sinhalese. The Indian's right to the franchise needed to be clipped, and Sinhalese politicians were obsessed by this objective.

In such a context when two Bills were presented for enactment in the local legislature, Minister S.W.R.D. Bandaranaike, Founder and representative of the Sinhala *Maha Sabha*, an extremist Sinhalese Nationalist Association, and a protagonist of the crusade against the Indians, wanted to oppose the legislation and the British Governor. One was an ordinary immigration bill without discriminatory provisions against non-Ceylonese, which had been contemplated at one time by the Board of Sri Lankan Ministers, while the second was a registration bill providing solely for compiling and maintaining a register of non-Ceylonese.<sup>2</sup>

Bandaranaike was not in favour particularly of the first bill, and he coaxed the Executive Committee of which he was Chairman to withhold the grant of approval for contributions from local authorities to the war funds until there was "satisfactory" enactment of legislation on the Indian question. Moreover, Bandaranaike had, in public utterances and through a resolution in his party, urged a boycott of the Governor. Hence Governor Andrew Caldecott planned to get rid of Minister Bandaranaike unless he changed his antagonistic attitude.

The Colonial Office, however, discovered that the Order in Council, that had ushered in the new Constitution in 1931, did not provide for the dismissal of a Minister except on an address from the State Council or on the Minister becoming a director of a company enjoying a contract with the government. Therefore the Governor had to find an alternative means to rid himself of Bandaranaike.

Caldecott wondered whether the King enjoyed an overriding power to dismiss a Minister since he was a servant of His Majesty and held office at the pleasure of the king. The Colonial Office, however, was doubtful of the propriety of such a step and was not so helpful to the Governor except to the extent of condemning Bandaranaike's behaviour and sympathising with the Governor's plight.<sup>3</sup>

In the meantime, Governor Caldecott called upon Bandaranaike to explain his hostile disposition. The Minister then publicly replied that he had been misunderstood, he wanted England to win the war, and had never advocated discourtesy towards the Governor. But the Governor was not satisfied.<sup>4</sup> Local official legal opinion could see no bar to the Governor dismissing the intransigent Minister and Caldecott wanted the Colonial Office to confirm this view.<sup>5</sup>

The Colonial Office, on the contrary, disagreed with the interpretations expressed by the legal officials of Sri Lanka. The power of a Governor to dismiss any servant of the Crown by virtue of the royal prerogative was not something inherent in his authority as the king's representative but depended upon the constitutional instruments by which he was appointed and functioned.<sup>6</sup> These instruments had not provided for the Governor to dismiss his Minister. The use of the prerogative power of the king by the Governor to dismiss a Minister because he was a servant who held office at royal pleasure was fraught with difficulty. Now arose a conflict of views between the legal authorities in London and the Governor's legal officers in Colombo.

In the ensuing interval the principal issue over which the Minister had clashed with the Governor was resolved peacefully. Bandaranaike capitulated to pressure and arranged to withdraw his embargo on the freedom of the local authorities to contribute towards the fund for war purposes.<sup>7</sup> Nevertheless, the Colonial Office wanted to resolve the conflict of opinion over the knotty question of the Governor's power to dismiss a Minister because opposing interpretations on the issue had been expressed by legal authorities.<sup>8</sup>

The views of the Colonial Office conveyed to the Governor made clear that he had no general power to dismiss the servants of the King since he enjoyed only so much of the prerogative as had been delegated to him by the constitutional instruments. Nor was the king explicitly and clearly empowered to dismiss Ministers in Sri Lanka. But as there could arise future occasions when the Governor might have to dismiss an intractable Minister or one in whom he had lost confidence, the Colonial Office wished to prepare an amendment to the Order in the Council enabling him to do so.<sup>9</sup>

Governor Caldecott did not concur with the opinion of the Colonial Office. Local legal opinion had not subscribed to the view that the Governor enjoyed only so much prerogative as was delegated to him by the constitutional instruments. Such a proposition entailed several embarrassing consequences; Caldecott hence wanted a further explanation for the adoption of such a view by the Colonial Office's legal authorities. If a future occasion arose for the Governor to dismiss a Minister, Caldecott preferred taking the risk of dismissing a Minister without taking recourse in an amendment to the Order in Council which gave him precise powers to rid himself of the Minister.<sup>10</sup>

Governor Caldecott was finding Bandaranaike generally a difficult person to handle. Caldecott had anticipated that Bandaranaike's marriage to a lady of the Kandyan nobility and the discipline of married life would provide him with the ballast that he had hitherto sadly lacked. But Bandaranaike's subsequent behaviour had already torpedoed such hope. Caldecott embellished his "most secret and personal" account to the Colonial Office with an unsavoury episode to indicate instability in Bandaranaike's domestic life while emphasising that his public behaviour had necessitated calling into question his retention of Ministerial office.<sup>11</sup>

The Governor added that people in Sri Lanka always spoke of "Young Banda" as if allowance were permissible for his youth and immaturity. But he was really forty years old and yet failed to show signs of acquiring principle or constancy. Caldecott did not like Bandaranaike and minced no words in condemning him. Although Bandaranaike was endowed with the gifts of eloquence, quick and telling repartee and ability in debate, still he was indolent and failed to exercise mental capacity. He peddled words instead of dealing in facts and consequently never learned his brief nor matched sound with sense. The Governor even alleged that Bandaranaike had maternally inherited his volatility and irresponsibility and prophesied that in any estimate of Sri Lanka's political future Bandaranaike would be an undependable factor likely to upset the most careful calculations.<sup>12</sup> One wonders whether later events proved Caldecott correct!

When Governor Caldecott called upon Bandaranaike to explain how he, along with his Executive Committee of Local Administration, had opposed contributions to the War Funds on 19 March 1941, and had made public statements unfavourable to the Governor and the British while being a Minister of the government, Bandaranaike had tried unsuccessfully to persuade his colleagues to join in a general walk out of the government.<sup>13</sup> His colleagues had left him alone to resign. When a lack of support was evident Bandaranaike retracted from the non-cooperative stand he had advocated, withdrew his opposition towards contributions to the War Funds and exclaimed that he had been misunderstood as he wished Britain to win the war.

Local opinion in the English press in Sri Lanka condemned Bandaranaike's anti-British behaviour and among the English educated people of the island he suffered a temporary political eclipse. Yet Governor Caldecott felt it better for Bandaranaike to continue to be Minister since at least then he was "more observable and more under restraint in the ministerial boat (and thereby less dangerous) than he would be outside it."<sup>13</sup>

Bandaranaike was rather rash and outspoken in his anti-British outpourings. In the State Council he had referred to England cynically while condemning the assistance given from Sri Lanka to fight the war as given to "preserve a civilization fraught with hypocrisy consisting of nothing but humbug." He added that "even a Governor must have a limit to his impertinence"; strong words indeed from a Minister of the government! As President of the Sinhala *Maha Sabha* Bandaranaike also decided to boycott the Governor and functions at which he would be present. Furthermore, he alleged that the British in order to punish the people who rebelled against them in 1817 and in 1848 had confiscated their lands and turned them over to friends and relations of the British Governors and sold some of them to European estate companies, who employed South Indian labourers as slaves in planting up such appropriated lands. Only a bloody revolution such as the French Revolution could solve the economic ills created by the British, concluded Bandaranaike in his diatribe.

Even when called upon to explain the incompatibility of his behaviour with his position as a Minister of the government, Bandaranaike had fought back: he concurred with his Executive Committee in disallowing the local authorities to contribute to the War Funds since he saw no irreconcilability of his Ministerial position with such action. Bandaranaike alleged that the Governor by giving undertakings to the Indian government which were detrimental to the interests of Sri Lanka had failed to observe the Royal Instructions in not consulting his Ministers beforehand. Consequently, there was dissatisfaction in the minds of the people which dampened the enthusiasm of their war efforts.<sup>14</sup> The Governor had assured that India would be consulted over future political reforms in Sri Lanka and the status of the Indians in the island.

Bandaranaike asserted that the Executive Committee had exercised its legitimate discretion in suspending approval to the grant of contributions by local bodies to war funds so as to highlight to higher authorities in London the discontent of the Sri Lankans with Governor Caldecott's assurances to India. Local authorities had, nevertheless, not been permanently impeded from making contributions. In regard to the disparaging statements about Britain and the Governor, he held that the statements attributed to him were incorrectly

reported and his actions were not intended to be discourteous to the Governor. He had made clear in a meeting that he wished England to win the war and Bandaranaike concluded that none of his statements was irreconcilable with his position as a Minister.<sup>15</sup>

But Governor Caldecott was yet not inclined to let off the Minister easily. He went on to question further. The Executive Committee in trying to exercise a discretion, supposed to be legally vested in it, to suspend approval of contributions by Local Bodies to the War Funds had really acted illegally because such discretion had been exercised on considerations not contemplated by the relevant statute.<sup>16</sup> From a constitutional standpoint the resolution adopted by Minister Bandaranaike's Executive Committee was a gross abuse of its powers which were limited only to Local Administration. Worse still, the association of the Minister with a motion to make assistance towards the war efforts conditional on the Royal Assent being given to certain legislation intended by Bandaranaike and his Executive Committee to circumscribe the political position of the Indians was incompatible with his oath to serve the King.

The Governor wanted Bandaranaike to rescind the resolution of his Executive Committee and to announce instead that application from local authorities to contribute towards the War funds would be accepted for consideration on their merits.<sup>17</sup> Caldecott was, however, unable to question the rather clever explanations offered by Bandaranaike in regard to some of his statements in the State Council. But they showed neither relevance to the matters that were under debate nor the restraint expected in a Minister's utterances. The Governor was hence surprised and concerned.

Bandaranaike's attendance at a public meeting of protest against the Governor's attitude on the position of Indians in Sri Lanka was inconsistent with his position as a Minister, with ministerial dignity and tradition. Moreover, if Bandaranaike had felt that submission of representations to the Secretary of State for the Colonies indicating disagreement with a Governor's act as an inadequate form of protest he could have exercised the always available and well understood alternative of resignation.

The Governor was not inclined to accept Bandaranaike's explanation that it was merely a matter of history that the British had confiscated the lands of indigenous inhabitants after the rebellions of 1817 and 1848 and disbursed them to their kith and kin and European Commercial Planting Companies at a nominal cost. It was not a full, accurate or fair statement of history that an uninformed audience might have expected reasonably from one in a position of authority.<sup>18</sup>

Eventually, the Governor, however, got his way when Minister Bandaranaike issued for immediate publication an announcement that applications from local bodies willing to contribute to the war funds would be accepted for consideration on their merits by the Minister and his Executive Committee.<sup>19</sup> At the same time, the correspondence over the issues between the Governor and the Minister was tabled at a meeting of the State Council in May 1941. The Minister's surrender was made public and Caldecott won his round. A Sri Lankan newspaper referred to Bandaranaike as "Obedient and Assisting."<sup>20</sup>

The episode itself was dismissed as a political episode of minor importance which ought never to have occurred. The Minister's conduct was characterised as a grotesque blunder. Although the Minister could have believed that on reading the correspondence between the Governor and him, the public would have viewed his conduct favourably, on the contrary it had really confirmed an impression that had been gaining ground that Bandaranaike's behaviour was irresponsible, undignified and opportunist. Caldecott's arguments had put Bandaranaike in his place. Regrettably the Minister had placed himself in a position which had made inevitable sooner or later such a humiliating recantation. However, it was also conceded that Bandaranaike had climbed down with his customary agility.<sup>21</sup>

Bandaranaike pleaded that in joining with his Executive Committee in suspending permission to local authorities to contribute towards the war funds he was legally entitled to do so. Caldecott retorted that such a decision was *ultra vires* really. It was made clear that the British Government required and even commanded all officers, civil and military, and all other inhabitants of the island to be obedient, aiding and assisting to the Governor.<sup>22</sup> The suggestion to boycott the Governor or any functions attended by him was neither an obedient nor assisting gesture and when Bandaranaike was compelled to withdraw his opposition to the Governor and to the War Fund, the Minister was well and truly proving to be an obedient servant of the Crown.

The Governor thereafter found the Minister so tractable and polite as never before but the Colonial Office prudently wondered how that would last.<sup>23</sup> The legal issue involved over the Governor's power to dismiss a Minister was important and needed to be solved. The debates in the State Council on the Governor versus Bandaranaike issue which had followed indicated the alacrity with which the Sri Lankan State Councillors pursued a discussion of constitutional issues. Editorials and letters in the press demonstrated that the politically minded Sri Lankans were canvassing the innumerable points that had been thrown up by the rather novel form of Constitution that was then operating in Sri Lanka which required resolution.<sup>24</sup>

The Constitution introduced in Sri Lanka by the Ceylon (State Council) Order in Council of 1931 was quite unusual in some of its features such as the Executive Committee system of government.<sup>25</sup> A member of the State Council, elected by the voters of a constituency, was then elected Chairman of an Executive Committee by his co-members. There were seven such Committees and each Committee was allocated subjects and functions. The Chairmen of these Committees were appointed by the Governor to be Ministers for the groups of subjects and functions of their Committees.<sup>26</sup>

The Chairmanship of an Executive Committee was inseparable from the office of Minister. Otherwise there would have arisen the anomaly of a person after resignation from the office of Minister yet continuing to function as Chairman of an Executive Committee. Also, a Minister dismissed by the Governor, who was the appointing authority, could still continue as Chairman of his Executive Committee owing to the want of a provision for the election of a new Chairman of an Executive Committee upon the dismissal or suspension of a Minister. This was untenable and would create conflicts in position. It was hence concluded that since the office of Chairman of an Executive Committee could not be divorced from that of Minister, if, from any cause, the appointment of a Minister was terminated the election of that Minister as Chairman of an Executive Committee would also become void. But this was unfortunately not clearly expressed.

The Legal Secretary J.C. Howard differed from the Attorney General of Sri Lanka over the question of a Governor's right to dismiss a Minister in terms of the Constitution of 1931. The Attorney General held that a Minister could not be dismissed easily by the Governor but, basing his reasoning on English practice and provisions, the Legal Secretary stated that members of a Ministry held office at the pleasure of the Crown and were dismissable without cause being assigned,<sup>27</sup> a practice prevalent in self-governing dominions. In Sri Lanka too the position of a Minister in regard to the Government was considered to be contractual. The Minister served the Government on certain conditions as holder of an appointment for which a salary was assigned and he could be dismissed by the Governor.

The difference of opinion between the Attorney General and the Legal Secretary in Sri Lanka over the important issue of whether the Governor could dismiss his Ministers was naturally construed to be important. It warranted a comprehensive examination of the entire constitutional question by the Colonial Office to enable a solution to be decided upon although the Secretary of State for the Colonies had generally inclined towards the views expressed by the Sri Lankan Attorney General.

The Governor was advised that he had no power to dismiss a Minister merely because he was the appointing authority by importing provisions of an Interpretation Ordinance into the State Council Ordinance of 1931 and adapting them for that purpose. Such action would be inapt because it was inconsistent with the pattern designed by the Order in Council for working that part of the Constitution relating to the appointment and termination of the appointment of Ministers. Nor could the Governor exercise prerogative powers, as were imputed in the Legal Secretary's opinion, since a Governor's power to dismiss a servant of the Crown by virtue of the Royal Prerogative was not inherent in the Governor's authority as the King's representative. The inevitable conclusion was that the Governor of Sri Lanka had no power to dismiss a Minister and the Legal Secretary's views on the issue were unacceptable.<sup>28</sup>

While examining several legal provisions it became evident that invoking the Interpretation Ordinance to interpret the Order in Council that created the Constitution of 1931 would be a deliberate act and it was held that nothing deliberate ought to be done by the Colonial Office with which view the Legal Secretary, however, disagreed. The Legal Secretary of Sri Lanka concluded instead that the power to determine a Minister's appointment or its termination rested with the local Governor. On the question of prerogative the issue was whether prerogative here comprised the whole body of prerogative or only the prerogative power of dismissing a Minister. If the Governor enjoyed only so much of the whole body of prerogative powers as was delegated to him by the constitutional instruments this caused serious concern since it affected all prerogative powers other than that of dismissing Ministers.<sup>29</sup>

The interpretation of the instruments that comprised the written constitution of Sri Lanka therefore had to be approached with general propositions of constitutional law and practice, and with specific propositions in regard to the nature of the constitution. Accordingly in a Crown Colony or self-governing dominion the prerogative powers that were exercisable by the Governor were not limited to the powers expressly delegated by the constitutional instruments but also comprised powers delegated by implication as those being essential for local government. Prerogative powers were an indispensable part of executive government and as statute law had neither replaced nor extinguished prerogative powers in Sri Lanka they could be exercised either by the king or his delegate, the Governor.

The Governor's right to choose a Minister was limited to the choice of a member of an Executive Committee but within those limits his power of choice was absolute. If a Minister became unfaithful to his oath of office to serve the government well and truly, the unavoidable conclusion was that either the king or the Governor should be able to dismiss him. This power of dismissal could not

be fettered with a condition that the State Council which neither made nor recommended the appointment of the Minister should have decided that the Minister was unworthy to continue in office,<sup>30</sup> argued the Legal Secretary of Sri Lanka.

But there were doubts as to whether the Governor really had powers to choose a Minister. He had to appoint as Minister any person chosen by an Executive Committee as their Chairman; the Governor could reject someone if he was not satisfied with a choice but he himself could not choose anyone. The Governor's power was hence a power of rejection and not selection. But when a State Council was dissolved a Minister continued in office although he had ceased to be Chairman of an Executive Committee and then was not subject to the control of the Committee or the State Council.<sup>31</sup>

The whole conception of the Sri Lankan constitution of 1931 was novel not only in relation to the selection of Ministers but more so in regard to the dual obligations which a Minister owed to the Governor as his Minister and to the members of his Executive Committee as their Chairman. There was no exact parallel to this in any other constitution. A Minister's responsibility to the State Council was also not clearly defined except in an indirect way as a person originally elected by the members of the Council to be a Chairman of one of their Committees. The State Council played no direct part in the appointment of a Minister and also could secure no change in an appointment. The removal of a Chairman of an Executive Committee from office upon the Governor receiving an address from the State Council<sup>32</sup> was the only clear and explicit provision in the constitution for dismissing a Minister.

Robert Drayton, the Legal Secretary of Sri Lanka, however advised Governor Caldecott that the power to dismiss a Minister on the Council's address was neither exhaustive nor was the Governor endowed with only so much of the prerogative powers as had been delegated to him by the constitutional instruments.<sup>33</sup> According to the Report of the Donoughmore Commission, Founding Fathers of the Constitution, and the drafts in the Colonial Office on the Order in Council of 1931 this contention was correct.

Above all, the Government of Sri Lanka viewed with misgiving the prospect of an amending ordinance being published on the eve of the Governor's dismissal of a Minister as that would reveal most pointedly a weakness of the Governor's position under a Constitution which had been there for years. Also, it would invite immediately an examination of the Constitution to discover further weaknesses at a time when the Governor's relations with his Minister was a matter of acute political controversy. Worse still, an amending Order in Council at this juncture would expose the Governor to criticism on the grounds that Governor Caldecott's action in calling upon Bandaranaike, Minister for Local Administration, to resign as he had failed to support the war effort and to

treat the Governor with due respect, as required of him as a Minister, had had no ultimate sanction in law.<sup>34</sup>

But the legal experts of the Colonial Office did not subscribe to the views expressed by the Legal Secretary although they were upheld by the Governor. The Legal Secretary had failed to appreciate the vital fact that the Chairman of an Executive Committee had to be appointed Minister which logically implied that it was futile for the Governor to have the power to dismiss a Minister unless he could make a complementary declaration that the cognate chairmanship also would then become vacant.<sup>35</sup> This was conclusive.

The dual position of one person being elected Chairman of an Executive Committee by its members and being Minister for the subjects allotted to that Committee on appointment by the Governor created a serious difficulty indeed. The Order in Council had expressly provided for dismissal of a Minister only if he became director of a company having a pecuniary interest in a government contract or if an address praying for dismissal was presented by the State Council. In both these exceptional situations the Order in Council also had provided clearly not only for the Minister to cease to be Minister but also to cease to be Chairman of his Executive Committee.<sup>36</sup>

This position was clearer when the background to the enactment of the Order in Council was considered. The Officer Administering the Government of Sri Lanka had suggested in 1930 that the power to dismiss a Minister should be deliberately withheld from the Governor of the Colony. Although the Governor was to be empowered to appoint Ministers it was not intended that he should be empowered to revoke a Minister's appointment. Such a power while justifiable in constitutional theory would have had little practical significance then, and its inclusion would have aroused suspicion. Hence the proconsul of that time had stated "I see no reason in a Constitution of this nature for giving the Governor power to dismiss Ministers."<sup>37</sup>

However, now Governor Caldecott, advised by his Legal Secretary was arguing that he had the power to dismiss a Minister on the ground that the Minister held office at the Governor's pleasure. But the Colonial Office felt it futile to recognise that the Governor had the power to dismiss a Minister unless there was also a complementary declaration to the effect that the cognate Chairmanship of the Executive Committee too would then become vacant simultaneously.

This view was clearly warranted because there was express provision in the governing Order in Council that when a Minister's appointment became void or was terminated on other grounds that he also ceased therefore to be the Chairman of his Executive Committee. It was especially necessary to provide for

this condition absolutely clearly in an amendment to the Order in Council since the circumstances in which a Minister could be dismissed by the Governor would be those in which the Minister concerned or the Board of Ministers as a whole with or without the cooperation of the Executive Committee concerned would strain every artifice to bring the Governor up against a deadlock. The Colonial Office correctly sensed the mood and temper of the Sri Lankan members of the State Council who were fighting against gubernatorial power<sup>38</sup> asking for more power for themselves.

It was unwise for Governor Caldecott to take a risk on the advice of his Legal Secretary by dismissing a Minister using his prerogative powers. Moreover, it would be most unfortunate if the legality of the Governor's action was then questioned in the courts. Undoubtedly the issue would be taken to courts devising some means or other to do it.<sup>39</sup> The Colonial Office hence disagreed strongly with the opinion of the local authorities in Sri Lanka<sup>40</sup>.

To buttress their conclusion the Colonial Office relayed to the Governor the learned opinion of its legal experts, Sir Sydney Abrahams and Sir Kenneth Poyser.<sup>41</sup> Not only were there no means of dismissing a Minister but also when the Order in Council of 1931 was finally drafted it had been intended that a Minister should not be made liable to lose his Ministry save in the circumstances expressly indicated in the enactment which were when the State Council presented an address to the Governor for removal of a Minister or when a Minister gained a directorship in a Company enjoying a contract with the government.

Furthermore, the Governor had a duty to appoint the Chairman of an Executive Committee and not any person or member other than the Chairman as Minister. When a duty to appoint as Minister a person designated by an office had to be exercised by the Governor the Colonial Office could not see how the Governor could revoke an appointment made not in pursuance of a power but a duty. The Chairman of an Executive Committee, it was enjoined in the Order in Council, must and no other person could be Minister. There was no provision for a Minister to forfeit his Ministry and to remain as Chairman of a Committee as that would be inconsistent. Additionally where there was provision for dismissing a Minister on an address by Council or where he forfeited his office on becoming a director of a company holding a contract with the government there were express provisions declaring that he would then cease to be Chairman of his Executive Committee. It was certain that neither the government of Sri Lanka nor the Colonial Office had contemplated the dismissal of a Minister by the Governor using his prerogative powers because the administrative authorities in Sri Lanka had in 1930 when the Order in Council was being drafted deliberately struck off sections that could have empowered the Governor to exercise the power of dismissal.<sup>42</sup>

This still did not satisfy the Sri Lankan authorities, however. The Constitution clearly had envisaged that the State Council should have an executive as well as a legislative character but it never had functioned so. The Constitution limited the collective responsibility of Ministers to financial affairs, yet the Board of Ministers was painfully but surely attaining a wider appreciation of corporate responsibility. Likewise, the position of the three Officers of State in charge of reserved subjects; the Chief Secretary, the Legal Secretary and the Financial Secretary, had both in the Board of Ministers and the State Council undergone change. The growth of practices, not provided for, was accelerated by the war conditions and many of the changes had been so gradual that they remained unperceived. But this development was a healthy one and at least enabled a cumbersome and overlaid Constitution to be made elastic and to work with minimum friction. Hence the Sri Lankan authorities argued that it was impolitic at this juncture to define more rigidly by amendments to the Order in Council the Governor's powers in relation to his Minister.

The Colonial Office, however, did not accept the view that the Constitution of 1931 could be changed in practice. Also it was undoubtedly unwise policy to use the prerogative powers of the Governor or the King or of both to rid the Governor of the embarrassment of having a troublesome or disloyal Minister.<sup>43</sup> Any endeavour to dismiss the Minister by this means would be frustrated by the absence of a complementary power to declare the cognate chairmanship of an Executive Committee also vacant. This was an insuperable impediment to the dismissal of a Minister by the Governor except on the specific grounds prescribed in the Order in Council of 1931.

The appointment of a Minister under the Sri Lankan constitution was peculiar. It was not made by the usual method of an offer which the Sovereign or his representative was free to make or not to a particular person who was free to accept or not. It was made in pursuance of a duty to appoint a particular officer (Chairman of an Executive Committee) who himself because he held that office was not at liberty to decline the appointment. The Chairman of a Committee was not a servant of the Crown. Therefore, unless the dismissal of the Minister by means of the prerogative implied a necessary termination of Chairmanship of his Executive Committee the dismissal gets frustrated because the individual would continue still to be Chairman. The dependence of the Ministry upon the Chairmanship of an Executive Committee with its inevitable implication had been overlooked by those in Sri Lanka.

Governor Andrew Caldecott remained unconvinced. In 1943 he was ready to accept the advice of his new Legal Secretary which tallied with the advice given earlier to dismiss a troublesome Minister and face any consequent risks. If the Governor had a power to reject a Chairman of a Committee and not appoint

him Minister then the non exercise of that power amounted in reality to a power of appointment, persisted the Governor's legal adviser. The Royal Instructions to the Governor spoke of "His Ministers", and a Minister was required to swear an oath pledging faithful service. This created a nexus between the Minister and the Crown. Since the Governor appointed a Minister on behalf of the Crown by reason of the power conferred on him by the Order in Council hence he had the power of dismissal too if the Order in Council was read in conjunction with the provisions of the Interpretation Ordinance, reiterated the Local Legal Adviser.

Furthermore, the Sri Lankan authority regarded that as the Chairmanship of an Executive Committee was inseparable from that of a Minister, if from any cause the appointment of a Minister is terminated the election of that Minister as Chairman of his Executive Committee also became void. If the dependence of Ministry upon Chairmanship with its inevitable implications was acknowledged that dependence could not be greater than the dependence of the Chairmanship upon the Ministry. Like the Christian doctrine of the Trinity it was not easy to comprehend that the two entities of Minister and Chairman though distinct in themselves and having differences were yet at the same time both one and indivisible.

The Sri Lankan legal experts added that the Governor had the power to dismiss his Minister using a part of the prerogative delegated to him by implication.<sup>44</sup> The Governor could, as illustrated by precedent drawn from the Colony of Malta in 1933, in an emergency, as an extreme measure, suspend the Constitution. If he had such power it was inconceivable that he was not empowered to remove from office an individual Minister who violated his oaths.

The Sri Lankan Governor had, at least, partially the executive responsibility for local affairs as well as being the guardian of imperial interests which was essential for local government. He was therefore endowed with sufficient prerogative by delegation to exercise the prerogative power to dismiss a Minister.

The intentions of the framers of the Constitution in 1931 were not legally relevant to decide the issue when it had become evident that the Constitution was capable of organic growth. By convention and practice the Constitution was not working now in the way its authors had thought it would or its progenitors, the Donoughmore Commissioners, had intended it should.

The Colonial Office, nevertheless believed firmly that even if he could get away with it, the Governor was legally and constitutionally incorrect in assuming that he could dismiss a Minister without having the Order in Council amended to provide for such action. Its opinion on the issue was crystal clear and free from difficulty while the Governor's legal advisers were unable to take a detached view of the Sri Lankan Constitution.

Their opinions were those of advocates and not of judges. They were swimming in the political stream in Sri Lanka and with English practice in mind, could not simply get away from theories of Cabinet Government. The Order in Council was not regarded by the Sri Lankan officials as a rigid instrument but as one to be interpreted according to contemporary needs. It was not considered a Code in itself but as one to be operated with recourse to other fortuitous aides such as an earlier Interpretation Ordinance and the Royal Prerogative.

The Colonial Office was baffled that while the Sri Lankan Government had intended earlier that the power of dismissal should not be given to the Governor, Caldecott was wanting to exercise it by the oblique method of using an Interpretation Ordinance or the extraneous method of using his Prerogative. This was wrong since there were other direct methods explicitly prescribed for declaring the associated office of Chairman vacant in the event of a Minister being dismissed for certain definite reasons. The reason for expressly declaring the Chairmanship vacant was that otherwise there would arise a deadlock caused by a dismissed Minister continuing still to hold the Chairmanship while the elected Chairman previously appointed by the Governor had ceased to occupy the Minister's Office.

The Colonial Office anyway felt that a consultation of the law officers of the Crown was imperative to reach finality in this controversial question. Impasse had been reached on the real question of whether the Governor of Sri Lanka had the power to dismiss a Minister or not.

However, before consulting higher legal authorities in London regarding a solution, the Colonial Office wished to be certain whether the issue was a practical one.<sup>45</sup> Fresh constitutional reforms based on proposals of the Sri Lanka Ministers were under consideration and the Colonial Office was not so anxious to deal with an issue which could be merely academic. Minister Bandaranaike had made his peace with Governor Caldecott, the Second World War was on, changes in the British imperial political set-up were imminent, and in Sri Lanka too political change was certain soon. The constitutional controversy was now solely theoretical and the Colonial Office did nothing more about it.

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5. *ibid.* Minute of K.W. Blaxter of the Colonial Office, 16.4.41
6. *ibid.* Minute of S.S. Abrahams addressed to Sir G. Bushe of Colonial Office.
7. *ibid.* Telegram from Governor of Ceylon to Secy. of State, No. 276, Secret, of 17 April 1941.
8. *ibid.* Minute of HPB of Colonial Office of 21.4.41
9. *ibid.* No. 278 Secret Telegram from Secy. of State to Governor, 17 April 1941.
10. *ibid.* No. 334 Secret Telegram from Governor to Secy. of State, 3 May 1941.
11. *ibid.* Most Secret & Personal - Extract from Things Ceylonese No. 14 S.W.R.D. Bandaranaike
12. *ibid.*
13. *ibid.* See enclosure No. 1 CSO No. CFN. 30/31 of 2 April 1941 from Governor Andrew Caldecott to Honourable Mr. S.W.R.D. Bandaranaike; also enclosure containing some extracts from Statements Reported to have been made in public by Hon. S.W.R.D. Bandaranaike dated 11 February 1941 in the State Council; 16 February 1941 on Galle Face Green; March 1941 at Pamunugama Village Hall; 30th March 1941 at the Buddhist Hall Pettah, at Special General Meeting of Sinhala *Maha Sabha*.
14. *ibid.* See Letter No. 20 from Mr. S.W.R.D. Bandaranaike Minister for Local Administration, Guildford Crescent, to Governor of 7 April 1941.
15. *ibid.*
16. *ibid.* See Governor Andrew Caldecott's letter to Hon. S.W.R.D. Bandaranaike of 13 April 1941.
17. *ibid.*
18. *ibid.*
19. *ibid.* See S.W.R.D. Bandaranaike, Minister for Local Administration to Governor, 14 April 1941.
20. *ibid.* See enclosure, *Ceylon Daily News* 19 May 1941.
21. *ibid.*
22. *ibid.*

23. *ibid.* See Enclosure, Debates in the State Council, No. 23 of 30.5.41 and Mr. K.W. Blaxter's minute of 15 November 1941
24. *ibid.*
25. For a further discussion of the Constitution of 1931 See de Silva, C.R., *Sri Lanka: A History* (Delhi, 1987) pp. 190 ff.
26. CO 54/980/15 - File 55541/12 papers on Constitutional Power of Governor to dismiss Minister, see Governor's Secret Despatch No. 35 to Secy. of State for the Colonies of 21 June 1938 and No. 36 Secretary of State's Secret Reply to Governor of 19 July 1938, and especially Enclosure, opinion of J.W. Ilangakoon, Attorney General of Ceylon.
27. *ibid.* See enclosure Secret No. S.1/38 Opinion by J.C. Howard, Legal Secy., Colombo, 15 June 1938; also see Governor's Secret letter, Andrew Caldecott to Lord Moyne in the Colonial Office, 3 May 1941.
28. *ibid.* See Minute of S.S. Abrahams addressed to Sir G. Bushe, on 18 April 1941.
29. *ibid.* See enclosure of Legal Secy. Robert H. Drayton's memo of 2 May 1941 to Governors' Secret despatch to Lord Moyne of 3 May 1941.
30. *ibid.*
31. *ibid.*
32. *ibid.* See Article 37 of Order in Council of 1931
33. *ibid.* Minute of Robert H. Drayton Legal Secy, 2 May 1941.
34. *ibid.*
35. *ibid.* Minute in Colonial Office by Abrahams addressed to Sir K. Poyser of 17.9.41.
36. *ibid.* See minute in Colonial Office of G.E.J. Gent 22.9.41.
37. quoted in *ibid.*
38. *ibid.* See minute of K.E. Poyser of Colonial Office to Sir C. Parkinson of 23.9.41.
39. *ibid.*
40. *ibid.* Telegram No. 677 Secret from Secy. of State for the Colonies to Governor of 29 September 1941.
41. *ibid.* Secret., Secy. of State for the Colonies to Governor of 13 October, 1941; and Enclosure "Power of Governor to dismiss a Minister," by S.S. Abrahams, October 3, 1941.
42. *ibid.*
43. *ibid.*
44. CO 54/980/16 - File 55541/12 - 1943 Ceylon, See Secret Governor Andrew Caldecott to Secy. of State, Oliver Stanley, Minute of 15 May, 1943, also see Enclosure, opinion of Legal Secretary J.H.B. Nihill 29.4.43, Trafford Smith addressed to Sir S. Abrahams of 16 June 1943 and Minute of Sydney Abrahams of 16 June 1943.
45. *ibid.*