



## **Interim Report of the Presidential Election- 2019**

Our observation is that the recent Presidential Election, the one that was held at the completion of the full term of presidency in recent history, ended peacefully on November 16, 2019. It can be described as the most peaceful and free election held since 1982. So much so, the incidents of election related violence stood relatively at a minimum level during the pre-election period, the period of silence and on the day of Election. Yet, certain incidents occurred after the result was announced were not satisfactory compared to the relatively peaceful atmosphere prevailed in the pre-election period. Yet, they too, did not develop into a serious proportion. On the whole, compared to past elections, this election can be described as an election that has orientated towards adopting advance political practices.

The following comparison gives a clear idea of this situation. However, it does not reflect the true picture of the situation as it contains only a numerical comparison of the incidents reported. This is due to rapid increase in the interactive communication and flow of information, compared to the past. Prior to 2015, most of the complaints were received by fax, telephone and post. But today, information and complaints are received via many channels of communication and the public is also well informed and aware of the presence of information agencies (Election Commission and monitoring organizations). Under the circumstances, it can be seen that the political parties and the public were extremely keen in providing information and bringing even the minute incidents to the notice of the authorities. Accordingly, compared to the past, we have been able to achieve a better situation than indicated by the decrease in the number of incidents. The credit of this achievement should be given to the government which was in power when the election was held and to the department of elections, police department, monitoring organizations, civic organizations, the main political parties including the two main candidates and above all, to the entire public.

	<b>COMPARATIVE ANALYSIS OF VIOLATION OF ELECTION LAW AND OTHER EVENTS -2010,2015 AND 2019</b>	<b>2010</b>	<b>2015</b>	<b>2019</b>
1	Murders	4	0	0
2	Assaults	168	57	32
3	Kidnapping/abductions	1	1	0
4	Bomb attacks	2	1	0

5	Shooting incidents	23	10	0
6	Damage caused to immovable property	25	18	3
7	Damage caused to movable property	18	17	1
8	Incidents of threat and intimidation	55	36	10
9	Damaging and burning of political party offices	206	50	22
	<b><u>Total number of incidents of violation of Law pertains to violent incidents of serious nature</u></b>	<u>502</u>	<u>190</u>	<u>68</u>
10	Misuse of State Property and Power	57	194	142
	<b><u>Total number of incidents of violation of Law pertains to use of State power , property and government officers</u></b>	<u>57</u>	<u>228</u>	<u>199</u>
11	Other events/ miscellaneous	30	17	26
	<b><u>Total Number of Violations of Law pertains to Non-Violent incidents (Except State Power)</u></b>	<u>143</u>	<u>292</u>	<u>405</u>
	<b>GRAND TOTAL</b>	<u>702</u>	<u>710</u>	<u>672</u>

This year's presidential election was free, but not fair, and there were a number of factors that had affected this situation. Also, there are several other factors having a direct impact on elections that deserve consideration in the long run. This interim report is intended to draw the attention of the Election Commission and the Legislature to those factors.

## **2. Powers to the Elections Commission to balance the media intervention.**

Majority of electronic and print media maneuvered their media institutions to promote their chosen candidate at the presidential election while the time and publicity given to other candidates remained largely negative to the extent of evoking displeasure in the conduct of media organizations. The Election Commission issued guidelines and circulars to be followed, in many occasions in this regard. Apart from that, a considerable number of press conferences were held by the Election Commission. Yet, the Election Commission was unable to keep the media balanced, and also the Election Commission lacked sufficient powers to initiate legal action against this situation. However, the Election Commission was able to bring the state media under control to a certain extent, but that too, reached a level almost out of control in the immediate approach of the final days of the election. The PAFFREL offered to send letters addressed to the President, Telecommunication Regulatory Commission and the Ministry of Mass Media enlightening them of the situation. Yet, it was only the Secretary to the Ministry of Mass Media who had paid sufficient attention to that. While, the state media and the private media are using the radio frequencies owned by the public, both parties are compelled to face an equal competition in the open market. Therefore, we propose that the following measures will be adopted to arrest and control this situation.

- i. Amend Election Laws so that the Election Commission is empowered to appoint a committee with full powers to monitor and regulate the Media for a period from the date of the proclamation of the election upto two weeks after the announcement of results.
- ii. The media to be ranked by the above committee according to a formal system.
- iii. The Election Commission to implement a program of appraisal on the neutrality of media institutions at the end of each election, based on the counts of ranking determined by the committee.
- iv. Suspension of the issue of election results to those media institutions that do not comply with at least the minimum parameters set by the Election Commission.
- v. Take the ranking into account in renewing and extending annual licenses and stop renewal of license or levy a fine on media institutions that do not maintain neutrality standards.

Although election violence and corruption were minimum, the unwarranted influence made by the media, particularly the television media, can make an impact on election results. If this situation is not arrested, a situation might arise where media institution will determine the election of the Head of the state

## **2. Enact Laws to balance the Social Media**

Since the presidential election in 2015, Social Media has rapidly become an influential group in the society. Facebook, WhatsApp and Viber, Instagram, Twitter and Linkdin are prominent among them. It is most likely that the range of social media will continue to grow in the next few years. In January 2019, Sri Lanka had a population of 20.98 million. The number of mobile telephones used in the country is 20.71 million. It is growing at a rate of 1.6% annually; further, Sri Lanka has 7.13 million internet users which amount to 34% of the population. It is growing by 6.2% annually. There are 6.20 million active media activists in the country, which is 30% of the population and it is growing at 3.3% annually. In this backdrop, it is important that the society at large and the Election Commission adopt a creative approach to make social media an effective source of social benefit and dissemination of correct information.

PAFFREL worked closely with the Election Commission and Facebook in this year's presidential election. For the first time, we were able to monitor over 11,000 Facebook pages which included the Facebook pages maintained by political parties, candidates and several other popular Facebook pages. We made an attempt to do some control on the use of Facebook by referring our observations to Facebook institutions through Election Commission. It proved successful during the two day pre-election silence period (November 14 and

15), but the response from Facebook during the rest of the period was far from being adequate.

**The observations referred to the Election Commission by PAFFREL during the entire period of election are given below:**

<b>Nature of Observation</b>	<b>Pre-election Period</b>	<b>Period of Silence</b>	<b>Day of Election</b>	<b>Post Election Period</b>
Election Law Violations	186	1185	266	1
Provision of False information	161	4	3	2
False information likely to provoke conflict	12	0	2	3
Exerting influence	24	1	0	2
Human Rights Violations	12	0	0	4
Hate speech	86	1	2	15
<b>Total</b>	<b>481</b>	<b>1191</b>	<b>273</b>	<b>27</b>

**We wish to propose the following suggestions in respect of social media.**

i. Since social media operates in the free space, the international community must be persuaded to formulate formal rules to regulate them.

ii. Since social media was not operative during the period when the laws for monitoring of media institutions were enacted, it is necessary that new laws are enacted to include social media.

iii. Although social media operates in the free space, it is important that an independent committee is appointed to monitor and regulate their operations during election time. Moreover, apart from the intrinsic regulatory requirements of media institutions, it is necessary that new laws are enacted so that the media operations will conform to the law of the country and to the legal decrees of the Elections Commission. There should be provisions to punish those who refuse to follow such laws and a system should be formulated so that those who do not conform to the law could be punished.

**3. Selection of voting centers should be reconsidered.**

12,845 polling centers were operated at the last presidential election, and a very high percentage of 83%, cast their vote. If the number of voters in overseas is deducted, the real percentage can go up to 90% or more. It is a very high rate of voter participation by international standards. As frequently mentioned by the Chairman of the Election Commission, it is almost similar to an electoral system which includes all eligible voters. However, it is important that the Election Commission take notice of the following points in selecting polling stations so that not even a single voter is inconvenienced or left out.

**i. Polling centers must be accessible to persons with physical disabilities.**

In this years presidential election it was observed that people with physical disabilities had encountered difficulties at 14 % of polling stations in casting their vote. In view of the geographical conditions of the country, finding short term solutions for lack of road access to all buildings used as traditional polling centers is not easy. But, attention must be focused on finding some alternative solutions.

- To call for a report on the number of persons with physical disabilities in each polling station from the Grama Niladhari of the area.
- Based on the findings of this report, to set up temporary polling stations in areas where there is a considerable number of such people or initiate a mobile system so that the ballot paper is carried to the voter.
- Set up of additional voting centers at electorate level enabling such people to cast their vote at national elections. It could be done on the day of polling or before that.

**ii. Avoid as much as possible the choice of places of religious worship in selecting polling centers in future elections**

In this election it had been observed that a considerable number of religious leaders had engaged in promoting their preferred candidate directly, during the period of silence and on the day of the election. In this backdrop, having a polling center in a place of religious worship is analogous to holding a poll in the house of a supporter of a political party. Therefore, attention should be focused on establishing alternative polling stations or temporary polling stations instead of using places of religious worship for the purpose. Further, we have observed instances where voters of other religions coming to a particular religious premise where the polling center was located being inconvenienced as they too were obliged to adhere to the customs practiced in the religious center.

**iii. Selection of venues which are easily accessible to the voter, as polling centers.**

Despite the majority of voting centers in Sri Lanka being easily accessible to the voter, still there are some centers without easy access. For instance, at the last presidential election, in order to reach the polling center at Hapugolla in Galle district, voters had to travel in three buses if they were to use public transport from their village or walk about 3kms through the jungle or travel in vehicles organized by political parties to reach the polling center. It is important to look into such centers before the next election through the Grama Niladhari of the area. The Director General of the Elections Commission intervened and made makeshift arrangements for the problem,

but that too, failed to produce expected results at the last minute. It is important to look into such centers before the next election, through the Grama Niladhari of the area. Attention must be focused on setting up temporary polling stations in areas with transport difficulties to prevent such situations.

#### **iv. Issue of one time medical certificates for persons born with disabilities**

The prevailing law requires that the people who are blind and physically handicapped at birth must obtain medical certificates at every election. It causes emotional and practical problems to them while diminishing their interest to vote. Therefore, the law should be amended so that the medical certificate issued for those who were disabled at birth, will be valid for a longer period.

#### **4' extend the validity of electoral registration for 10 years**

As per the existing law, the name of the voter should appear in the valid list of electoral registration when the election is announced. In some cases, there were instances where the voters had been denied the right to vote even if a new electoral list is prepared closer to the election date. Under the circumstances, it would be possible to facilitate the new voters entering the electoral list to cast their vote by amending the law pertains to electoral registration.

Compared to other countries, the Elections Department/Commission in Sri Lanka had been able to maintain the voter registration at an optimal level. However, a certain number of voters are unable to cast their vote at every election. This time too, more than 200 people in Dehiwala area alone were unable to cast their vote as their names were not in the registered electoral list. There are instances, particularly in the urban areas where the names of citizens are left out from registration as they were not in their residence or were overseas during the period of voter registration. In this regard the interest of the voter is also minimal. In order to overcome this situation, it is important that the voter registration is made valid for a minimum period of 10 years; this situation can be avoided by updating the voter registration with adequate notice given and raising public awareness. This will also help reduce the massive expenditure incurred by the government every year in preparing the voter registration. The removal of names of the people who are deceased or changed their address and inclusion of names of those reaching the age of 18 years can be done annually. Also, if it is possible to introduce a system to conduct elections according to a preplanned election calendar, the additional registration of voters can be affected to include the names of young voters reaching the age of 18 year, in the electoral registration within a specific time frame before each election.

#### **5' make the identity card compulsory**

- i. Make it compulsory for every citizen to produce the national identity card for voting.
- ii. Maintain a Central Database

The Election Commission was able to prevent completely the casting of fake vote's consequent to making the National Identity Card (NIC) or any other identity card acceptable to the commission compulsory for voting. However, there were reports on casting the ballot of certain voters by others at the recent presidential election. One way to prevent this is to make the National Identity Card mandatory for voting for every citizen. At the same time, the issue of those who cannot obtain a National Identity Card (NIC) should be looked into and a national level program introduced to remedy this situation. Also, since there were instances where more than one identity card with the same name and the number had been issued, it is important that a central Database is maintained to avoid such situations.

#### **6. Introduction of a voter identity card**

i. A permanent voter ID card should be issued to those who find it difficult to obtain the National Identity Card, instead of the temporary ID card issued to them. As temporary ID card is requested mostly by adults, some of them may lose interest in voting for having been compelled to obtain a temporary ID at each election.

#### **7. Braille facility for the blind and visually impaired people at voting**

Since nearly 300,000 voters of Sri Lanka are blind or visually impaired, it is proposed that the Elections Commission focus its attention on identifying areas where such people reside in large numbers and provide braille facilities at voting centers to facilitate them. The Parliament should look into the revision of relevant laws to provide this facility.

#### **8. Introduction of an advance voting system**

Although Sri Lanka's voter turnout remains high, a significant number of people in the country are not able to vote in all elections for professional reasons. Citizens such as election monitors, doctors, nurses, private security personnel, members of transport services, those engaged in private sector essential services, and attending weddings on the day of election should be given the opportunity to vote before the day of the election. This may be difficult in local government elections. But this method should be introduced in national elections.

#### **9. Facilities for overseas Sri Lankans to exercise their right to vote.**

According to the electoral system of Sri Lanka, the Sri Lankan citizens overseas are entitled to register as voters. But there is no law or procedure that allows them to cast their vote. It is these expatriate workers who generate most of the foreign exchange needed for economic survival of Sri Lanka. It is sad that this category of people do not have the opportunity to cast their vote in elections. Therefore, a program has to be implemented enabling them to cast their vote at least by several stages.

i. Under the Phase I of this program, it would be possible to grant this opportunity to the employees of Sri Lanka's overseas embassies without much difficulty. But the rules should be revised for this.

ii. The majority of Sri Lankan expatriate employees are unskilled workers and most of them are employed as domestic servants in the Middle East. Perhaps, it would be practical and reasonable to allow them to cast their vote through the Sri Lanka embassies in those countries. They may also have difficulties in casting their vote independently. Therefore, laws must be enacted with a pragmatic program to allow them to vote. According to the Foreign Employment Bureau, Sri Lankan citizens are mainly employed in 16 countries. The attention can be focused on establishing voting centers at least in these 16 countries. Therefore, all these matters should receive the attention of the Election Commission and the legislators.

#### **10. The Laws that limit election expenses must be enacted without delay.**

Any election to be free and fair, it must be contested in a level playing field. But in Sri Lanka, this condition cannot be seen operative in any election. There are many reasons for this while the absence of laws that limit the expenses that a party or a candidate can incur during an election campaign can be considered the main reason. In every election, political parties and candidates backed by financial strength, take full advantage of it. This is a real challenge for representation of the true public opinion. Therefore; the Legislature should act without further delay, to adopt the "Candidate Expenditure Limit Bill" which has already been drafted by the monitoring agencies including PAFFEREL/CMEV in collaboration with the Election Commission. Apart from updating the Election Law, new legislation should be introduced.

#### **11. Regularise the Complaint Unit**

Although the overall performance of the Elections Commission may be satisfactory, we propose that the representatives of all parties will be re-appointed to the Committee to ensure efficient and transparent functioning of it. Also, the confidence on Elections Commission will be further strengthened if a mechanism can be put in place to investigate the complaints received and make the public aware of their progress. At the same time, a formal system must be introduced to gather information necessary for pursuing inquiries complaints and initiating legal action after the election. As there are instances where election complaints contain serious allegations against top government officials, attention should be paid to appointing personnel from various fields to the Complaints Investigation Committee. For this it is possible to obtain the support of election monitoring organizations.

#### **12. Protection of public confidence in Election Commission**

The Elections Commission has made a commendable effort to hold a free and fair election and evidently it is a challenging task considering the limits of power and the institutional structure of the Commission. The relaxed and mild attitude displayed from time to time, by the commission in regard to the laws on political parties and election campaigns of candidates in the face of the above constraints must change. In an atmosphere in which the legislators are not trying to amend laws that directly affect elections, the Election Commission adopting soft practices may be ineffective. The other

issue that has attracted public attention most is the decline of collective responsibility of the members of the commission itself, the most significant quality they should necessarily possess. It is also a matter of prestige of any Commission for its members to stand by the decisions taken collectively and defend them without prejudice. Moreover, all three members of the Commission dedicating their time during the entire election campaign to achieve this objective is a significant factor that improves the efficiency of the entire election process.

### **13. Laws to prevent unnecessary increase in the number of candidates**

At the last presidential election, 41 candidates paid the required deposit and of which 35 submitted nominations. During the election campaign, it became evident that nearly 20 of them were supporting the other candidates. As per the election results the security deposit placed by all candidates except the two main candidates was confiscated. All candidates, except three of them failed to secure at least 1% of the votes polled. It was evident that the vast majority of them had contested the election for personal gains or to support other parties and with no real expectation of winning the election. However, in this election we have seen a small number of candidates have contested knowing that they will not win, but with the expectation of socializing the political program and policies of their political parties. We must safeguard their space to do that. However, the unlimited increase in the number of contestants led to increase the expenses of the Elections Department by about rupees 3500 million over the estimated cost. The length of the ballot paper measured more than two feet. As a result, new ballot boxes had to be produced and a number of practical problems such as the need to increase the number of polling stations and the counting officers arose. Therefore, new legislation should be enacted to prevent candidates who contest for personal gains in the future whilst at the same time protecting the interests of candidates and political parties that contest on real political goals and principles. The following suggestions are made to achieve this object.

1. The security deposit should be increased to Rs. one million at the least.
2. Impose a criterion to the effect that the political parties contesting elections should submit a certificate testifying that they had engaged in political activities throughout the year.
3. As any political party that seeks to contest and win the presidency must have a public base for it, it must be made mandatory that it should have a minimum of 25 members in the local government, 5 members in the Provincial Council and at least one member in parliament.
4. If any political fails to fulfill the above criteria, but still seeks to contest the election with confidence to win, they should be allowed to do so subject to the condition that they shall pay a minimum of Rs 10 million or a certain percentage of the cost incurred by the Elections Commission in the event it fails to secure at least 1% of the votes polled. Laws should be enacted to this effect and the initial deposit to be made by such parties should be increased to Rs 10 million or more.

5. Political parties should prepare the annual budget, annual reports, details of assets and liabilities regularly and submit them to the Elections Commission, and accordingly, the Election Commission should announce the political parties which are qualified to contest, within a week of the proclamation of the election.

6. The election deposit to be made by independent candidates should be increased to Rs.5 million

#### **14. Laws on registration of political parties should be amended.**

There are 70 registered political parties in Sri Lanka. But at least 50% of them cannot be seen contesting elections. Also a significant number of these parties do not engage in any political activity and fail to provide official documents to the Election Commission on time. But they are accused of selling themselves at very high prices in elections. Considering these facts, legislation should be enacted to prevent registration of political parties without genuine political purpose. Also, legislation should be enacted to ensure 30% women's representation in political parties.

Certain political parties operate on a single person; there are more than 5 political parties with less than three members on the executive board. These are often the parties without a people base. It is time to reconsider the party registration criteria to avoid these situations. It is also necessary to consider whether the existing political parties will continue to operate on their current activities.