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Binendri Perera

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# PEOPLE'S MOVEMENTS AS A STRAND OF POPULAR CONSTITUTIONALISM: DRIVING FORCES, DISTINCTIVE FEATURES, AND DILEMMAS

**Binendri Perera<sup>†</sup>**

*Abstract:* Constitutional democracies claim themselves to be constructed upon the will of the people. As the agency gap between the rulers and the ruled widens, people are increasingly more frustrated and compelled to actively take a stand. Advances of technology and social mobilization give increasing opportunities for the people to directly express their will and call for accountability from their representatives. Against this backdrop, this paper engages in a comparative analysis of people's movements that happened and are continuing to take place in South Korea, Sri Lanka, Venezuela and Algeria. Based on the analysis, the paper maps out the common weaknesses in the constitutional and political structures of each of these countries and thereby highlights the distinctive features of these people's movements. The paper conceptualizes constitutional movements of people as a specific instance of popular constitutionalism wherein people challenge their representatives and directly assert the constitutional principles. These people's movements, while being formidable, face complicated dilemmas in their quest to establish constitutional norms in their countries.

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## I. INTRODUCTION

Constitutional democracies claim themselves to be constructed upon the will of the people. The constituent authority of people is invoked as a grand principle of their formation to validate the constitution and nation built thereunder. However, in the republican model of governance, people directly

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<sup>†</sup> LL.B. (Hons.) (Colombo), LL.M. (Harvard), Attorney-at-Law (Sri Lanka). The author currently teaches a course on the Legal System of Sri Lanka and its Constitutional Law at the Faculty of Law, University of Colombo. The author would like to thank Professor Michael Klarman for his mentorship and feedback on the paper, Jennifer Allison for assistance with research, June Casey for assistance with publication, Jane Bestor for her comments, and the HLS Summer Academic Fellowship Program 2019 through which this paper was written.

engage in governance only in limited circumstances. Representatives of the people have effectively been the oracles to pronounce the people's will and were generally considered competent to implement their will while the people themselves remained more passive. However, advances of technology and social mobilization have given increasing opportunities for the people to directly express their will, rather than relying on their representatives. As the agency gap between the rulers and the ruled widens, people are increasingly more frustrated and compelled to actively take a stand.

Against this backdrop, people's movements that happened and are continuing to take place in Sri Lanka, South Korea, Venezuela and Algeria are analyzed from a comparative perspective. Based on the analysis, the common weaknesses in the constitutional and political structures of each of these countries are mapped and thereby, the distinctive features of these people's movements are highlighted. People's movements that seek to assert constitutional principles are conceptualized as a strand of popular constitutionalism. These movements are a response to the weaknesses in constitutional structures of those countries, whereby the elected representatives of the people can abuse the constitutions for their personal and partisan gain. These people's movements, while being formidable, face complicated dilemmas in their quest to assert and establish constitutional principles.

## II. PEOPLE'S MOVEMENTS AROUND THE WORLD FROM 2016 TO 2019

This paper analyses a number of specific instances where people challenged the ruling elite of their countries, demanding that they adhere to the constitutional principles such as rule of law, democracy and a system of checks and balances. The movements in focus are the Candlelight Protests of South Korea from 2016 to 2017, Sri Lanka's public protests during the constitutional coup 2018, Venezuela's 2019 protests and Algerian protests dubbed the Smile Revolution of 2019. These movements depict the engagement of people in the constitutional governance of their countries during the period of 2016 to 2019 in the regions of East Asia, South Asia, Latin America and Africa. This period has seen numerous protests across the globe advocating various social and political causes.<sup>1</sup> Focus upon these

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<sup>1</sup> Juliana Kaplan & Allana Akhtar, *World on fire: Here Are All the Major Protests Happening Around the Globe Right Now*, BUSINESS INSIDER (Oct. 23, 2019, 2:11AM), <https://www.businessinsider.com/all-the-protests-around-the-world-right-now>.

particular countries is to conceptualize people's movements in terms of constitutional structures of their country and the constitutional principles they were asserting through their protests.

*A. South Korean Candlelight Protests*

Candlelight Protests in South Korea occurred from 2016 to 2017, during which almost one third of the population participated in protesting the corruption and abuse of power by their President Park Geun-Hye and her advisors.<sup>2</sup> Unofficial presidential advisor Choi Soon-sil was found to have solicited personal favors and pressured conglomerates, including Samsung, to provide donations for her non-profit organizations.<sup>3</sup> President Park was accused of aiding her friend.<sup>4</sup> The protests compelled the legislature to take a stand against the President and Constitutional Court of South Korea and confirmed the impeachment in a unanimous vote.<sup>5</sup> President Park then faced trial and was convicted for bribery, extortion, abuse of power and other criminal charges,<sup>6</sup> alongside her advisor and the heir of Samsung group.<sup>7</sup>

*B. Sri Lankan Protests Against the Constitutional Coup of 2018*

Sri Lankan President, Maithripala Sirisena, triggered immediate citizen protests, by appointing Mahinda Rajapaksa as the Prime Minister when he did not have the constitutional authority to remove the incumbent Prime Minister, Ranil Wickremasinghe. Sri Lankans started their protests demanding for the parliament, which the president had arbitrarily prorogued, to be reconvened to assess which prime minister had the majority support in parliament. Protestors called out the parliamentarians who were crossing the floor in the

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<sup>2</sup> Alexis Dudden, *Revolution by Candlelight: How South Koreans Toppled a Government*, DISSENT (2017), <https://www.dissentmagazine.org/article/revolution-by-candlelight-how-south-koreans-toppled-a-government>.

<sup>3</sup> *South Korea Jails Choi Soon-Sil, Friend to Park Geun-hye, for Corruption*, BBC NEWS (Feb. 13, 2018), <https://www.bbc.com/news/world-asia-43042862>; *South Korea's Presidential Scandal*, BBC NEWS (Apr. 6, 2018), <https://www.bbc.com/news/world-asia-37971085>.

<sup>4</sup> *South Korea's Presidential Scandal*, *supra* note 3.

<sup>5</sup> Paula Hancocks, *Park Geun-hye: Downfall of South Korea's Political Princess*, CNN WORLD (Mar. 30, 2017, 11:49 PM), <https://www.cnn.com/2017/03/09/asia/south-korea-park-geun-hye-profile/index.html>.

<sup>6</sup> Choe Sang-Hun, *Park Geun-Hye, Ex-South Korean Leader, Gets 25 Years in Prison*, N.Y. TIMES (Aug. 24, 2018), <https://www.nytimes.com/2018/08/24/world/asia/park-geun-hye-sentenced-south-korea.html>.

<sup>7</sup> *South Korea Jails Choi Soon-Sil*, *supra* note 3.

parliament for personal gain,<sup>8</sup> and demanded for the Speaker of the Parliament to take a stand to uphold the constitution.<sup>9</sup> Simultaneously, local blogs and electronic newspapers became platforms for sharing news and also educating the citizens about the complex constitutional issues involved.<sup>10</sup> People challenged the president's conduct during the constitutional coup through petitions and direct letters.<sup>11</sup> The president's denounced conduct included interfering with the parliamentary process,<sup>12</sup> arbitrary transfers of a senior police officer in charge of investigating several politically sensitive crimes,<sup>13</sup> and making homophobic comments at a rally.<sup>14</sup> When the president dissolved the parliament in violation of the constitution, the protestors called for the Election Commission and the courts to uphold the constitution.<sup>15</sup> These protests continued peacefully through the entire duration of the constitutional coup until the Supreme Court decisions restored the status quo. The Court invalidated the president's Proclamation dissolving the Parliament and

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<sup>8</sup> S.W.R. de A Samarasinghe, *Sri Lanka's Democracy in Peril*, THE ISLAND (Nov. 11, 2019, 12:00 PM), [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=194276](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=194276).

<sup>9</sup> *Sri Lankans Denounce the "Coup" and Constitutional Crisis*, PUB. RADIO INT'L (Nov. 2, 2018, 2:45 PM), <https://www.pri.org/stories/2018-11-02/sri-lankans-denounce-coup-and-constitutional-crisis>.

<sup>10</sup> See Agence France-Presse, *Thousands of Sri Lankans Protest Ousting of PM Ranil Wickremesinghe*, S. CHINA MORNING POST (Oct. 30, 2018, 11:51 PM), <https://www.scmp.com/news/asia/south-asia/article/2170943/tens-thousands-sri-lankans-march-support-ousted-prime-minister>.

<sup>11</sup> Devanesan Nesiiah, *An Open Letter to President Maithripala Sirisena*, GROUNDVIEWS (Nov. 7, 2018), <https://perma.cc/32K2-P4AN>; *Lasantha's Daughter Writes Moving Letter to Sirisena Against Attempt to Transfer CID OIC Nishantha Silva*, COLOMBO TEL. (Nov. 20, 2018), <https://www.colombotelegraph.com/index.php/lasanthas-daughter-writes-moving-letter-to-sirisena-against-attempt-to-transfer-cid-oic-nishantha-silva/>; *No Constitution = No Democracy: A Statement by 900 Sri Lankan Students on #CoupLK*, GROUNDVIEWS, <https://perma.cc/SBA3-68L3>.

<sup>12</sup> *Sri Lanka Political Crisis: How Citizens Are "Taking a Stand" for Democracy*, BUS. STANDARD (Nov. 7, 2018, 6:46 IST), [https://www.business-standard.com/article/international/sri-lanka-political-crisis-how-citizens-are-taking-a-stand-for-democracy-118110700075\\_1.html](https://www.business-standard.com/article/international/sri-lanka-political-crisis-how-citizens-are-taking-a-stand-for-democracy-118110700075_1.html).

<sup>13</sup> *CID's IP Nishantha Silva Transferred*, DAILY MIRROR (Nov. 19, 2018, 10:33 AM), <https://perma.cc/Z6YK-42BA>; *Lasantha's Daughter Writes Moving Letter*, *supra* note 11; *Police Commission Cancels Transfer of CID Inspector Nishantha Silva*, DAILY FT (Nov. 20, 2018), <http://www.ft.lk/front-page/Police-Commission-cancels-transfer--of-CID-Inspector-Nishantha-Silva/44-667198>.

<sup>14</sup> *President Under Fire Over "Butterfly" Comments*, COLOMBO GAZETTE (Nov. 6, 2018, 8:35 AM), <https://perma.cc/4AYY-RYD6>; *Sirisena Should Be Held Responsible for Homophobic Incidents in Sri Lanka in Coming Days: Sri Lankan LGBTIQ+ Community*, COLOMBO TEL. (Nov. 6, 2018), <https://perma.cc/JJM3-JL3E>.

<sup>15</sup> *No Constitution = No Democracy*, *supra* note 11.

refused to recognize the appointment of a Prime Minister who doesn't command the majority in Parliament.<sup>16</sup>

### C. *Venezuelan Protests of 2019*

Citizen protests in Venezuela began in January 2019, with their opposition-led, National State Assembly President Juan Guaidó, challenging the authoritarian president, Nicolas Maduro, who won the previous election through fraudulent measures.<sup>17</sup> Maduro announced that he won the 2018 election, but the election results were declared invalid by the legislature and Guaidó was declared to be the interim president.<sup>18</sup> Maduro rejected this challenge and the country plunged into a crisis.<sup>19</sup> Despite people's protests which continued during early 2019, Maduro resorted to threats backed by the military in response to the opposition.<sup>20</sup> The regime has also taken harsh measures against allies of Guaidó in the legislature, within the military and protestors in the streets.<sup>21</sup> Political leaders have had to either go into hiding or seek foreign protection through embassies.<sup>22</sup>

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<sup>16</sup> Supreme Court of the Democratic Socialist Republic of Sri Lanka, 13/12/2018, "*R. Sampanthan et. al. v Attorney-General*," SC FR Application No. 351/2018 (Sri Lanka); *Sri Lanka Supreme Court Says Rajapaksa Is Still Prevented from Acting as PM*, ASIAN TRIBUNE (Nov. 14, 2018, 19:40 PM), <https://perma.cc/Q4VP-LSC6>.

<sup>17</sup> Jeffery D. Pugh, *Foreign Allies Should Take Their Cues from Venezuelan Activists' Push for Democracy*, THE GLOBAL POST (Feb. 7, 2019), <https://theglobepost.com/2019/02/07/venezuela-opposition-democracy/>.

<sup>18</sup> Georgina Laud, *Venezuela Crisis: Corruption Scale Reveal – How Maduro Government Failed Venezuela*, EXPRESS (Feb. 4, 2019, 14:12 PM), <https://www.express.co.uk/news/world/1081359/venezuela-crisis-corruption-scale-president-maduro-government-failed-venezuelans>.

<sup>19</sup> *Id.*

<sup>20</sup> Agencies, *Venezuelan Crisis: Maduro Displays Military Might as US Warns of "Significant Response" to Threats Against Diplomats*, INDEPENDENT (Jan. 28, 2019, 00:48 AM), <https://www.independent.co.uk/news/world/americas/venezuela-crisis-nicolas-maduro-army-juan-guaido-us-john-bolton-a8749566.html>.

<sup>21</sup> See Moisés Naím, *What Has a Bigger Impact, Elections or Street Protests?*, EL PAÍS (Jun. 19, 2019, 06:18 EDT), [https://elpais.com/elpais/2019/06/19/inenglish/1560937997\\_603402.html](https://elpais.com/elpais/2019/06/19/inenglish/1560937997_603402.html); *Venezuela Death Squads Kill Young Men, Stage Scenes, UN Report Says*, REUTERS (Jul. 5, 2019, 9:09 PM), <https://www.scmp.com/news/world/americas/article/3017337/venezuela-death-squads-kill-young-men-stage-scenes-un-report>.

<sup>22</sup> See Lucía Abellán, *Venezuelan Opposition Leader Seeks Refugee in Spanish Embassy in Caracas*, EL PAÍS (May 2, 2019, 05:08 EDT), [https://elpais.com/elpais/2019/05/01/inenglish/1556713845\\_723006.html](https://elpais.com/elpais/2019/05/01/inenglish/1556713845_723006.html).

Guaidó and his allies have directly appealed to the military to join ranks with them, but this has not received a positive response.<sup>23</sup> Even the soldiers who defected and wore blue arm bands in support of Guaidó later removed such external expressions of rebellion for fear of harassment.<sup>24</sup> The citizens were facing crippling living conditions due to shortages of basic needs such as food, medicine, and electricity.<sup>25</sup> While Maduro opened the borders to Brazil and Aruba in an attempt to restore normalcy to the country, economic and political instability continues.<sup>26</sup> Protests were to continue as the talks between the Venezuelan government and the opposition in Norway ended without an agreement.<sup>27</sup> People have stated that they are determined to carry on their protests until democracy is restored.<sup>28</sup>

#### D. *Algerian Smile Revolution of 2019*

Algeria is a North African country that avoided mass demonstrations during 2011 Arab Spring only because their president Bouteflika lifted a nineteen-year-old state of emergency rule and promised further constitutional reform.<sup>29</sup> Arab Spring was a series of public protests in 2011 during which the people in Middle Eastern and Northern African countries protested against authoritarianism and corruption of their governments.<sup>30</sup> However, underlying causes that gave rise to the Arab Spring remained unresolved in Algeria and the country's public is taking up a late blooming Arab Spring in 2019.<sup>31</sup> Algerians started their protests, dubbed the "Smile Revolution," on February

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<sup>23</sup> See Kejal Vyas, *Venezuelan Crisis: Violence Erupts as Guaidó Calls for Uprising*, WALL ST. J. (May 1, 2019, 10:10 AM ET), <https://www.wsj.com/articles/venezuelas-guaido-says-he-has-support-from-members-of-military-11556622855>.

<sup>24</sup> *Id.*; *Backers "Failed to Follow Through" Uprising: Guaidó*, GULF TODAY (May 7, 2019) <https://www.gulftoday.ae/news/2019/05/07/backers-failed-to-follow--through-uprising-guaido>.

<sup>25</sup> *Venezuela Faces Gas Shortages*, NPR, (Jun. 19, 2019, 5:07 AM ET), <https://www.npr.org/2019/06/19/733955656/venezuela-faces-gas-shortages>.

<sup>26</sup> See Brian Ellsworth, *Venezuela Reopens Borders with Brazil and Aruba, Official Says*, REUTERS (May 10, 2019, 8:29 AM), <https://www.reuters.com/article/us-venezuela-politics-border/venezuela-reopens-borders-with-brazil-and-aruba-official-idUSKCN1SG1QF>.

<sup>27</sup> *Venezuela's Guaidó Vows Protests as Norway Talks Produce No Deal*, ALJAZEERA (May 30, 2019), <https://www.aljazeera.com/news/2019/05/venezuelan-government-opposition-envoys-talks-deal-190530160246998.html>.

<sup>28</sup> *See id.*

<sup>29</sup> See Adel Abdel Ghafar & Anna L. Jacobs, *Lessons for Algeria from the 2011 Egyptian Uprising*, BROOKINGS (March 14, 2019), <https://www.brookings.edu/opinions/lessons-for-algeria-from-the-2011-egyptian-uprising/>.

<sup>30</sup> *Arab Spring*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/Arab-Spring> (last visited Mar. 8, 2020).

<sup>31</sup> Ghafar & Jacobs, *supra* note 29.

22, 2019, when their authoritarian leader Abdelaziz Bouteflika announced that he would run for president for the fifth time.<sup>32</sup> The eighty-two-year-old has not made an appearance in public for several years and his officials have had to assure that he is indeed alive.<sup>33</sup> The Algerian elite forged ahead to keep the ailing president in office so that their status and privileges can be preserved.<sup>34</sup>

Despite harsh repression from state authorities, protestors persisted and maintained that Bouteflika should not run for a fifth term.<sup>35</sup> Like many of their Middle-Eastern and North African neighbors, Algeria is a country with a youth bulge, wherein two thirds of the population are below the age of thirty.<sup>36</sup> This youth population is frustrated by the lack of employment opportunities, deteriorating economy and diminishing quality of life.<sup>37</sup> President Bouteflika withdrew his candidacy on March 11, 2019 and resigned from office in April 2, 2019 due to public pressure.<sup>38</sup> The military joined forces with the public and attempted to appear as the guardian of the constitution in order to ensure a smooth transition of power through the presidential elections that were supposed to be held on July 4, within ninety days of the resignation of the president as per Article 102 of the Algerian Constitution.<sup>39</sup>

However, people realized that this presidential election was not guaranteed to be a free and fair election, and the military and elite were attempting to preserve the existing form of governance.<sup>40</sup> In response to this turn of events, the people transformed their demands from removal of Bouteflika to resignation of the interim president and the prime minister as well as anyone who is tainted by the previous regime.<sup>41</sup> They further

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<sup>32</sup> See Shirley Le Penne, *Algeria: Learning to Smile*, THE JERUSALEM POST (Mar. 21, 2019, 22:13), <https://www.jpost.com/Opinion/Algeria-Learning-to-smile-584216>; Sharan Grewal, *Algeria's Army Calls for the President's Removal*, BROOKINGS (Mar. 27, 2019), <https://www.brookings.edu/blog/order-from-chaos/2019/03/27/algerias-army-calls-for-the-presidents-removal>.

<sup>33</sup> Le Penne, *supra* note 32.

<sup>34</sup> *See id.*

<sup>35</sup> Grewal, *supra* note 32.

<sup>36</sup> Jason Burke & Ruth Michaelson, *Algeria's Angry Youth Ready to Rise Up to Topple Ailing President*, THE GUARDIAN (Mar. 10, 2019), <https://www.theguardian.com/world/2019/mar/10/algeria-youth-rise-up-against-ageing-leaders>.

<sup>37</sup> *See id.*

<sup>38</sup> Sharan Grewal, *Bouteflika's Bid for Time*, BROOKINGS (Mar. 14, 2019), <https://www.brookings.edu/blog/order-from-chaos/2019/03/14/bouteflikas-bid-for-time>.

<sup>39</sup> *See id.*

<sup>40</sup> *See Algeria Protestors Demand End to Regime After Bouteflika's Fall*, BBC NEWS (Apr. 5, 2019), <https://www.bbc.com/news/world-africa-47830156>.

<sup>41</sup> *Id.*; see also Ahmad Al-Sholi, *The End of Absurdity in Algeria*, JACOBIN (Apr. 21, 2019), <https://jacobinmag.com/2019/04/algeria-protests-abdelaziz-bouteflika-corruption-economy>.



demanded that the military not interfere in restoration of country's democracy.<sup>42</sup> People have insisted upon the fall of the regime, despite clear examples of dangers that resulting instability would cause to the nation as is evident through countries such as Egypt, Libya and Syria.<sup>43</sup> Constitutional Council cancelled the presidential election to be held on July 4, 2019 keeping abreast with the popular demand.<sup>44</sup> Therefore, Algeria has bravely taken up to the possibility for a democratic transformation through negotiations not restricted by the procedures of the current constitution.

### III. CONSTITUTIONAL FRAMEWORKS AS A DRIVING FORCE OF PEOPLE'S MOVEMENTS

Despite the unique historical, social and cultural circumstances of each country, their constitutional structures show several similarities. Firstly, these countries are either presidential systems or semi-presidential systems whereby the excessive executive powers are vested in a single individual. Secondly, each of these executive presidents once in power have engaged in abusive constitutionalism to further entrench themselves in their personal capacity.<sup>45</sup> Thirdly, political opposition has been weak or scattered due to the political trajectory of the country and the person or the party in power have also systematically repressed opposing parties.

#### A. *Presidential or Semi-Presidential Systems of Governance*

The South Korean constitution was created under the influence of the United States occupation and engagement in the country's domestic affairs, even though the constitution was not written with direct intervention of United States as was done in Japan.<sup>46</sup> The South Korean Constitution of 1948 created

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<sup>42</sup> See *6<sup>th</sup> Friday of Protest: Algerians Call for Army Chief of Staff to Step Down*, EFE (Mar. 29, 2019), <https://www.efc.com/efe/english/world/6th-friday-of-protest-algerians-call-for-army-chief-staff-to-step-down/50000262-3939036>; see also Heba Saleh, *Algerian Opposition Calls on Army to Stay Out of Politics*, FINANCIAL TIMES (Mar. 19, 2019), <https://www.ft.com/content/069dcfb4-4a52-11e9-bbc9-6917dce3dc62>.

<sup>43</sup> See generally Jason Brownlee, Takrek Masoud & Andrew Reynolds, *THE ARAB SPRING: PATHWAYS OF REPRESSION AND REFORM* (2015); *ARAB SPRING: THE HOPE AND REALITY OF THE UPRISINGS* (Mark L. Haas & David W. Lesch eds., 2016).

<sup>44</sup> Adam Nossiter, *Algeria Cancels Presidential Election, Setting Up New Impasse*, N.Y. TIMES (Jun. 2, 2019), <https://www.nytimes.com/2019/06/02/world/africa/algeria-elections-canceled.html>.

<sup>45</sup> See David Landau, *Abusive Constitutionalism*, 47 U.C. DAVIS L. REV. 189, 195 (2013) (defining "abusive constitutionalism" as the "use of mechanisms of constitutional change in order to make a state significantly less democratic than it was before").

<sup>46</sup> See Chaihark Hahm & Sung Ho Kim, *To Make "We the People": Constitutional Founding in Postwar Japan and South Korea*, INT'L J. CONST. L. 801-05 (2010).

an indirectly elected presidency.<sup>47</sup> But after successive regimes of authoritarian leadership, the constitutional amendment of 1987 introduced a directly elected presidency with the aim of increasing the accountability of the office to the public.<sup>48</sup> However, the president continues to enjoy wide ranging executive powers under Chapter IV, as the head of the state<sup>49</sup> and the Commander-in-Chief of the Armed Forces.<sup>50</sup>

Sri Lanka has also followed the French constitutional model in its 1978 constitution,<sup>51</sup> providing vast powers to the executive president. The legislature is subject to constitutional and more far-reaching political control of the president and the president is protected from judicial scrutiny by a strong immunity clause provided by Article 35.<sup>52</sup> The president is also virtually immune from the political scrutiny of the parliament due to the stringent impeachment process stated in Article 38(2) of the constitution,<sup>53</sup>

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<sup>47</sup> See *Constitutional History of South Korea*, CONSTITUTIONNET (Apr. 2018), <http://constitutionnet.org/country/republic-korea>.

<sup>48</sup> Kyong-Wan Ahn, *The Rule of Law in South Korea: Insights into the Social Evolution During the Two Decades with the New Constitution (1987-2007)*, (Oct. 2007) (unpublished article), <https://www.coursehero.com/file/31057651/ahn-paperdoc/>.

<sup>49</sup> DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 66 (S. Kor.) (the Korean President is not only the head of the state but has the “responsibility and duty to safeguard the independence, territorial integrity and continuity of the state and the Constitution . . . [and] (4) [e]xecutive power shall be vested in the Executive Branch headed by the President.”).

<sup>50</sup> *Id.* art. 74 (“(1) The President shall be Commander-in-Chief of the Armed Forces under the conditions as prescribed by the Constitution and Act. (2) The organization and formation of the Armed Forces shall be determined by Act.”).

<sup>51</sup> Suri Ratnapala, *Sri Lanka at the Constitutional Crossroads: Gaullist Presidentialism, Westminster Democracy or Tripartite Separation of Powers?* LAWASIA J. 33, 34 (2003-2004).

<sup>52</sup> CONSTITUTION OF THE REPUBLIC 1978, art. 35(1) (Sri Lanka) (“While any person holds office as President of the Republic of Sri Lanka, no civil or criminal proceedings shall be instituted or continued against the President in respect of anything done or omitted to be done by the President, either in his official or private capacity: Provided that nothing in this paragraph shall be read and construed as restricting the right of any person to make an application under Article 126 against the Attorney-General, in respect of anything done or omitted to be done by the President, in his official capacity: Provided further that the Supreme Court shall have no jurisdiction to pronounce upon the exercise of the powers of the President under Article 33(2)(g). (2) Where provision is made by law limiting the time within which proceedings of any description may be instituted against any person, a period of time during which such person holds the office of President of the Republic of Sri Lanka shall not be taken into account in calculating any period of time prescribed by that law. (3) The immunity conferred by the provisions of paragraph (1) shall not apply to proceedings in the Supreme Court under paragraph (2) of Article 129 and to proceedings under Article 130 (a) relating to the election of the President or the validity of a referendum.”).

<sup>53</sup> *Id.* art. 38(2)(a) (“Any Member of Parliament may, by a writing addressed to the Speaker, give notice of a resolution alleging that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of—(i) intentional violation of the Constitution, (ii) treason, (iii) bribery, (iv) misconduct or corruption involving the abuse of the powers of his office, or (v) any offence under any law, involving moral turpitude and setting out full

made impractical in practice because the president can prorogue the parliament under his power to summon, as well as dissolve the parliament in Article 33(2)(c) of the Sri Lankan Constitution 1978,<sup>54</sup> to pressure the parliamentarians who might initiate impeachment proceedings.

The 1991 constitution of Venezuela creates a five-branch government instead of three, introducing an electoral branch and a citizen branch. The constitution is also extremely progressive in its incorporation of international human rights treaties, enshrinement of economic, social and cultural rights, women's rights and indigenous rights.<sup>55</sup> However, the executive branch consists of a president, and the constitutional powers of the president qualifies Venezuela as one of the most powerful presidential systems of Latin America.<sup>56</sup> The 1996 constitution shifted the authority to make military appointments from the legislature to the executive, giving president direct control of the military.<sup>57</sup> This has been a crucial power for Maduro to continue in power amidst protests in 2019. Therefore, not only two but four other constitutionally co-equal branches of government have failed to keep the executive president in check.

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particulars of the allegation or allegations made and seeking an inquiry and report thereon by the Supreme Court. (b) No notice of such resolution shall be entertained by the Speaker or placed on the Order Paper of Parliament unless it complies with the provisions of sub-paragraph (a) and—(i) such notice of resolution is signed by not less than two-thirds of the whole number of Members of Parliament ; or (ii) such notice of resolution is signed by not less than one-half of the whole number of Members of Parliament and the Speaker is satisfied that such allegation or allegations merit inquiry and report by the Supreme Court. (c) Where such resolution is passed by not less than two thirds of the whole number of Members (including those not present) voting in its favor, the allegation or allegations contained in such resolution shall be referred by the Speaker to the Supreme Court for inquiry and report. (d) The Supreme Court shall, after due inquiry at which the President shall have the right to appear and to be heard, in person or by an attorney-at-law, make a report of its determination to Parliament together with the reasons therefor. (e) Where the Supreme Court reports to Parliament that in its opinion the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of any of the other allegations contained in such resolution, as the case may be, Parliament may by a resolution passed by not less than two thirds of the whole number of Members (including those not present) voting in its favor remove the President from office.”).

<sup>54</sup> *Id.* art. 33(2)(c) (“In addition to the powers, duties and functions expressly conferred or imposed on, or assigned to the President by the Constitution or other written law, the President shall have the power... to summon, prorogue and dissolve Parliament.”).

<sup>55</sup> See Gregory Wilpert, *Venezuela's New Constitution*, VENEZUELA ANALYSIS (Aug. 27, 2003, 12:10 AM), <https://venezuelanalysis.com/analysis/70>.

<sup>56</sup> See *Constitutional History of Venezuela*, CONSTITUTIONNET, <http://constitutionnet.org/country/constitutional-history-venezuela> (last visited Mar. 8, 2020).

<sup>57</sup> See Wilpert, *supra* note 55.

The Algerian Constitution of 1996 provides for a powerful presidency, in which the president is also the commander-in-chief of the armed forces as provided for in Article 77(1).<sup>58</sup> According to Article 93 of the constitution, the president can further declare an emergency in consultation with the two presidents of the legislature.<sup>59</sup> Article 96 allows the president to suspend the constitution and the fundamental freedoms of the people.<sup>60</sup> Even though the constitution requires that the presidential candidates should either have fought in the war against French or do not descend from people who supported the French,<sup>61</sup> executive powers accorded to Algerian president follows the French model. In fact, Article 77 powers of the Algerian president are very similar to the powers of the French presidents stated in Title II (Articles 5 to 19) of the French Constitution of 1958.<sup>62</sup>

Therefore, countries in focus have all followed the American and French presidential systems, which have worked well in those countries due to the robustness of their constitutional norms. However, even these systems' capacities have been checked time and again, with the first French president under the Fifth Republic, De Gaulle and America's current president Donald Trump.<sup>63</sup> Even these systems, which have a unique historical and cultural set up to sustain a powerful executive president within the constitutional limits, have been strained by particularly notorious individuals. Therefore, it is virtually inevitable that these models fail to restrain powerful leaders in East Asian, South Asian, Latin American and African countries. This is because constitutional principles are comparatively weakly embedded in these countries' normative framework, for example, due to frequent constitutional amendments that weaken the system of checks and balances.

The U.S. Constitution introduced an executive president who is accountable to the people and the other institutions of the state for his exercise

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<sup>58</sup> The Constitution of the People's Democratic Republic of Algeria art. 77, *as amended*.

<sup>59</sup> *Id.* art. 93, *as amended* ("When the country is threatened by an impending danger to its institutions, independence, or territorial integrity, the President of the Republic decrees the state of exception.").

<sup>60</sup> *Id.* art. 96, *as amended* ("During the period of the state of war, the Constitution is suspended, the President of the Republic assumes all the powers.").

<sup>61</sup> *Id.* art. 73, *as amended*.

<sup>62</sup> 1985 CONST. 5-19 (Fr.).

<sup>63</sup> See DAVID FRUM, TRUMPOCRACY: THE CORRUPTION OF THE AMERICAN REPUBLIC (2018); Fredric S. Burin, *Executive Power and the Rule of Law in the Fifth French Republic*, 33 SOCIAL RESEARCH 407, 407-08 (1966).

of power. This was a deliberate move away from the British monarchy.<sup>64</sup> While the U.S. president is indirectly elected through electoral college, the countries in discussion all elect their president through direct elections to ensure legitimacy and accountability.<sup>65</sup> Therefore, these countries constitutionally repose a higher trust in their presidents. Ironically, that trust is flouted, and the discretion is misused so blatantly in practice. There is a gap in traditional conception of constitutionalism because of the extensive powers and discretion accorded to the president,<sup>66</sup> and the people's movements, despite being haphazard and complex compared to the traditional institutional routes, have developed as a mechanism to directly question the abuse of presidential powers.

*B. Abusive Constitutionalism Tactics to Further Entrench Executive Powers*

David Landau, Mason Ladd Professor at Florida State University College of Law who mainly writes about comparative constitutional law, states that abusive constitutionalism consists of the mechanisms of constitutional amendment and replacement to weaken the leverage of political opposition and other institutions of state which act as a check against executive power.<sup>67</sup> Because these measures exploit the formal mechanisms of constitutional change, they become entrenched within the supreme law of the land and enjoy symbolic legitimacy. Therefore, abusive constitutionalism that Landau illustrates is arguably more threatening than the abuse of unwritten constitutional practices.

These abusive constitutional amendments, while following the formal constitutional procedures, in effect entrench a person or a party in power by changing the rules of the game, i.e., the framework of governance. Even though their culminative effect is to erode the quality of constitutional

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<sup>64</sup> *A Point of View: Is the US President an Elected Monarch?*, BBC NEWS (May 15, 2015), <https://www.bbc.com/news/magazine-32741802>. Eliga Gould, *The American Founders Made Sure the President Could Never Suspend Congress*, THE CONVERSATION (Sep. 4, 2019), <http://theconversation.com/the-american-founders-made-sure-the-president-could-never-suspend-congress-122703>.

<sup>65</sup> Seonhwa Kim, *Reforming South Korea's "Imperial Presidency"*, INSTITUTE FOR SECURITY AND DEVELOPMENT POLICY (Oct. 2017), <http://isdip.eu/publication/reforming-south-koreas-imperial-presidency/>.

<sup>66</sup> See generally Larry Diamond, *ILL WINDS: SAVING DEMOCRACY FROM RUSSIAN RAGE, CHINESE AMBITION AND AMERICAN COMPLACENCY* (2019). Even countries such as Poland and Turkey moved towards semi-presidentialism and presidentialism in order to centralize power.

<sup>67</sup> See Landau, *supra* note 45, at 189.

democracy, Landau argues that tools of constitutional law are either incapable of restraining abusive constitutional mechanisms or are easily circumvented by the potential authoritarian leaders.<sup>68</sup> This scenario is proven time and time again by the authoritarian leaders of South Korea, Sri Lanka, Venezuela and Algeria.

South Korea's dictators have successively removed presidential term limits. The First President elected under the system, Rhee Syngman, engaged in abusive constitutionalism to entrench himself and similar steps were taken under the dictatorship of Park Chung Hee.<sup>69</sup> In response to political dissent and protests, Park Chung Hee declared martial law and amended the constitution so that he could be president for life.<sup>70</sup> Therefore, the constitution of 1978 introduced a single presidential term of five years and amendments for this term were only applicable to the future presidents.<sup>71</sup> Even with reforms strengthening the powers of the legislature and fundamental rights of citizens, the executive president remains powerful.<sup>72</sup>

Former Sri Lankan president Mahinda Rajapaksa similarly amended the constitution removing the term limits on presidency and also strengthening president's powers to make appointments to the judiciary and the independent commissions.<sup>73</sup> However, the most recent Nineteenth Amendment to the 1978 Constitution reintroduced the presidential term limits. Therefore, in South Korea and Sri Lanka the practices of abusive constitutionalism have been averted to an extent even though the executive presidency remains powerful. Nevertheless, the attempts at constitutional restraints have aided people's movements to succeed as they have cut short the full-fledged presidential powers.

On the other hand, Venezuelan and Algerian abusive constitutionalism mechanisms remain in place without being countered. Venezuela removed

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<sup>68</sup> *Id.*

<sup>69</sup> *Constitutional History of South Korea, supra* note 47.

<sup>70</sup> EDWARD M. GRAHAM, REFORMING KOREA'S INDUSTRIAL CONGLOMERATES 26 (2003).

<sup>71</sup> *Constitutional History of South Korea, supra* note 47.

<sup>72</sup> *Id.*

<sup>73</sup> Parliament of the Democratic Socialist Republic of Sri Lanka, Eighteenth Amendment to the Constitution (Sept. 9, 2010), [https://www.parliament.lk/files/pdf/constitution/18th\\_amendment\\_act.pdf](https://www.parliament.lk/files/pdf/constitution/18th_amendment_act.pdf); Gehan Gunatilleke, *A Review of 'The Eighteenth Amendment to the Constitution: Substance and Process*, GROUNDVIEWS (Sept. 26, 2011, <https://groundviews.org/2011/09/26/a-review-of-%E2%80%98the-eighteenth-amendment-to-the-constitution-substance-and-process%E2%80%99/>).

term limits on all elected officials in 2009 through passing a referendum.<sup>74</sup> Even though the referendum reflects the voices of people, and thus a tool of democracy, Venezuelan government was accused of stifling the opposition in their campaign towards the referendum.<sup>75</sup> Therefore, abusive constitutional amendment in this instance gained the sanction of people through manipulation of state resources. Algeria also removed presidential term limits by an amendment to its constitution in 2008.<sup>76</sup> Bouteflika was accused of election fraud, just as Maduro, and Bouteflika also governed the country through emergency until the pressure of 2011 Arab Spring.<sup>77</sup>

These constitutional amendments and misuse of constitutional provisions have not only weakened or silenced opposition, but have also debilitated the freedom, political participation and choice of the people. When the people have less effective participation afforded through the constitutional text, people are compelled to find other avenues to pressure the governing elites.<sup>78</sup>

### C. *Weak or Actively Suppressed Political Opposition*

South Korea and Sri Lanka have moved from active repression of political parties to a context where the parties are struggling to establish an identity and retain a voter base in a volatile environment of polarization. Both countries struggle with the issue whereby parties represent a leader rather than an ideology and thereby, there is no political loyalty towards the party.<sup>79</sup> Whereas ideological coherence in the parties is established with the risk of polarization, lack of ideology weakens the party organization power and voter

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<sup>74</sup> *Constitutional History of Venezuela*, *supra* note 56 (last visited Mar. 8, 2020).

<sup>75</sup> Rory Carroll, *Hugo Chavez Wins Referendum Allowing Indefinite Re-election*, THE GUARDIAN (Feb. 16, 2009), <https://www.theguardian.com/world/2009/feb/16/hugo-chavez-indefinite-rule>.

<sup>76</sup> *Constitutional History of Algeria*, CONSTITUTIONNET (2016), <http://constitutionnet.org/country/constitutional-history-algeria>.

<sup>77</sup> *See Algeria: Constitution*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/algeria-constitution> (2019).

<sup>78</sup> *See* Donatella Della Porta, *Communication in Movement: Social Movements as Agents of Participatory Democracy*, in *SOCIAL MEDIA AND DEMOCRACY: INNOVATIONS IN PARTICIPATORY POLITICS* 39, 39–40 (Brian D. Loader & Dan Mercea eds., 2012).

<sup>79</sup> *See generally* David I. Steinberg & Myung Shin, *Tensions in South Korean Political Parties in Transition: From Entourage to Ideology?* 46 *ASIAN SURVEY* 518 (2006); Frank Ching, *In Korea, No Party Loyalty*, 163 *FAR E. ECONOMIC REV.* 34 (2000); Hoon Jaung, *The Historical Origins of Frail Party Politics in South Korea: The Abortive Experiment of Democratic Republican Party, 1963-1979*, 10 *KOREAN PARLIAMENTARY RESEARCH INSTITUTE* 313–346 (2015).

mobilization. When the parties are unable to represent the voters ideologically, their legitimacy to bring about change wanes.

Suppression of opposition parties was prominent in South Korea under the dictatorship of Park Chung Hee.<sup>80</sup> However, the country has had a plethora of political parties since its transition to democracy in 1987.<sup>81</sup> Nevertheless, politicians' ties to political parties are thin and parties frequently fracture over disagreements or reorganize themselves under different names and party colors.<sup>82</sup> Intra-party fighting is complicated further by illicit inter-party fights. In 2017, the National Intelligence Service of South Korea revealed that its previous officials "mobilized cyberwarfare experts" to carry out an internet campaign that would swing the voters in favor of Park Geun-hye over her rival Moon Jae-In in the 2012 presidential election.<sup>83</sup> Sri Lankan opposition was weak during Rajapaksa presidency because he enticed the opposition parliamentarians to join the government. Rajapaksa's regime was toppled only because his minister of health and general secretary of the party, Sirisena defected from his party and became the opposition's candidate. Opposition parties built a coalition to defeat Rajapaksa and therefore, in 2018 political parties were comparatively more autonomous to pick their alliances.

In a context of ideologically weak political parties, people's movements are a routine mechanism for the people to express their concerns with governance.<sup>84</sup> Nevertheless, the presence of a strong political opposition within the South Korean and Sri Lankan legislatures, free to express dissent within the state structure, has become a channel through which people's movements could assert constitutional principles. But at the same time, these parties in the opposition are less interested in reforming the existing power structures to entrench constitutional principles. They are more focused on grabbing power within the same tilted frameworks, rather than effective

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<sup>80</sup> See Hancocks, *supra* note 5; Jaung, *supra* note 79, at 9.

<sup>81</sup> See Steinberg & Shin, *supra* note 79; Ching, *supra* note 79.

<sup>82</sup> See Jin Kai, *Why Are South Korean Politics so Messy?*, THE DIPLOMAT (May 26, 2017), <https://thediplomat.com/2017/05/why-are-south-korean-politics-so-messy/>; *Korea – Political Parties*, GLOBALSECURITY.ORG, <https://www.globalsecurity.org/military/world/rok/politics-parties.htm> (last updated 2019).

<sup>83</sup> See Justin McCurry, *South Korea Spy Agency Admits Trying to Rig 2012 Presidential Election*, THE GUARDIAN (Aug. 4, 2017, 3:15 EDT), <https://www.theguardian.com/world/2017/aug/04/south-koreas-spy-agency-admits-trying-rig-election-national-intelligence-service-2012>.

<sup>84</sup> See Sunhyuk Kim, "Contentious Democracy" in South Korea, *An Active Civil Society and Ineffectual Political Parties*, 8 TAIWAN J. DEMOCRACY 51, 55–56 (2012).



entrenchment of constitutional principles through impartial constitutional reform.

On the other hand, in Venezuela and Algeria, where the opposing parties are actively suppressed and are denied effective powers, people's movements have had a harder time to move the government to listen to their demands. While weak institutionalization of parties is a structural issue of Venezuelan politics,<sup>85</sup> Venezuela's president has been ruthlessly suppressing political dissent while struggling to maintain the country's economic stability in the face of falling oil prices.<sup>86</sup> Opposition leaders such as Leopoldo Lopez and Caracas Mayor Antonio Ledezma have been either in jail or house arrest for prolonged periods.<sup>87</sup> Guaidó himself is facing travel bans and threats of arrest.<sup>88</sup>

Algeria's major opposition party, Islamic Salvation Front was banned at the introduction of the multiparty system by Article 178(2) of the 1996 Constitution after a political monopoly of Front de Libération Nationale under the constitution of 1963.<sup>89</sup> The constitution also prohibits parties based on "religious, linguistic, racial, sexual, corporatist or regional basis" under Article 42.<sup>90</sup> Therefore, opposition parties and political dissent is actively suppressed in Algerian context.

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<sup>85</sup> See Daniel Hellinger, *The Second Wave of Incorporation and Political Parties in the Venezuelan Petrostate*, in *RESHAPING THE POLITICAL ARENA IN LATIN AMERICA* 251–52 (Eduardo Silva & Federico Rossi eds., 2018).

<sup>86</sup> See Zeeshan Aleem, *How Venezuela Went from a Rich Democracy to a Dictatorship on the Brink of Collapse*, VOX (Sep. 19, 2017, 9:10 AM), <https://www.vox.com/world/2017/9/19/16189742/venezuela-maduro-dictator-chavez-collapse>; Scott Neuman, *Venezuelan Agents Arrest Opposition Leaders in Midnight Raids*, NPR (Aug. 1, 2017, 9:12 AM), <https://www.npr.org/sections/thetwo-way/2017/08/01/540790886/venezuela-agents-arrest-opposition-leaders-in-midnight-raids>.

<sup>87</sup> Neuman, *supra* note 86.

<sup>88</sup> See *Opposition Leader Barred from Leaving Venezuela*, CBC NEWS (Jan. 29, 2019, 7:20 PM), <https://www.cbc.ca/news/world/venezuela-guaido-barred-leaving-supreme-court-1.4998072>.

<sup>89</sup> *Algeria: Constitution*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/algeria-constitution> (2019).

<sup>90</sup> THE CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA 1963, art. 42 ("The right to establish political parties is recognized and guaranteed. However, this right cannot be used to violate the fundamental liberties, the fundamental values and components of the national identity, the national unity, the security and integrity of the national territory, the independence of the country and the People's sovereignty as well as against the democratic and republican nature of the State. In respect to the provisions of the present Constitution, the political parties cannot be founded on religious, linguistic, racial, sex, corporatist or regional basis.")

#### IV. CHARACTERISTICS OF PEOPLE'S CONSTITUTIONAL MOVEMENTS

People's movements are taking place in a backdrop of weak or unresponsive state structure. Therefore, the first characteristic of these movements relates to the historical experience of authoritarianism against which the citizens are propelled to act. The second characteristic of these people's movements is the substantive value basis of constitutional principles upon which the citizens have united to protest against the state and demand change. This is crucial in a context where citizens are denied elections, well-organized political parties, and freedom of expression, and press to play their role in constitutional governance. The third is the use of technology as a means of amplifying citizen voices. While people have protested against abuse of power time and again, and have been ruthlessly suppressed by the oppressive regimes, technological advances make it increasingly harder to silence public dissent.

##### A. *Driven by Abhorrence Towards Authoritarianism and Corruption*

These countries are either in the grips of an authoritarian leader or memory of authoritarianism is painfully fresh in their memories.<sup>91</sup> South Korea had moved from the dictatorial regimes of Rhee Syngman and Park Chung Hee to a democratic model through public pressure in the 1980s.<sup>92</sup> Park Chung Hee led Korea to economic prosperity through implementing the developmental state model.<sup>93</sup> This model consists of export-led growth strategies and government support of national industry champions, alongside stringent state regulation of civil and political rights including any form of political dissent or disruption.<sup>94</sup> Following the assassination of Park Chung Hee, South Korea was effectively ruled by Chun Doo Hwan, who gained control of the military through a coup and imposed martial law.<sup>95</sup> However, in May 1980 during the Kwangju uprising, the suppressed university students led protests against the authoritarian regime.<sup>96</sup> Despite this uprising being

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<sup>91</sup> See Larry Diamond, *supra* note 66. See generally Yascha Mounk, *THE PEOPLE VS. DEMOCRACY: WHY OUR FREEDOM IS IN DANGER AND HOW TO SAVE IT* (2018); DANIEL ZIBLATT & STEVEN LEVITSKY, *HOW DEMOCRACIES DIE* (2018).

<sup>92</sup> *Constitutional History of South Korea*, *supra* note 47.

<sup>93</sup> GRAHAM, *supra* note 70.

<sup>94</sup> *Id.*

<sup>95</sup> Chong-suk Han, *Kwangju Uprising: South Korean History*, *ENCYCLOPEDIA BRITANNICA* (2007), <https://www.britannica.com/event/Kwangju-Uprising>.

<sup>96</sup> *Id.*

ruthlessly crushed by the military, South Koreans consider this uprising as a catalyst towards bringing about democracy.<sup>97</sup> Chun's chosen successor, Roh Tae Woo amended the constitution allowing the people to directly elect the president and South Korea has had democratically elected presidents ever since.<sup>98</sup>

Sri Lanka was just emerging from the civil war, the end of which was marked by a soft authoritarian regime of a strong executive president.<sup>99</sup> Rajapaksa's regime was infamous for violation of human rights and political freedoms, suppression of political dissent and a rhetoric of radical Sinhala nationalism, which was harmful towards the liberties of the minorities.<sup>100</sup> Three decades of civil war also justified and systematized rule by emergency, militarization and surveillance of the public as well as human rights violations for the sake national security.<sup>101</sup> However, people were getting increasingly frustrated when these conditions did not undergo substantial transformations after the much-celebrated end of the civil war.<sup>102</sup> The country had transitioned into a more liberal, human rights-oriented regime through the Presidential and parliamentary elections of 2015.<sup>103</sup> Nevertheless, some of the systemic drawbacks continue to hinder the flourishing of constitutional democracy in Sri Lanka and therefore, people continue to agitate for reform.

Venezuela has been captured by different dictators throughout its post-independence period. Democratic leaders have only lasted a short period

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> See Jayadeva Uyangoda, *Rebuilding Institutions in the Transition from Soft Authoritarianism*, THE ISLAND (Feb 09, 2015, 7:10 PM), [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=119250](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=119250) ("The defining feature of soft authoritarianism as a regime model is the shift to authoritarianism while democratic elections and institutions such as parliament are still functioning and the rulers still seek political legitimacy through the electoral process. Manipulation of the electoral process, undermining of democratic institutions frontal attacks on the rival opposition parties as well as democratic civil society, and the promotion of the personality cult of the leader are usual practices under soft authoritarianism."); Neil DeVotta, *From Civil War to Soft Authoritarianism: Sri Lanka in Comparative Perspective* in GLOBAL CHANGE PEACE & SECURITY 331, 333 (2010).

<sup>100</sup> See *Profile: Mahinda Rajapaksa*, BBC NEWS (Aug. 18, 2015), <https://perma.cc/G95G-VPER>.

<sup>101</sup> See generally Radhika Coomaraswamy & Charmaine de los Reyes, *Rule by Emergency: Sri Lanka's Postcolonial Constitutional Experience*, 2 INT'L J. CONST. L. 272 (2014); *Sri Lanka: Failed Pledges Mar 10 Years Since War's End*, HUMAN RIGHTS WATCH (May 17, 2019, 10:15 PM EDT), <https://www.hrw.org/news/2019/05/17/sri-lanka-failed-pledges-mar-10-years-wars-end>.

<sup>102</sup> Neil DeVotta & Sumit Ganguly, *The Scarring of Democracy in Sri Lanka*, US NEWS (Nov. 8, 2018, 11:09 AM), <https://www.usnews.com/news/best-countries/articles/2018-11-08/commentary-sri-lankas-constitutional-crisis-and-the-threat-to-its-democracy>.

<sup>103</sup> *Id.*

before they were ousted by military or popular uprisings.<sup>104</sup> The 1996 constitution was promulgated by Hugo Chávez, who was democratically elected in 1998. However, this constitution failed to draft a governance mechanism that would prevent rise of dictatorships in future. His successor, Maduro, has effectively become a democratic authoritarian who has suppressed the political opposition, judicial independence and freedom of press.<sup>105</sup> He wields complete control over the government and military, but he has failed to improve economic and social conditions of the people.<sup>106</sup>

Middle Eastern countries who went through the Arab Spring were also still under dictatorships: Tunisia under the power of President Zine al-Abidine Ben Ali, Egypt under Hosni Mubarak and Libya under the power of Muammar Gaddafi.<sup>107</sup> These presidents abused their power in a manner that entrenched their power and wealth at the expense of general public. As a result, the public faced social and economic disempowerment and the pent-up frustrations were a main reason which triggered the Arab Springs of 2011.<sup>108</sup> Bouteflika of Algeria lifted the state of emergency by which he ruled the country for nineteen years and promised further constitutional reform in order prevent the uprisings in 2011.<sup>109</sup> However, the people have not seen any meaningful reform and meanwhile their octogenarian president became an outright puppet for the corrupt elite after suffering a stroke in 2013.<sup>110</sup> His written announcement of his candidacy to run for a fifth term of presidency provoked immediate protests, and this was a response arising from a prolonged and persistent experience of authoritarianism.<sup>111</sup> Therefore, painful memories of authoritarianism, or the deteriorating conditions of life brought about by

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<sup>104</sup> See *Constitutional History of Venezuela*, *supra* note 56.

<sup>105</sup> Aleem, *supra* note 86.

<sup>106</sup> *Id.*

<sup>107</sup> See BROWNLEE ET AL., *supra* note 43; Haas et al., *supra* note 43.

<sup>108</sup> Abdul Qadir Mushtaq & Muhammad Afzal, *Arab Spring: Its Causes and Consequences*, 30 J. PUNJAB U. HISTORICAL SOC'Y 1, 1–3 (Jan.–June 2017), [http://pu.edu.pk/images/journal/HistoryPStudies/PDF\\_Files/01\\_V-30-No1-Jun17.pdf](http://pu.edu.pk/images/journal/HistoryPStudies/PDF_Files/01_V-30-No1-Jun17.pdf)

<sup>109</sup> See *Algeria Lifts 19-Year-Old State of Emergency*, REUTERS (Feb. 24, 2011, 12:23 PM), <https://www.reuters.com/article/us-algeria-emergency-lifting/algeria-lifts-19-year-old-state-of-emergency-idUSTRE71N6VS20110224>.

<sup>110</sup> See Rana Jaward, *How Does Reclusive President Bouteflika Run Algeria?*, BBC NEWS (Mar. 6, 2019), <https://www.bbc.com/news/world-africa-47456114>.

<sup>111</sup> See Ruth Michaelson, *Bouteflika to Quit as Algeria's President After Huge Protests*, THE GUARDIAN (Apr. 1, 2019, 12:47 EDT), <https://www.theguardian.com/world/2019/apr/01/algerias-president-abdelaziz-bouteflika-to-step-down-by-28-april>.

authoritarian regimes, allowed the people to put down their differences, at least temporarily, to unite against a common threat to their wellbeing.

Furthermore, presidential or semi-presidential systems of these countries constitutionally allow for a powerful individual to enjoy a vast amount of unchecked discretion. This has paved way for authoritarianism which sanctions and perpetuates corruption of the ruling elite. Impunity for corruption compels the citizens to mobilize in response to demand accountability. The South Korean Candlelight Protests were triggered by the corrupt practices of Park and her advisors in collusion with the conglomerates.<sup>112</sup> Sri Lanka's previous president's regime was widely accused of corruption and embezzlement of state finances and his sudden power grab through precarious constitutional means was allegedly to shield his brother who was to face trial for misuse of state finances.<sup>113</sup> Venezuelan democracy has a long history of corruption,<sup>114</sup> and Maduro has continued that history. His sanction of corrupt military has resulted in their continued support for his regime.<sup>115</sup> The Organized Crime and Corruption Reporting Project picked Maduro as the 2016 "man of the year in organized crime and corruption" for misuse of state finances, repression of political opposition and press, and allowing his family members to deal in drugs.<sup>116</sup> While Bouteflika failed to curb the state-wide corruption, which resulted in Algeria sinking in Transparency International's corruption perception index,<sup>117</sup> 2019 anti-corruption crackdowns led to the apprehension of his close associates for engaging in corrupt practices.<sup>118</sup> When the state mechanisms are failing to

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<sup>112</sup> *Presidential Scandal*, *supra* note 3.

<sup>113</sup> See Tisarane Gunasekara, *Deranged*, COLOMBO TELEGRAPH (Nov. 11, 2018), <https://perma.cc/S3NM-MWFA>.

<sup>114</sup> See Gustavo Coronel, *The Corruption of Democracy in Venezuela*, CATO INSTITUTE (Mar. 4, 2008), <https://www.cato.org/commentary/corruption-democracy-venezuela>.

<sup>115</sup> See *Venezuela Crisis: Why the Military is Backing Maduro*, BBC NEWS (Jan. 28, 2019), <https://www.bbc.com/news/world-latin-america-47036129>.

<sup>116</sup> See *Person of the Year 2016: Nicolás Maduro*, ORGANIZED CRIME AND CORRUPTION REPORTING PROJECT (last visited Jan. 26, 2020), <https://www.occrp.org/en/poy/2016/>.

<sup>117</sup> See Ahmed Marwane, *Fighting Corruption in Algeria: Turning Words into Action*, FIKRA FORUM (Dec. 12, 2018), <https://www.washingtoninstitute.org/fikraforum/view/fighting-corruption-in-algeria-turning-words-into-action>.

<sup>118</sup> See *Algeria: 5 Billionaires Arrested as Part of Anti-Corruption Drive*, ALJAZEERA (Apr. 22, 2019), <https://www.aljazeera.com/news/2019/04/algeria-5-billionaires-arrested-part-anti-corruption-drive-19042211903777.html>.

check the executive from corruption, people have no choice but to directly challenge the representative to whom they conferred powers.<sup>119</sup>

### B. *Constitutional Principles as the Rallying Point*

Democracy and rule of law were the central rallying point of all these protests. When the institutional checks fail at holding the elected representatives accountable, people have had to directly assemble themselves and demand the upholding of constitutional principles. South Korean protestors were seeking accountability for the corruption of the president and the most senior advisors of the government.<sup>120</sup> The people's movements rallied around the constitutional principle of people's sovereignty.<sup>121</sup> They insisted that the president derived her authority from the people and that people will not tolerate such lack of accountability and transparency in presidential conduct.<sup>122</sup>

Similarly, Sri Lankan protestors explicitly claimed that they were not supporting a person but defending the salient principles of their constitutional democracy.<sup>123</sup> They emphasized the sovereignty of people and the importance of protecting democracy.<sup>124</sup> People, protesting in Colombo, called for the officials ranging from the president, speaker and parliamentarians to the Election Commissioners and the judges to uphold the constitution.<sup>125</sup> When the president dissolved the parliament in violation of the constitution, he tried to veil the violation by stating that parliamentary elections promote people's

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<sup>119</sup> See Diamond, *supra* note 66.

<sup>120</sup> Dudden, *supra* note 2.

<sup>121</sup> See CONSTITUTION OF THE REPUBLIC OF KOREA, Jul. 12, 1948, art. 1(2) ("The sovereignty of the Republic of Korea resides in the people, and all state authority emanates from the people.").

<sup>122</sup> *Id.*

<sup>123</sup> See Shihar Aneez, *Supporters of Ousted PM Protest as Sri Lanka Gripped by Political Crisis*, U.S. NEWS (Oct. 30, 2018, 5:35 AM), <https://www.usnews.com/news/world/articles/2018-10-30/supporters-of-ousted-pm-protest-as-sri-lanka-gripped-by-political-crisis>; *Sri Lanka Political Crisis: How Citizens are "Taking a Stand" for Democracy*, BUSINESS STANDARD (Nov. 7, 2018, 6:46 IST), [https://www.businessstandard.com/article/international/sri-lanka-political-crisis-how-citizens-are-taking-a-stand-for-democracy118110700075\\_1.html](https://www.businessstandard.com/article/international/sri-lanka-political-crisis-how-citizens-are-taking-a-stand-for-democracy118110700075_1.html); *Sri Lanka Political Crisis: Thousands March in Protest Against President's Decision to Sack Prime Minister*, ABC NEWS (Oct. 30, 2018, 7:50 AM), <https://www.abc.net.au/news/2018-10-30/warnings-ofbloodbath-as-political-crisis-grips-sri-lanka/10445252>.

<sup>124</sup> *Id.*

<sup>125</sup> See *Thousands Rally in Colombo in Support of Sacked Sri Lanka PM*, ALJAZEERA (Oct. 30, 2018), <https://www.aljazeera.com/news/2018/10/thousands-sacked-sri-lanka-pm-supporters-rally-colombo-181030105543897.html>; Shihar Aneez, *Angry Sri Lankans Rally to Support Ousted PM, Denounce "Coup,"* REUTERS (Oct. 30, 2018, 4:40 AM), <https://www.reuters.com/article/us-sri-lanka-politics/angry-sri-lankans-rally-to-support-ousted-pm-denounce-coup-idUSKCN1N41HQ>.

sovereignty because then the people can exercise their sovereignty directly through franchise as stated in Article 3 and 4 of the constitution. However, people petitioned that elections held in violation of the constitution cannot be free and fair.<sup>126</sup> Therefore, the people's movement was firmly grounded on constitutional doctrine.

Even Venezuela, where citizen protests began with their National State Assembly president, Juan Guaidó, stepping up to challenge the president, protests demanded democracy. Protestors carried Venezuelan flags and banners supporting democracy as well as remembrances of those who had fallen in the struggle.<sup>127</sup> The initial protest took place on the Venezuelan Youth Day, commemorating the Battle of La Victoria in 1814 during Venezuela's war for independence where many young people died for the country—a significant day to remind the role that people, especially the younger generations, play in shaping the country's destiny.<sup>128</sup>

Algerian protestors emphasized the republican nature of their country in demanding their president to quit.<sup>129</sup> Given the recurrent failure of politics to govern in the public interest, people mobilize themselves to demand accountability from the state and its officials. The protestors initially demanded that Bouteflika step down, with chanting, “the people want to pave the way.”<sup>130</sup> However, demands of the movement evolved once it became clear that meaningful constitutional democracy was not possible under the current regime and without resignation of the president and other power players.<sup>131</sup> The people then called for the fall of the regime.<sup>132</sup> Rejecting the procedural constitutional provisions which state that presidential elections should be held within ninety days of the resignation of the incumbent, people cited Articles

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<sup>126</sup> *No Constitution = No Democracy*, *supra* note 11.

<sup>127</sup> See Ana Vanessa Herrero & Nicholas Casey, *Venezuelans Opposed to Maduro Pour into Streets for Day of Protests*, N. Y. TIMES (Feb. 2, 2019), <https://www.nytimes.com/2019/02/02/world/americas/venezuela-protests-opposition-maduro.html>.

<sup>128</sup> See Sam Meredith, *Here's How a Massive Nationwide Protest Against Maduro Could Shape Venezuela's Future*, CNBC (Feb. 12, 2019, 8:05 AM), <https://www.cnbc.com/2019/02/12/how-a-nationwide-protest-against-maduro-could-shape-venezuelas-future.html>.

<sup>129</sup> Faten Aggard, *Algeria Protests: Bouteflexit Complete. Now What?*, AFRICAN ARGUMENTS (Apr. 4, 2019) <https://africanarguments.org/2019/04/04/algeria-protests-bouteflexit-complete-now-what/>

<sup>130</sup> See M. Tahir Kilavuz, *Here's Why Algerians are Protesting*, THE WASHINGTON POST (Feb. 25, 2019, 12:00 PM), [https://www.washingtonpost.com/politics/2019/02/25/heres-why-algerians-are-protesting/?utm\\_term=.b49109824277](https://www.washingtonpost.com/politics/2019/02/25/heres-why-algerians-are-protesting/?utm_term=.b49109824277).

<sup>131</sup> See *Algeria Protestors Demand End to Regime After Bouteflika's Fall*, *supra* note 40.

<sup>132</sup> *Id.*

6, 7, and 8 on the sovereignty of people as paramount.<sup>133</sup> Therefore, the Algerian people's movements have moved beyond the text of the constitution that restrict constitutional principles in practice.

### C. *Technology as the Method of Mobilization*

Given the tendency of repressive regimes to capture, repress, or distort mass media,<sup>134</sup> alternative methods of disseminating information are crucial. Technological advances provide a variety of different platforms of information sharing, communication, and debate, such as social media, messaging apps, blogs, and e-news websites. These platforms allow people to express their dissent online as well as mobilize for other forms of political participation such as holding marches and protests as well as attending political debates and signing petitions.<sup>135</sup> Social media has the potential advantage of disrupting the top-down nature of information sharing and also attempting to equalize the field in terms opportunities to access and disseminate information.<sup>136</sup>

South Korea's major television channels and newspapers were found to be biased towards coverage of the political agenda of the incumbent president.<sup>137</sup> Therefore, it is hard for political dissent to rely on mainstream media. Mobilization of people for South Korea's Candlelight Protests took place through social media and citizens reported the progress of protests through their smartphones. People participated in the progress of the protests through sharing information through the Korean chat, Kakao Talk, as well as Facebook and other social media.<sup>138</sup>

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<sup>133</sup> *Id.*

<sup>134</sup> See Sarah Repucci, *Media Freedom: A Downward Spiral*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-and-media/2019/media-freedom-downward-spiral> (last accessed Mar. 11, 2020).

<sup>135</sup> See Mahmood Monshipouri, *Introduction: Protests and Human Rights in Context*, in INFORMATION POLITICS, PROTESTS, AND HUMAN RIGHTS IN THE DIGITAL AGE 1, 6 (Mahmood Monshipouri ed., 2016); Sangwon Lee, *The Role of Social Media in Protest Participation: The Case of Candlelight Vigils in South Korea* 12 INT'L J. COMM. 1523, 1524–25 (2018).

<sup>136</sup> See SOCIAL MEDIA AND DEMOCRACY: INNOVATIONS IN PARTICIPATORY POLITICS 8 (Brian D. Loader & Dan Mercea eds., Routledge 2012).

<sup>137</sup> See Chang Sup Park, *Korean Media Often Allied with Ruling Political Parties*, 36 NEWSPAPER RES. J. 265, 265 (2015).

<sup>138</sup> See Ha-Joon Chang, *South Koreans Worked a Democratic Miracle. Can They Do It Again?*, N. Y. TIMES (Sep. 14, 2017), <https://www.nytimes.com/2017/09/14/opinion/south-korea-social-mobility.html>.



In Sri Lanka, one of the early steps of the constitutional coup was for the new Prime Minister's side to take over the mainstream media.<sup>139</sup> While this signaled the repression that was about to follow, it also meant that dissemination of information, as well as citizen activism, could only take place through the internet. There were threats to shut down the internet as well, which indeed was a measure taken during ethnic tensions between Sinhalese and Muslims in March 2018,<sup>140</sup> and also in the aftermath of Easter Sunday Attacks of April 2019.<sup>141</sup> However, this did not happen during the constitutional coup, arguably because president was publicly proclaiming to act in the name of democracy and rule of law. Thus, internet-based activism and mobilization were crucial for rallying against the president.

The leader of the Venezuelan National Assembly has been communicating with the public through social media.<sup>142</sup> Similar to other contexts, mainstream media are under the tight control of the government. However, Guaidó summoned hundreds of thousands of people to the streets for non-violent demonstrations through social media.<sup>143</sup> The people were asked to convey their grievances through placards and they referred to fundamental issues of lack of food, access to medicine and crippled quality of life.<sup>144</sup> Social media remains the only avenue through which the people can comprehend what is happening around them and also communicate to the world the gravity of the situation that they are facing in their country and the suffering that they are undergoing.<sup>145</sup> Nevertheless, the regime has made

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<sup>139</sup> See Jack Moore, *Sri Lankan Press Freedom Crushed Following Mahinda Rajapaksa's Return*, NATIONAL (Nov. 4, 2018), <https://www.thenational.ae/world/asia/sri-lankan-press-freedom-crushed-following-mahinda-rajapaksa-s-return-1.787836>.

<sup>140</sup> See FREEDOM OF THE NET, <https://www.refworld.org/docid/5be16af813.html> (last accessed Mar. 11, 2020).

<sup>141</sup> See Jane Wakefield, *Sri Lanka Attacks: The Ban on Social Media*, BBC NEWS (Apr. 23, 2019), <https://www.bbc.com/news/technology-48022530>.

<sup>142</sup> See *Venezuela Opposition Cling to Social Media Lifeline*, FRANCE24 (Jan. 31, 2019, 23:46), <https://www.france24.com/en/20190131-venezuela-opposition-cling-social-media-lifeline>.

<sup>143</sup> See Philip Reeves, *Venezuelan President Maduro Faces Intensified Pressure to Step Down*, NPR (Jan. 30, 2019, 5:04 AM), <https://www.npr.org/2019/01/30/689863662/venezuelan-president-maduro-faces-intensified-pressure-to-step-down>.

<sup>144</sup> *Id.*

<sup>145</sup> See, e.g., ShareAmerica, *In Pictures: The Suffering of Venezuela's People*, SHAREAMERICA (Jun. 4, 2019), <https://share.america.gov/in-pictures-suffering-of-venezuelas-people/>.

several attempts to restrict social media activism through blackouts and crackdown of activists.<sup>146</sup>

During the Arab Spring, masses of people were educated through internet-based sources and were mobilized through social media.<sup>147</sup> In fact, Arab Springs, which spread through Middle Eastern countries, were also known as Facebook revolutions, Twitter revolutions or social media revolutions.<sup>148</sup> Algerian protestors are similarly mobilizing social media and internet platforms to mobilize the people and also report the progress of the rallies through Facebook, Twitter, and Instagram.<sup>149</sup> People's uprisings were spearheaded by the youth organization Active Youth Collective, which began its activism through Facebook.<sup>150</sup> Social media also becomes the avenue for the younger generations to see the international and regional developments and lack of progress in the domestic social, economic sphere.<sup>151</sup> Both in Sri Lanka and Algeria, people have lost their trust in the mainstream media, which have been muzzled by the government.<sup>152</sup> Algerian protests have triggered the journalists themselves to mobilize against repression of their freedom of expression to engage in independent journalism.<sup>153</sup> While the Algerian government has engaged in blackouts, they have not blocked social media or internet, and there have been no arrests of the social media activists.<sup>154</sup> Protestors have also understood that disciplined protests are the most effective. Thereby, Algerian social media pages instructed the protestors to

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<sup>146</sup> See *Social Media Shutdown in Venezuela is a Warning of What is to Come as Political Tensions Rise*, ACCESS NOW (Jan. 22, 2019, 4:21 PM), <https://www.accessnow.org/social-media-shutdown-in-venezuela-is-a-warning-of-what-is-to-come-as-political-tensions-rise/>; Joshua Goodman, *Venezuela Frees Musician Jailed After Blasting Maduro Online*, ASSOCIATED PRESS (Jul. 17, 2019), <https://apnews.com/2533a947358f4057bad1ddd7c4654408>.

<sup>147</sup> See Heather Brown, Emily Guskin & Amy Mitchell, *The Role of Social Media in the Arab Uprisings*, PEW RES. CTR. (Nov. 28, 2012), <https://www.journalism.org/2012/11/28/role-social-media-arab-uprisings/>.

<sup>148</sup> See Stefano Passini, *The Facebook and Twitter Revolutions: Active Participation in the 21<sup>st</sup> Century*, 22 HUM. AFF. 301, 301 (2012); Saleem Kassim, *Twitter Revolution: How the Arab Spring Was Helped by Social Media*, MIC (Jul. 3, 2012), <https://www.mic.com/articles/10642/twitter-revolution-how-the-arab-spring-was-helped-by-social-media>.

<sup>149</sup> See *Social Media Breaks "Wall of Fear" for Algeria Protestors*, ARAB NEWS (Mar. 6, 2019), <http://www.arabnews.com/node/1462191/media>.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> See *Bouteflika Protests: Algeria's Shifting Media Space*, ALJAZEERA (Mar. 18, 2019, 08:17 GMT), <https://www.aljazeera.com/programmes/listeningpost/2019/03/bouteflika-protests-algeria-shifting-media-space-190317083422948.html>.

<sup>153</sup> *Id.*

<sup>154</sup> *Social Media Breaks "Wall of Fear" for Algeria Protestors*, *supra* note 150.

“come equipped only with ‘love, faith, Algerian flags and roses’, and to take litter away with them.”<sup>155</sup>

## V. PEOPLE’S MOVEMENTS AS A DISTINCT STAND OF POPULAR CONSTITUTIONALISM

This section distinguishes and conceptualizes people’s movements analyzed above as a distinct strand of popular constitutionalism. The first part of the section discusses the U.S. based conceptualization of popular constitutionalism which argues that people’s representatives should receive priority in authority to uphold the constitution. The second section distinguishes people’s movements asserting constitutional principles from social movements that advocate for social and political causes generally. The following section distinguishes people’s movements as a phenomenon that precedes constitutional moments, during which constitutional reforms take place. Based on these arguments, people’s movements asserting constitutional principles are placed as a strand of popular constitutionalism that pits people against people’s agents. This is different from the U.S. based conceptualization because it operates on the assumption that mechanisms of constitutional governance ensure that people’s agents uphold people’s will. However, people’s movements occur when the country’s governance mechanisms fail to ensure that people’s agents represent their will. A constitutional moment could be a potential outcome of people’s movements, but they occur prior to a constitutional moment.

### A. *U.S.-Based Conceptualization of Popular Constitutionalism*

The concept of popular constitutionalism encourages people to be actively involved in interpretation and implementation of the constitution. The proponents for popular constitutionalism have based their arguments on the constitutional law of the United States. They have emphasized the tension between constitutional interpretation by elected branches of the state versus the un-elected judiciary. Larry Kramer, former Professor of Law at Stanford Law School, in *People Themselves*, illustrates the nature of the United States Constitution as a compact of the people and how the agents of the people were entrusted with implementing the constitution.<sup>156</sup> Kramer argues that “to define

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<sup>155</sup> Burke & Michaelson, *supra* note 36.

<sup>156</sup> See STEPHEN KOTKIN & LARRY D. KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* 7 (Oxford University Press 2004).

a role for courts have been part of a larger and more fundamental struggle to maintain the authority of ordinary citizens over their Constitution.”<sup>157</sup> Kramer disagrees with the dichotomy that politics are within the realm of the ordinary people and that the constitution, by virtue of being a law, is under the guardianship of the judges. He challenges the *Cooper v. Aaron*<sup>158</sup> reading of *Marbury v. Madison*<sup>159</sup> that if it is the province of the court to state what the law is and what the constitution is, then the Supreme Court’s interpretation of the constitution is supreme.

Popular constitutionalists range from those who denounce judicial supremacy to radicals who denounce judicial review itself.<sup>160</sup> However, the United States-oriented popular constitutionalism functions upon the backdrop of people having designed the constitution and plays a role in constitutional governance “at least in some limited sense—through elections, social movements, and judicial nominations.”<sup>161</sup> Therefore, Tom Donnelly, who was a Climenko Fellow and Lecturer on Law at Harvard Law School, concludes that “even under our current system, constitutional doctrine tends to track public opinion in most high-salience areas.”<sup>162</sup> Thus, the main claim of popular constitutionalism is that “the American people—or, at least, their elected representatives—must have a direct means of enforcing popular constitutional understandings” because “for popular constitutionalists . . . the invisible hand of public opinion is not enough.”<sup>163</sup>

But the countries in focus in this paper face a fundamental issue whereby the people are either precluded from electing their representatives through free and fair periodic elections or their elected representatives no longer represent their interests. Consequently, the fundamental assumption of people’s representatives aligning with the will of the people, taken for granted by the current conceptualization of popular constitutionalism, is absent in these countries. Therefore, the people’s movements are attempting to either

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<sup>157</sup> *Id.*

<sup>158</sup> *See* 358 U.S. 1, 1(1958).

<sup>159</sup> *See* 5 U.S. 137, 137 (1803).

<sup>160</sup> *See* Tom Donnelly, *Making Popular Constitutionalism Work*, 2012 WIS. L. REV. 159, 160–161 (2012).

<sup>161</sup> *Id.* at 162.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

transform the basic constitutional structures to be more democratic or ensure that representatives in power are accountable to the constitutional norms.

*B. People's Movements Distinguished from Socio-Political Movements*

Corey Brettschneider, Professor of Political Science at Brown University, reviewing UC Santa Cruz University Associate Professor Elizabeth Beaumont's *The Civic Constitution: Civic Visions and Struggles in the Path toward Constitutional Democracy*, highlights the significance of defining the people engaged in popular constitutionalism and whether the nature of their demands are in fact constitutional.<sup>164</sup> However, focusing upon the United States, Beaumont deals with people's engagement via the socio-political movements.<sup>165</sup> This differs from people's movements discussed here because such movements operate within the existing framework of governance in the country.<sup>166</sup> They are a strand of citizen activism that Duncan Green, Professor in Practice at London School of Economics, defines broadly as "any individual action with social consequences, and much of it involves collective activity, including participation in faith groups or neighborhood associations, producer organizations and trade unions, village savings and loan groups, and funeral societies, among others."<sup>167</sup>

Beaumont focuses on political activism of citizens within this broad definition to distinguish the movements which qualify as popular constitutionalism. Examples provided are movements advocating for African Americans' rights and women's rights, which are movements to win rights of different groups of people within the existing political and constitutional structure through negotiations with its existing powerholders.<sup>168</sup> Such is possible when the people's agents are responsive towards people's demands. However, the primary purpose of a constitutional movement is to dismantle the power players of the current political and constitutional structure, which does not provide any mechanism to hold them accountable to the people. Therefore, a social movement becomes a constitutional movement when

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<sup>164</sup> See generally Corey Brettschneider, *Popular Constitutionalism Contra Populism*, 30 CONST. COMMENT. 81 (2015).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 81–83.

<sup>167</sup> DUNCAN GREEN, *HOW CHANGE HAPPENS* 179, 180–81 (2016) (attributing expansion of such social movements to education, political openness, transformed conceptions of rights and justice, and advances in technology).

<sup>168</sup> Brettschneider, *supra* note 164, at 82–84.

people base their substantive demands on democracy and rule of law and mobilize to challenge the existing structures of governance. The difference is in the substantive demands and goals of the movement.

C. *People's Constitutional Movements Distinguished from Constitutional Moments*

Bruce Ackerman, Sterling Professor of Law and Political Science at Yale Law School, in *We the People: Foundations*, introduces a four-stage process of higher lawmaking, whereby the constitutional transformations happen through “signaling, proposing, deliberating and codifying functions.”<sup>169</sup> Ackerman’s analysis triggered an array of constitutional literature critiquing “both its descriptive accuracy and normative desirability.”<sup>170</sup> However, the focus of Ackerman’s theory is to justify the constitutional changes that are premised on precarious legal grounds according to the existing constitutional structure.<sup>171</sup> Ackerman purports that people pronounce their will in exceptional instances of so-called constitutional moments, during which higher law making, i.e., constitutional reform takes place, thus giving rise to a dualist democracy. However, the starkness of the distinction between ordinary politics and constitutional moments is questionable,<sup>172</sup> especially in the United States where the procedure to amend the constitution is extremely rigid and unwritten constitutional practices of the three branches of the state constitute a significant portion of country’s governance. But the United States is once again in a special position in this regard because the countries analyzed in this paper have relatively detailed written constitutions with more flexible amendment procedures. Therefore, rather than identifying constitutional moments, focus in other countries is upon the amending and replacing the constitutions procedurally and substantively complying with constitutional principles.<sup>173</sup>

However, the focus of this paper is at a process prior to this so-called higher law-making process. Ackerman’s higher law-making phase might

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<sup>169</sup> BRUCE ACKERMAN, I *WE THE PEOPLE: FOUNDATIONS* 266, 266–67 (1993).

<sup>170</sup> Sujit Choudhry, *Ackerman's Higher Lawmaking in Comparative Constitutional Perspective: Constitutional Moments as Constitutional Failures?*, 6 INT’L J. CONST. L. 193, 204 (2008).

<sup>171</sup> *Id.* at 199–201.

<sup>172</sup> See generally Michael J. Klarman, *Constitutional Fact/Constitutional Fiction: A Critique of Bruce Ackerman's Theory of Constitutional Moments*, 44 STAN. L. REV. 759 (1992).

<sup>173</sup> Choudhry, *supra* note 170.

arrive as an outcome of the constitutional movement, as was seen in Tunisia during the Arab Springs of 2011.<sup>174</sup> But this is not the guaranteed result as seen in the South Korean and Sri Lankan examples. These movements indeed transformed political regimes of the country, but the people's constitutional movements in the above instances acted as a check against the powerholders of the regime by holding them accountable to the constitutional principles of their existing constitutional regime. Higher lawmaking is not necessarily their only goal or the paramount goal, even when the people do see the weaknesses of their current constitutional structure.

The initial phase of signaling is when “the movement earns the constitutional authority to claim that, in contrast to the countless ideological factions competing in normal politics, its reform agenda should be placed at the center of sustained public scrutiny.”<sup>175</sup> However, in people's constitutional movements, the people are challenging the existing regime that is oppressive and corrupt and does not abide by the constitutional rules that are said to govern them. People are demanding that the ruling elites conform to the most basic constitutional principles, which are confined to the written text in these contexts. Therefore, the political responsibility is minimal in this context and people are compelled to pressurize their governments for reform. Even though opposition politicians have given leadership to the people's movements, as seen in Venezuela, individual leadership has not been the focal point but the collective effort of the people.<sup>176</sup>

Ackerman theorizes that in the second phase of higher lawmaking the movement is encouraged to “focus its rhetoric into a series of more or less operational proposals for constitutional reform.”<sup>177</sup> At the third phase of “mobilized popular deliberation,” Ackerman refers to the backlash produced by the previously silent stakeholders against imminent change and illustrates how tough it is for the reform proposals to withstand this backlash.<sup>178</sup> People's movements in discussion also need to face backlash by those who have a

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<sup>174</sup> See Selim Ben Abdeselem, *The Making of a Constitution: A Look Back at Tunisia's Thorny Consensus-building Process*, CONSTITUTIONNET (Mar. 26, 2014), <http://constitutionnet.org/news/making-constitution-look-back-tunisias-thorny-consensus-building-process>.

<sup>175</sup> ACKERMAN, *supra* note 169, at 266.

<sup>176</sup> Lamine Chikhi, *Sensing Advantage, Algeria Protest Leaders Hike Pressure for Change*, REUTERS (Mar. 13, 2019, 10:08 AM), <https://www.reuters.com/article/us-algeria-protests-leaders/sensing-advantage-algeria-protest-leaders-hike-pressure-for-change-idUSKBN1QU2DE>.

<sup>177</sup> ACKERMAN, *supra* note 169, at 266.

<sup>178</sup> *Id.*

vested regime in the existing system. Only the backlash would be stronger because those with a vested interest have distorted the constitutional systems to their advantage to such an extent that they are virtually omnipotent. This was especially evident in the Venezuelan and Algerian examples.<sup>179</sup> Therefore, even when people are legally the authority of all state power in terms of the constitutional theory, people themselves have to muster immense courage at immense costs to their lives and liberties to ensure that their rulers abide by the most basic constitutional principles.

*D. People's Constitutional Movements as People Versus People's Agents*

People's movements to assert constitutional principles are a special type of movement that challenges the rules and the practices of a constitutional and political structure which are unconstitutional in principle. In constitutional theory, people evaluate their candidates through fair and free periodic elections, referendums and through other institutional mechanisms. However, as the presidential or semi-presidential systems allow one or few individuals to weaken these constitutional procedures of checks and balances, people are compelled to mobilize themselves to act directly as a check against their representatives.

Generally, people are not a monolith and speak in many voices. Even during the people's movements discussed, in Sri Lanka and Venezuela there were counter-movements supporting the establishment even though they have been comparatively weak or staged. Moreover, ethnically heterogeneous Sri Lankan society is experiencing simultaneous division based on ethnicity, rising to the forefront in the aftermath of Easter Sunday Attacks, April 2019. Nevertheless, Sri Lankan society, politically deeply divided in terms of ethnicity since British colonial era, carried out a relatively cohesive constitutional movement against presidential abuse of power in 2018. This movement was just as forceful as the Candlelight Protests of South Korea, where the society is relatively homogenous. In Algerian and Venezuelan societies, the constitutional movements were led by the youth bulge, disillusioned and frustrated with the depravation of avenues for progress. However, the aging population of South Korea led a similarly successful constitutional movement against their president. Therefore, such diverse

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<sup>179</sup> See Neuman, *supra* note 86; *Social Media Shutdown in Venezuela is a Warning of What is to Come as Political Tensions Rise*, *supra* note 146; *Algeria Election: Fresh Protests as Tebboune Replaces Bouteflika*, BBC NEWS (Dec. 13, 2019), <https://www.bbc.com/news/world-africa-50782676>.



entities are driven to unity (although not perfect) in this specific instance, because the constitutional and political environment of the country results in scathing failure to advance public interests.

Even though the governments have resorted to disproportionately effective mechanisms to suppress people's movements, from cyber blockades to military power, people have persevered. Technology has provided them with unprecedented means to persist in their dissent.<sup>180</sup> Intellect, discipline and peacefulness of the protests, which are firmly grounded on constitutional principles, have been a significant character of these people's movements. Therefore, these movements are a special instance of popular constitutionalism, in response to a gap in a particular constitutional structure that allows for abusive of power by the executive.

## VI. DILEMMAS FACED BY PEOPLE'S CONSTITUTIONAL MOVEMENTS

Firstly, that advances of technology provide citizens more opportunity to access information, express themselves and mobilize themselves against the tyrannical rulers. Secondly, that success of citizen movements depends on their ability to influence the legislature, executive and judiciary to formally concede to and effectuate their views. Thirdly, this collision between the citizens and the state apparatus has dangers of destabilizing the country or alternatively, weakening the citizens' call to uphold principles of constitutional law through their integration into the current inefficient state apparatus.

### A. *Citizen Mobilization from Social Media to Streets*

Constitutionalism envisages a limited form of government through separation of powers and protection of fundamental rights. The traditional conception of constitutionalism focuses upon the institutional mechanisms to deliver its goals. People become a formidable collective check against the governmental abuses of power through people's movements. Technology acts as a springboard to facilitate and amplify such activism. Dissemination of information, mobilization of protestors and advertisement of protests' progress take place through social media.

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<sup>180</sup> Brown, Guskin & Mitchell, *supra* note 147.

The significance of these methods is in that they disrupt the top-down nature of traditional media and monopoly over the news.<sup>181</sup> In the countries discussed, state media are subject to capture and heavy regulation by the government in power. Therefore, mainstream media only deliver a biased and incomplete narrative. Hence, there is a need for this gap to be filled by multiple actors who get the opportunity to share a multitude of information and news through internet-based mechanisms. Consequently, in each of these countries, social media activism has been a springboard in disrupting state-led narratives and emboldening citizens to express dissent.<sup>182</sup> Furthermore, social media was the method of calling people out for street protests, especially as traditional media get heavily regulated through authoritarianism.<sup>183</sup>

South Koreans used creative methods of protests, from candle lights to slogans demanding accountability.<sup>184</sup> During the Christmas season, the protestors dressed up in Santa suits.<sup>28</sup> Progress of the movement was shared by people themselves. This is effective because the mainstream media has lost its credibility to engage in unbiased and accurate journalism. During the Sri Lankan Constitutional Coup in 2018, street protests, social media activism, and petitions complemented and amplified the effects of each other in expressing people's dissent. Protest slogans and social media posts ranged from sharing of scholarly writings and latest news updates to memes and cartoons. Petitions were addressed directly to the President, challenging his acts and calling him to act in accordance with the constitutional norms.<sup>185</sup>

Language, slogans, and art played a significant role in the Arab Spring as people used powerful phrases, flags, paint and graffiti to express their dissent.<sup>186</sup> Venezuelan and Algerian people were also seen carrying the flags

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<sup>181</sup> See SOCIAL MEDIA AND DEMOCRACY: INNOVATIONS IN PARTICIPATORY POLITICS 1–3 (Brian D. Loader & Dan Mercea eds., Routledge 2012).

<sup>182</sup> ARAB NEWS, *supra* note 149.

<sup>183</sup> Hollie McKay, *From Secret Meetings to Social Media to Military Rumbles: How Venezuelan Protests Came to Life*, FOX NEWS (Jan. 24, 2019), <https://www.foxnews.com/world/from-secret-meetings-to-social-media-to-militaryrebellion-how-the-venezuelan-protests-are-brought-to-life>.

<sup>184</sup> Agence France Presse, *Latest Protest Increases Pressure on Defiant South Korea President Park Geun-hye to Resign*, SOUTH CHINA MORNING POST (Nov. 19, 2016, 4:30 PM), <https://www.scmp.com/news/asia/east-asia/article/2047556/fresh-protest-pushes-defiant-south-korea-president-park-geun-hye>; “Santa Protest” Against South Korea President Park Guen-hye, BBC NEWS (Dec. 24, 2016), <https://www.bbc.com/news/world-asia-38427931>.

<sup>185</sup> COLOMBO GAZETTE, *supra* note 14; *Sirisena Should Be Held Responsible*, *supra* note 14.

<sup>186</sup> Emma Graham-Harrison, *Beyond Syria: The Arab Spring's Aftermath*, THE GUARDIAN (Dec. 30, 2018), <https://www.theguardian.com/world/2018/dec/30/arab-spring-aftermath-syria-tunisia-egypt-yemen>.

and posters demanding for democracy.<sup>187</sup> Progress of these street protests was shared globally through internet-based mechanisms. Therefore, technology acts as a means for the citizens to express themselves domestically as well as to the international community in order to amplify the vigor of their demands for constitutional governance.

Technology provides citizens a method of mobilization which is physically safer, even though movements in South Korea, Sri Lanka, Venezuela and Algeria have all progressed into street protests. Protests in South Korea and Sri Lanka were peaceful.<sup>188</sup> Protestors in Venezuela and Algeria resorted to violence only after the actions that were taken by governments to repress them. The Venezuelan state engaged in extrajudicial execution of those who protested via social media posts, highlighting the extent of repression capable by an authoritarian regime.<sup>189</sup> Nevertheless, the movements show that the people can mobilize in peaceful, intellectual revolutions to uphold constitutionalism and furthermore, their capacity to voice these constitutional principles in their own terms. This is the potential of the people's movements in promoting constitutionalism.

However, the limitation of reliance on Internet-based mechanisms for such activism is the extent of its outreach. For instance, internet usage among the Sri Lankan population was just 33%, and 49.2% in Algeria in 2018.<sup>190</sup> 60% of the Venezuelan population was using internet in 2017.<sup>191</sup> This limitation creates a significant disparity in the availability of information for the citizens based on their technology literacy and thus leaves out a significant population from the discourse. In contrast, in South Korea, virtually every household had internet facilities by 2017,<sup>192</sup> and the percentage of internet using population

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libya. See generally Nabiha Jerad, *The Tunisian Revolution: From Universal Slogans for Democracy to the Power of Language*, 6 MIDDLE EAST J. CULTURE & COMM. 232 (2013); *Arab Spring: Background*, ILLINOIS LIBRARY, (Mar. 3, 2020, 2:08 PM), <https://guides.library.illinois.edu/c.php?g=348276&p=2346883>.

<sup>187</sup> Pugh, *supra* note 17.

<sup>188</sup> Dudden, *supra* note 2; Agence France-Presse, *supra* note 10.

<sup>189</sup> *Venezuela Crisis Mission: Protestors Executed for Social Media Posts*, AMNESTY INTERNATIONAL UK (Feb. 20, 2019, 2:59 PM), <https://www.amnesty.org.uk/press-releases/venezuela-crisis-mission-protesters-executed-social-media-posts>.

<sup>190</sup> *Internet Usage in Asia*, INTERNET WORLD STATS, <https://www.internetworldstats.com/stats3.htm> (last accessed Mar. 11, 2020).

<sup>191</sup> *Venezuela Internet Usage and Market Report*, INTERNET WORLD STATS (2017), <https://www.internetworldstats.com/sa/ve.htm>.

<sup>192</sup> Elaine Ramirez, *Nearly 100% of Households in South Korea Now Have Internet Access, Thanks to Seniors*, FORBES (Jan. 31, 2017, 1:52 PM), <https://www.forbes.com/sites/elaineramirez/2017/01/31/nearly-100-of-households-in-south-korea-now-have-internet-access-thanks-to-seniors/#39546b825572>.

was 89.9% by 2016.<sup>193</sup> However, internet usage itself does not guarantee social media activeness and online political participation.<sup>194</sup> Therefore, there is a high risk that economically and educationally marginalized communities are denied political participation with use of internet-based mechanisms as the main means of activism.

Furthermore, the government could censor internet usage and social media to inhibit citizen activism; China habitually uses this tactic, and Sri Lanka has temporarily resorted to it several times. The Venezuelan government has been blocking social media platforms such as Instagram and domestically popular websites to keep the citizens ignorant.<sup>195</sup> Guaidó has faced significant challenges in reaching the people due to government's interruptions with internet through cyber blockades and blackouts.<sup>196</sup> However, the citizens have found creative and novel technology to outsmart government censorship and receive information using "international Domain Name System ("DNS"), the equivalent of an internet phonebook that connects URLs with numeric web addresses" and "virtual private networks ("VPNs") to access the internet."<sup>197</sup> A similar trend is seen in Sri Lanka whenever there is a social media ban.<sup>198</sup>

Sharing of information through apps such as WhatsApp and Twitter is not without its drawbacks, for fictions were shared via these sources just as much as fact.<sup>199</sup> Since anyone can post and share information through social media without any scrutiny or cross-checking for accuracy, quality of information that is shared and its capacity to mislead the masses also becomes a serious issue. South Korean political actors were found guilty in engaging

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<sup>193</sup> *Internet Users*, CIA WORLD FACTBOOK (Dec. 7, 2019), [https://www.indexmundi.com/south\\_korea/internet\\_users.html](https://www.indexmundi.com/south_korea/internet_users.html).

<sup>194</sup> Alex Chuan-Hsien Chang, *Does Internet Usage Inspire Offline Political Participation*, 20 JAPANESE J. POL. SCI. 20, 191, 192 (2019).

<sup>195</sup> Verónica Arroyo, Peter Micek & Gasper Pisanu, *The Venezuelan Crisis Also Lives Online*, SLATE (Jan. 25, 2019, 5:18 PM), <https://slate.com/technology/2019/01/venezuela-internet-shutdown-censorship-filtering-protests.html>.

<sup>196</sup> *Social Media Shutdown in Venezuela Is a Warning of What Is to Come as Political Tensions Rise*, *supra* note 146.

<sup>197</sup> Isayen Herrera, *How Venezuela's Vice Grip on the Internet Leaves Citizens in the Dark During Crises*, NBC NEWS, (May 16, 2019, 7:23 AM), <https://www.nbcnews.com/tech/tech-news/how-venezuela-s-vice-grip-internet-leaves-citizens-dark-during-n1006146>.

<sup>198</sup> Ariel Hochstadt, *Sri Lanka Blocked Social Media (Again) – Here's How You Get It Back*, VPNMENTOR, (Feb. 1, 2020), <https://www.vpnmentor.com/blog/sri-lanka-social-media/>.

<sup>199</sup> Jasmine Garsd, *Amid Chaos, Venezuelans Struggle to Find the Truth, Online*, NATIONAL PUBLIC RADIO (Jan. 26, 2019, 7:35 AM), <https://www.npr.org/2019/01/26/688868687/amid-chaos-venezuelans-struggle-to-find-the-truth-online>.

in cyberwarfare to distort elections.<sup>200</sup> Sri Lankan social media had to be shut down during anti-Muslim riots in 2018,<sup>201</sup> in the aftermath of the Easter Sunday Attacks,<sup>202</sup> and anti-Muslim riots triggered right afterward in 2019 because of hate speech targeting religious and ethnic groups.<sup>203</sup>

Therefore, it is crucial that the citizens are not merely active on social media, but that they have the “political competence” to participate in a substantial and effective manner.<sup>204</sup> Nevertheless, the perpetual threat of misinformation is also compelling the citizens to be “smart news consumers” and Venezuelans have resorted to receive their news through Public Information Service, which is run by undercover journalists who distribute local news through WhatsApp, Facebook and Twitter.<sup>205</sup> Therefore, even though social media and internet-based mechanisms provide a powerful tool for dissemination of information and free expression, it is clear that it is not above manipulation. People are required to actively engage in activism and also exercise autonomous judgement to assess the quality of news shared for a constitutional movement to be successful.

Also, during a situation of governmental abuse of power the citizens are generally united. Women, children, ethnic minorities and LGBTQ community<sup>206</sup> of the countries have actively participated in these protests. But, the united protests at the face of an immediate threat do not guarantee adequate protection for minorities, especially in a heterogeneous context where tensions and mistrust between communities are high. Therefore, these countries run the risk of a majority violating the rights of minorities whenever

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<sup>200</sup> Choe Sang-Hun, *South Korean Officials Accused of Political Meddling*, N.Y. TIMES (Dec. 12, 2013), <https://www.nytimes.com/2013/12/20/world/asia/south-korean-cyberwarfare-unit-accused-of-political-meddling.html>

<sup>201</sup> Zaheena Rasheed & Amantha Perera, *Did Sri Lanka's Facebook Ban Help Quell Anti-Muslim Violence?*, AL JAZEERA (Mar. 13, 2018), <https://www.aljazeera.com/news/2018/03/sri-lanka-facebook-ban-quell-anti-muslim-violence-180314010521978.html>.

<sup>202</sup> *Sri Lanka Attacks: Is the Social Media Ban Blocking Citizens from the Truth?* TIMES ONLINE (Apr. 24, 2019), <http://www.sundaytimes.lk/article/1085396/sri-lanka-attacks-is-the-social-media-ban-blocking-citizens-from-the-truth>.

<sup>203</sup> *Sri Lanka Blocks Social Media Again After Attacks on Muslims*, AL JAZEERA (May 13, 2019), <https://www.aljazeera.com/news/2019/05/sri-lanka-blocks-social-media-anti-muslim-attacks-190513053644479.html>.

<sup>204</sup> Henrik Serup Christensen & Asa Bengtsson, *The Political Competence of Internet Participants: Evidence from Finland*, 14 INFORMATION, COMMUNICATION & SOCIETY 896, 899–901 (2011).

<sup>205</sup> Garsd, *supra* note 200.

<sup>206</sup> *LGBTQ*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/LGBTQ> (defining LGBTQ as lesbian, gay, bisexual, transgender, and queer/questioning (one’s sexual or gender identity)).

their citizenry is fragmented along racial, ethnic, or religious lines. Social media platforms, such as Google and Facebook, are designed to hold the attention of the users through algorithms that generate content, to which users have shown a prior preference.<sup>207</sup> Artificial intelligence which run these platforms are geared to maximize profits through promotion of advertisements.<sup>208</sup> However, through filtering of content to optimize preferred posts people become more and more polarized in politicized issues.<sup>209</sup> This in turn makes negotiation, compromise and agreement harder. Studies have shown that rigidly held beliefs do not alter from social media consumption, but rather the extreme beliefs are consolidated thereunder.<sup>210</sup> This conclusion is in line with the algorithmic function of social media platforms.

Just as technology can amplify citizen voices during the protests, violence against minorities or any ostracized group can also be exacerbated through technology. This was the case in Sri Lanka, where ethnic mistrust was spread through fake news; the Aluthgama riots of 2014, Digana riots of 2018 against Muslims, and 2019 Anti-Muslim riots in the aftermath of Easter Sunday Attacks were all exacerbated through social media.<sup>211</sup>

#### *B. Capacity to Influence the Institutions of The State*

Citizen protests act as a check upon government's power abuses when the other branches of the government are failing to act effectively against such abuse of power. However, these citizen demands need to be championed by democratic institutions. In South Korea, President Park's conservative Saenuri Party had lost its parliamentary majority in the most recent previous election. Therefore, the parliament was controlled by a coalition of opposition parties when the Candlelight Protests took place in 2016.<sup>212</sup> The Candlelight Protests in South Korea led to a collaborated response by the legislature and the

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<sup>207</sup> See ROGER McNAMEE, ZUCKED: WAKING UP TO THE FACEBOOK CATASTROPHE 53, 53–100 (2019).

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> YONG SUK LEE, SOCIAL MEDIA AND RIGID BELIEFS: EVIDENCE FROM IMPEACHMENT OF THE PRESIDENT 2 (2018).

<sup>211</sup> *Sri Lanka Muslims Killed in Aluthgama Clashes with Buddhists*, BBC NEWS (June 16, 2014), <https://www.bbc.com/news/world-asia-27864716>; Janet Guyon, *In Sri Lanka, Facebook is like the Ministry of Truth*, QUARTZ (Apr. 22, 2018), <https://qz.com/1259010/how-facebook-rumors-led-to-real-life-violence-in-sri-lanka/>.

<sup>212</sup> Ju-min Park & Jack Kim, *South Korea's Park Asks Parliament to Decide How She Can Quit, Opposition Cries Foul*, REUTERS (Nov. 28, 2016, 8:22 PM), [https://www.reuters.com/article/us-southkorea-politics/south-koreas-park-asks-parliament-to-decide-how-she-can-quit-opposition-cries-foul-idUSKBN130093\\_](https://www.reuters.com/article/us-southkorea-politics/south-koreas-park-asks-parliament-to-decide-how-she-can-quit-opposition-cries-foul-idUSKBN130093_)

judiciary. The Sri Lankan people's movement's demand to uphold the constitution was reiterated through the decisions of the Supreme Court and Court of Appeal.<sup>213</sup> The Sri Lankan legislature, where the majority was in opposition to the president and his party, also attempted to align themselves with the people's demands.<sup>214</sup> Notably, even though there were threats of military involvement during the Constitutional Coup, the Sri Lankan military was not brought into alter the stakes during the power struggle. The absence of an exercise of military power by armed forces unchecked by the democratic branches of the state was significant in upholding constitutional principles.

Notably, people's constitutional movements have better success in getting the attention of state institutions based on the extent to which constitutional values are embedded in domestic governance. These movements have had better results in countries which have professed a commitment to democracy and rule of law rather than in countries where the leaders were openly autocratic. Overt dictators have had no qualms about using military power to suppress dissent, as was seen in the protests of Venezuela and Algeria as well as during the Arab Springs. But in South Korea and Sri Lanka, the rulers seemed more restrained in their resorting to violent means to repress the people's movements.

Because people's constitutional movements have not had one or several leaders spearheading the process, channeling the energy into a state apparatus becomes a challenge. The Venezuelan example shows that people are placing their faith in Juan Guaidó to lead the transition to democracy at the level of a state apparatus. However, the embedded culture of authoritarianism is acting as a formidable barrier even in this instance where the movement has a potential champion to effectuate a change of governmental institutions. Meanwhile, South Korean protestors were more successful even when the constitutional movement was not guided by a leader or a group because the constitutional norms are comparatively embedded and acknowledged in the country. Strength of organized political dissent has been higher in Sri Lanka and South Korea, where there is a commitment to democracy and rule of law, even if such commitment is weak in practice. In turn, the presence of

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<sup>213</sup> *Sampanthan v AG*, *supra* note 16.

<sup>214</sup> Michael Safi & Amantha Perera, *Sri Lanka MPs Pass No-Confidence Vote Against Disputed PM Rajapaksa*, THE GUARDIAN (Nov. 14, 2018, 3:36 P.M.), <https://www.theguardian.com/world/2018/nov/14/sri-lanka-parliament-noconfidence-pm-mahinda-rajapaksa>.

institutional presence of organized dissent made the democratic institutions more amenable to the public demand. The Venezuelan opposition leader is also the President of the National State Assembly; however, the power of this institution is practically weak. The weaker democratic values are in the country, the harder it has been for people to make an impact through their movements. This shows the significance of embeddedness of constitutional values and democracy in the country for the success of people's movements, an unfortunate paradox given the fact that citizens are mobilizing to transform a culture of authoritarianism in each of these instances.

### *C. Achievement of Long-term Transformations*

Interaction between the people's movement and branches of the state apparatus is important for the objectives of people to be ultimately achieved. However, the objectives of the people's movements are often compromised as a result of this interaction. The South Korean narrative is more positive as the President was impeached while her advisors and the business tycoons involved in the scandal were convicted for their crimes.<sup>215</sup> Nevertheless, the country is still grappling with longer-term systemic effects of corruption on its economy and the citizenry.

Sri Lankans managed to restore the status quo; however, the president who violated the constitution remains in office and the government is struggling with the economic concerns of the nation. As corruption and violations of the constitution remain effectively unsanctioned, the extent to which citizens' demands to uphold constitutional principles was achieved in the longer term is questionable. Political weakness arising from the constitutional coup whereby the president and the prime minister remain at loggerheads with each other proved fatal for the country during the Easter Sunday attacks, April 2019. In the aftermath of the attacks, the prime minister claimed that he was shut out of intelligence information and Security Council meetings while the president stated that he was not informed of the warnings against rising of a terrorist organization. Breakdown of coordination within the executive branch, alongside the weak legislature being unable to act as an effective check against the executive, resulted in severe damages to national security.

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<sup>215</sup> Dudden, *supra* note 2.



At the same time, both of these people's movements aimed at and achieved a reformist agenda rather than a revolutionary overhaul of the entire constitutional and political backdrop. For instance, Algerian and Venezuelan people's movements are seeking more dramatic "paradigm-shifting displacement[s] . . . in the conceptual prism through which constitutionalism is experienced in a given polity."<sup>216</sup> Therefore, resistance against these movements has been forceful and countries are facing severe instability in all spheres of life. Where the goals of the people's constitutional movements have been less disruptive and targeted incremental change, negotiating for them has proven easier. However, the effectiveness of the system of constitutional checks and balances has been a crucial factor in the ultimate success of these interactions.

The narrative of the Arabic world exemplifies the dangers of destabilization caused by people's movements allowing for internal extremist forces striving power to seize the moment, causing unbearable economic consequences and external powers to intervene in a manner that is detrimental to countries' interests.<sup>217</sup> Therefore, the Arab Spring has brought forth mixed results, creating more chaos than stability in the long term. Venezuela and Algeria are running a similar risk of destabilization and further economic degradation. Whereas interactions with the organs of the state are crucial to successfully harness the people's demands for constitutionalism and ensure the stability of the country, these very same interactions can dilute the vigor to achieve the constitutional principles due to weak institutional will and capacities.

## VII. CONCLUSION

People's movements to assert constitutional principles are a significant and formidable strand of popular constitutionalism. Advances in technology are providing people increased opportunities to engage in activism. Nevertheless, technology is not above manipulation, prejudice, hatred and divisive forces, which are detrimental for the political participation and fundamental rights of economically, educationally marginalized communities and ethnic, religious minorities. Channeling the energies of people's constitutional movements towards achieving constitutional and governance

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<sup>216</sup> Gary Jeffrey Jacobsohn, *Theorizing the Constitutional Revolution*, 1 J.L. & Cts. 1, 3–13 (2014).

<sup>217</sup> Graham-Harrison, *supra* note 186.

reforms is crucial to ensure the stability of the country and also achieve people's goals in the longer term. While the force of united public demands can generate certain action on the part of the state apparatus, sooner or later people will once again face the corruption and weaknesses of the state structure which propelled them to activism. Consequently, success of the movement depends upon the robustness of democratic institutions, the very institutions which are structurally weak in presidential and semi-presidential systems. When people's constitutional movements collide with the institutions of the state movements, either the people lose their revolutionary constitutional goals, or the countries face manifold levels of instability. Therefore, people's movements that assert constitutional principles are an instance of popular constitutionalism, which faces complex dilemmas to achieve constitutionalism.

