

THE ALL PARTIES REPRESENTATIVE COMMITTEE

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The All Parties Representative Committee (ARPC) recommendation that the full implementation of the Provincial Council System, that was introduced through the 13th Amendment to the Constitution in 1987 as the solution to the ethnic problem has to be considered in depth. Otherwise all studies done and efforts made after 1987 to find a solution to the ethnic problem and advances made towards that will be of no avail and we will be pushed back to square one.

It's necessary to consider whether the APRC proposal, that was submitted to the president as directed by the president, when implemented can bring an end to the civil war, or in other words whether this proposal will be the political solution to the ethnic problem.

In this context it is of importance to trace the root of the problem that has caused the Tamil community to fight for a separate state.

With the advent of the Donoughmore Reforms and the introduction of universal franchise, the question arose regarding the mechanism for protecting the rights of the minority communities under the system with the Sinhala community forming 2/3 of the population and with a comparative voting strength. The danger existed of the majority community ruling the country disregarding the rights of the minority communities. The Tamil leaders suggested the balancing of representation in the Legislature between the majority and the minority communities as a way of protecting the rights of minorities. The demand for fifty/fifty was an outcome of this perception. The formation of the all Sinhala Cabinet after the State Council elections of 1936 further confirmed the fears of the minorities. Although the situation was corrected subsequently, the dangers inherent in the political system for minority communities continued to dominate the political thinking of the minorities.

The arrival of the Soulbury Commission and the discussion that followed between the leaders of the two communities centred around the question of safeguarding the rights of minority communities through a system of weighted representation for the minority communities in the Legislature. It is believed that at the discussions D.S.

Senanayake as the leader of the Sinhala community agreed to a ratio of two to one representation for the majority and minority communities in the proposed Parliament modeled on the British parliamentary system, with the guarantee of equal rights for all citizens with a firm assurance of non-discrimination. It is significant that the Tamil leadership and even the radical Tamil groups which were left inclined and politically powerful in Jaffna did not advocate a federal system or even some form of devolution of power.

The Soulbury report and the 1947 constitution (Soulbury Constitution) was no doubt a let down for the minority communities. The constitution did not contain adequate provisions for safeguarding the rights of the minorities. There was no provision for weighted representation for minority communities in Parliament. What was envisaged was the protection of minority rights through Section 29 of the Constitution which later turned out to be misconceived.

Within two years after independence it became clear that the Sinhala leadership has not kept up to its promise made before Independence. The enactment of the Citizenship Act No. 18 of 1948 and the Parliamentary Elections Act No. 48 of 1949 deprived the plantation Tamil community of their citizenship rights and their franchise.

The Privy Council in the case of *Kodakam Pillai vs Mudanayake* where those enactments were challenged held that those two enactments do not offend against Section 29 of the Constitution. The contention that Section 29 of the Soulbury Constitution was adequate to protect the rights of the minority communities proved to be a fallacy. This was further confirmed by the decision of the Supreme Court in the *Kodeswaran* case where a public servant who was subjected to discrimination, in the implementation of the Official Language Act No. 33 of 1956, declaring Sinhala as the only official language of the country, challenged a circular that discriminated against the Tamils.

The realization of the futility of Section 29 of the Constitution led to the formation of the Federal Party in 1949. The defeat of S.J.V. Chelvanayagam, the leader of the Federal Party, at the parliamentary elections in 1952 and the fact that the

Federal Party was able to win only 3 seats out of a possible 12 shows that even at that point of time the Tamil community was not demanding a federal system and that the demand was for equal treatment and non-discrimination.

The emergence of Sinhala nationalism based on the demand for more opportunities for the Sinhala community in the field of education, employment and distribution of state land, and the demand for special status for the Sinhala language, Sinhala culture and Buddhism, in this period based on the notion that the Sinhala community (specially Sinhala Buddhists) were discriminated under colonial rule, and the need to correct this historical injustice brought the Federal Party and the demand for federalism to the forefront of Tamil politics, as revealed at the parliamentary elections in 1956, where the Federal Party won all but three seats in the Tamil dominated areas in the North and East. The Sinhala leadership was insensitive towards the fears of the minority communities and this polarized society on ethnic basis. Further, the unimaginative and irresponsible manner in which the southern leadership reacted by physically and verbally attacking the Tamil people living in the South and the use of the armed forces to suppress protest movements of the Tamil people in the North and East led to the emergence of a radical movement fighting for a Tamil identity.

The promulgation of the 1st Republican Constitution in 1972 through the process of a Constituent Assembly and the failure of the Constituent Assembly to address the demands of the Tamil community, and its failure to at least consider some form of devolution further aggravated the situation.

The Constituent Assembly was insensitive to the aspirations of the Tamil community and declared Sri Lanka to be a unitary state with all power centralized in the legislature (National State Assembly) and to make matters worse did away with Section 29 of the Constitution, which was perceived by the minorities as the provision that even to a limited extent protected the rights of the minorities, without an alternative provision for the protection of minority rights.

The introduction of language-based standardization for admissions to universities during the same period changed the complexion of the struggle of the Tamil community from a struggle for equal rights and accommodation to one of a struggle for a federal state with autonomy in the traditional Tamil areas. This in turn caused the emergence of a radical militant movement fighting for a Tamil identity.

The failure of the Constituent Assembly to even consider the aspirations of the Tamil community and its over enthusiastic response to the aspirations of the Sinhala Buddhists turned out to be tragic.

The creation of a presidential system of government with executive power vested with an all powerful Executive President in 1977 and the constitutional meddling that was seen during this period, such as the enactment of the 6th Amendment to the constitution by which all Tamil members of Parliament representing the Tamils of the North and Eastern provinces were evicted from Parliament, the use of state power to suppress the struggle of the Tamil people for autonomy and the pogrom in 1983, have fractured the Sri Lankan state.

The Sri Lankan state exists if at all as a unit due to the presence of the armed forces in the North and East of Sri Lanka. This is the reality that has to be accepted if we are to think of a viable political solution to the problem.

Therefore, what is needed today is the restructuring of the Sri Lankan state incorporating the aspirations of the Tamil community. Nothing short of this can be a viable solution.

The provincial councils system established under the 13th Amendment to the Constitution has failed to satisfy the aspirations of the Tamil speaking people. The provincial councils system suffers from an incoherent deformation due to which meaningful devolution, that will confer at least limited autonomy to the units is not possible.

Article 2 of the Constitution sets out that Sri Lanka is a unitary state. Article 3 states clearly that in the Republic of Sri Lanka sovereignty is in the people and inalienable. Article 4 sets out how the sovereignty of the people shall be exercised. The legislative power of the people is vested in Parliament and the executive power of the people is exercised by the president.

A unitary state is well defined and there is no reason for any controversy. A unitary state is a form of state where power emanates from one center. C.F. Strong in his treatise on "Modern Political Constitutions" states: "The essence of a Unitary State is that the sovereignty is undivided, or, in other words, that the powers of the Central Government are unrestricted, for the constitution of a Unitary State does not admit of any other law making body than the central one."

The two distinctive features of a unitary state are:
(1) the supremacy of the central government, and
(2) the absence of subsidiary sovereign bodies.

In the case of a federal state its definition is not so clear. There can be different shades of federalism and different federal models, and sharing of sovereignty can take different forms and extents. In a federal system the constitution is supreme and defines the sharing of power between the center and the periphery.

Therefore, when a constitution specifically lays down that it is a unitary state it unequivocally lays down the limitations within which power can be devolved. The peripheral unit will be a sub-unit and cannot be an autonomous unit. In other words there will be no sharing of sovereignty.

In a federal state the legislature of the federation and of each of the federating units are limited in their supremacy and neither of them is supreme. There is something above them both, namely the constitution, which is a definite contract, a treaty to which the contracting parties reduce the conditions of their union to writing. A federal constitution is, in fact, a charter of rights and duties of the federal and state authorities. The Supreme Court is the authority with the power to adjudicate the breach of the treaty. Therefore, the Supreme Court is the supreme body in a federal system upholding the supremacy of the constitution.

Therefore, there is no meaning in the much quoted statement that there is no significance in stating that constitution is a unitary one or not.

There are numerous other ways of describing the nature of the state in a constitution without describing it as a unitary state, so that there can be meaningful devolution, which one may call a quasi federal system.

The Indian Constitution described India as a union of states and in the 2000 draft constitution presented by President Chandrika Kumaratunga to Parliament the Sri Lankan state is described as one, free, sovereign and independent state consisting of the center and of the *regions which shall exercise power as laid down in the Constitution.*

Provisions of the 13th Amendment and the provincial council system cannot be thought of as a solution to the ethnic problem.

Further, it is seen that during the last twenty years we have moved far beyond the 13th Amendment in search of a solution to the ethnic problem.

At the Thimpu discussions between the Sri Lankan government and five Tamil militant groups, the proposals now known as the Thimpu proposals for the restructuring of the Sri Lankan state, the aspirations of the Tamil people emerged from these groups. At the Oslo round of peace negotiations during the Ranil Wickremasinghe government it was proposed by the LTTE that the parties explore the possibility of finding a solution based on a federal system with internal self-determination and autonomy in the areas traditionally inhabited by the Tamil speaking people.

In the draft constitution of 2000 presented to Parliament by the Chandrika Kumaratunga government what was proposed was something close to a federal system with wide powers devolved to the units and power sharing at the center.

Therefore, it is seen that having gone so far in search of solution, any suggestion that we seek a solution to the ethnic problem within the 13th Amendment through the provincial council system is a farce, to say the least. ■

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