

BRINGING THE THIRTEENTH AMENDMENT BACK?

The Sri Lankan government seems to be promoting a public discussion on the 13th Amendment as the framework of a solution to the ethnic conflict. The context of this new interest in the much-maligned 13th Amendment has two interesting dimensions. The first is the belief that the government is winning the war against the LTTE. The government now seems to be confident to talk about a political solution from a position of strength. The second is the Indian government's insistence that along with a military offensive, the government should also pursue a political solution. The 13th Amendment constitutes India's most favoured framework of a political solution to Sri Lanka's ethnic conflict.

The 13th Amendment has a chequered political career. It was introduced in 1987 on India's insistence. It provided the constitutional basis for devolution of power institutionalized through Provincial Councils. From its early days, the 13th amendment met two types of criticism. Sinhalese nationalists committed to the unitary model of the state were angry. They charged that the 13th Amendment created a federal system in Sri Lanka at the behest of the Indian government and to please Tamil 'separatists.' Tamil nationalists viewed it as an inadequate constitutional arrangement that fell short of their political demands. Despite the opposition, the UNP government of President J. R. Jayawardena implemented the 13th Amendment in 1987. The Provincial Councils thus established are now an integral component of Sri Lanka's state structure.

Meanwhile, in the mid-1990s, a new argument developed with regard to the Provincial Councils. It proposed the enhancement of the powers of the Councils through a constitutional amendment. The objective of this proposal was to make the system of devolution a firmer basis of a political solution to the ethnic conflict by enhancing provincial autonomy. President Chandrika Kumaratunga and her Minister of Constitutional Affairs, as well as the Left parties of the People's Alliance government, were the key advocates of this position. There were many civil society groups too who argued for greater regional autonomy. This proposal came to be named 'Thirteen Amendment Plus.' Its basic assumption was that a credible constitutional arrangement to address minority aspirations should go beyond the limited devolution framework of the 13th Amendment. But no attempt to constitutionalize a 13th Amendment Plus has so far succeeded. The lack of political

backing to such a move across the political spectrum has been a major reason for this failure.

The present resurgence of official interest in the 13th Amendment is interesting for a number of reasons. The government seems to think that instead of bringing a new constitutional package for greater regional autonomy, the implementation of the existing constitutional provisions would be pragmatic, practically feasible and politically acceptable even to its extreme Sinhalese nationalist coalition partners. But this would be seen by some Tamil parties, particularly the Tamil National Alliance, as minimalist devolution with no relevance to a serious project of addressing Tamil political aspirations. It appears that the government is more concerned with a political solution that is acceptable to Sinhalese society.

Obviously, the government has its own strategic calculations to bring the 13th amendment back to public attention. Three factors seem to define the government's thinking. The first is that once the LTTE is militarily defeated, Tamils would not be in a position to bargain beyond the 13th amendment. The second is the reality that there are Tamil political parties already linked to the government who would accept a solution even minus the 13th Amendment as long as they are given access to power and economic resources. The third is that by reviving interest in the 13th Amendment, the government can please the external actors, particularly India and the US.

Can President Mahinda Rajapakse seriously pursue the proper implementation of the 13th Amendment in the North and East as well as the rest of the country without moving away from his own formula of 'maximum devolution within a unitary state'? This question can generate more than one answer. It also leads to some more questions. For example, is the coalition which President Rajapakse leads committed to serious and genuine devolution of power to the North and East? In the event of the LTTE being neutralized as a major stakeholder in the conflict, will the government have the political compulsion for any measure of regional autonomy, even a limited one under the 13th Amendment? Will the non-LTTE and non-TNA Tamil groups which the government views as the authentic representatives of the Tamil community, be in a position to bargain for full implementation of the 13th Amendment in a context where the government continues to

fail to fulfill its devolution promise? Will the Tamil people be content with an old formula that could not resolve the conflict twenty years ago? Will the extreme nationalist forces aligned with the regime and emboldened by the present military campaign against the LTTE, allow President Rajapakse to implement a political solution even in its truncated form?

Answers to above questions are not very clear. One thing clear, however, is that if the present government is seriously and genuinely committed to a political solution to the ethnic conflict which will guarantee both equality and autonomy to the ethnic minorities, a new configuration of domestic political forces will be necessary. ■

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