

After the Elections: Political Fire-Walking

Sri Lanka's parliamentary election, concluded the other day, has not so far contributed anything substantial to erasing the country's political uncertainty and instability. However, it has at least added one new expression to the popular Sinhalese political lexicon, *hang parliamentuwa* ('hung parliament')!

The indecisive outcome of the election had always been there to be seen ever since the President and her colleagues began, in September-October last year, to entertain the idea of fresh parliamentary polls. After a costly and bitter election campaign, Sri Lankan people now have a fractured legislature and a minority government. There is a fresh sense of deepening crisis which, quite ironically, many do not seem to feel. The new government's immediate task is to ensure its survival and that requires eight more parliamentary seats. That is not an easy goal to achieve, given the unstable political balance that exists in the new parliament. Trying to split either the UNF or the TNA, in order to get the support of some of the opposition ranks, is not easy at the moment. Splitting the TNA would be an extremely risky option, which may even bring at risk the cease-fire agreement with the LTTE. Unless President Kumaratunga works swiftly to expand her coalition to include the CWC and SLMC, April may prove itself to be, to borrow a phrase from written in 1971, the cruelest month for the Freedom Alliance.

Election Outcome

This election's outcome has some startling features. The entities that suffered loss are the UNP and the SLFP, the two mainstream political parties. The UNP lost the governmental power, and about five percent of its electoral support base countrywide. The SLFP has lost its strength within the Freedom Alliance which it leads, to the emerging powerhouse of the JVP. Those who made decisive gains at the election are the JVP, the LTTE and the Hela Urumaya. All three are non-mainstream entities. The margins in the political spectrum have now come to the center and those who occupied the center have been pushed aside. That, and that alone, makes the parliamentary election of April 02, 2004 a possible turning point in the island's twisted path of political change in recent years.

This shift in the balance of power marks a qualitatively new political equilibrium as concretized in the composition of the new parliament. Sri Lanka's is a political society that is acutely fractured

in the context of a protracted civil war. The uncertain outcome of this election, resulting in an unstable minority government, is a fairly accurate reflection of that splintered nature of our polity. There is no point in blaming the PR system for that. Even the first-past-the-post system would have reflected the degree to which our polity is deeply divided, although the outcome under that system would have been somewhat different. Actually, the new legislature will have five competing centers of power – the UNF, the President and the SLFP, the JVP, the LTTE, and JHU. A multi-polarized parliament, expressing extreme ethno-nationalist positions, might make the legislative process complex and difficult. Bringing consensus in legislation among the Sinhalese, Tamil and Muslim ethno-nationalist forces in parliament, can be an absolutely difficult exercise. Yet, the fact that all the major political stakeholders in the polity are now represented in the new parliament is a positive gain. No major contender for power can now complain that Sri Lanka's parliament is not adequately representative.

Impasse

The new parliamentary election has not resolved Sri Lanka's political impasse that it was supposed to address. Instead, it has created a new stalemate. The new Alliance government is now trying to break the impasse by resorting to partisan constitutional change. The course of action it proposes is to summon a constituent assembly and pass the new constitution through a simple majority in that assembly. The centerpiece of that constitutional change will be the abolition of the presidential system and returning to a prime ministerial government. The new constitutional framework might also alter the existing electoral system, perhaps transforming the results of the April parliamentary election in favor of the Alliance. While listening to the spokespersons of the Alliance these days, one gets the impression that there is a school of thought emerging within the Alliance making the argument that if the April 02 elections outcome is re-calculated on the basis of the pre-1978 system of first-past-the post system, the Alliance would stand to gain a huge parliamentary majority.

Constitutional reform in a deeply divided society like ours should be an exercise in bringing the fractured polity together in a spirit of peace and reconciliation. It should not lead to greater polarization, conflict and instability. The Alliance's constitutional reform initiative does not seem to have been guided by any of these objectives. It is primarily motivated by the political self-interest of the Alliance and its adversarial power dynamics with the UNP. The real issue today is not whether the existing 1978 constitution is good or bad. The most important question that the Alliance leaders seem to ignore is the negative political consequences of a

unilateralist constitutional reform process. An elementary lesson that we should learn from the disastrous experiences in constitution making in the past, in 1972 as well as 1978, is that the fundamental law of the land should not be altered to suit the political agenda of a regime or the power calculations of its individual leadership.

High Risk

Viewed from a conflict resolution perspective, the Alliance's constitutional reform program can be seen as a high-risk enterprise. The people's mandate that the Alliance is supposed to have obtained to change the constitution is not one that has the support of all ethnic communities in Sri Lanka. The Alliance did not receive at the parliamentary election any significant support from Sri Lanka's Tamil electorate. Actually, the Tamil people in the North-East as well as the Up-Country are not constituent components of the 'people' who have given the 'mandate' to the Alliance. If indeed it is a mandate, it is one which the Alliance has obtained essentially from the Sinhalese electorate. If the Alliance government, with no majority in parliament and with the support of only 45% of the electorate, interprets its narrow electoral victory as a mandate to change the constitution through a unilateral process, it will certainly provide the impetus and justification for the LTTE and the TNA to interpret their victory as well in a similar mandate perspective. In this sense, the Alliance's proposed constitutional assembly option is a dangerous exercise of political fire walking, because it bases itself on zero-sum politics of self-interest.

Process

Sri Lanka does indeed need a radical alteration of its constitutional structure. It should be an inclusive process in which all parties and stakeholders are involved. At the center of any new constitutional initiative should be an outcome of political engagement between the government, the LTTE and the minority communities, actively supported by the other political stakeholders through their participation. The new constitutional reform initiative should also be one that will further facilitate the peace process. Therefore, the best course of action that the Alliance government should pursue is to work towards an interim constitution through a parliamentary select committee. One good thing in the present parliament is that it provides representation to all major political forces in our society. A constitutional select committee in the new parliament would be one that will be both representative and inclusive.

An all-party constitutional select committee, mandated to work on an interim constitution, will also provide a sense of security to the minority government of the Alliance. When all parties are included in a joint initiative for a new, though interim, constitution, there will be virtually no impetus for the opposition to topple the minority government. Actually, an inclusive constitutional reform initiative through parliament would be the most constructive option available for Sri Lanka today. In the framework of the new interim

constitution, all the issues of reform, as perceived important by different stakeholders can be deliberated. That can result in two interim power sharing arrangements, one at the level of Sri Lankan state, and the other concerning the North-East. In a divided polity, constitutional reform can succeed only when it contains mechanisms for power-sharing, instead of provisions for exclusion, as in the 1978 constitution.

Consensus

One may object to this option citing the failed cohabitation talks in October-November last year. Those consensus talks lasted only two months. Both sides, particularly President Kumaratunga and Prime Minister Wickramasinghe, should share the blame for the failure of Tittawella-Samarawickrama talks to produce a framework of consensus. There is no harm in giving another chance to consensus politics, before embarking on a high-risk and unilateralist path of constitutional alteration. Actually, President Kumaratunga is now in a better position to call for a broad process of consensus talks. The central theme of such a new dialogue initiative can be an interim constitution with broad political and popular support.

If the Alliance and UNP politicians are not ready for a qualitatively new phase of political relations as well as for bold, creative initiatives, Sri Lanka's political future will continue to remain confused and directionless. Meanwhile, that perpetual risk of relapsing to violence and war is very much there in the horizon. The political management of the post-election North-East is becoming an increasingly delicate task in the light of the LTTE's internal crisis. This calls for a new framework of consultation and dialogue between Kumaratunga, Wickramasinghe and other political leaders. Let's not forget that the Eastern province has always been the weakest link in Sri Lanka's chain of politics.

Prospects for the Peace Process

Resuming the stalled negotiations with the LTTE constitutes one of the complex challenges that the new UPFA administration is facing. Preoccupied with the dilemmas in the difficult task of regime formation without a working majority in parliament, President Kumaratunga does not seem to have spent any quality time on the strategizing of the next phase of negotiations. In contrast, the LTTE leadership appears to have strategized their approach to talks with the new UPFA regime. They have already made the point that the UPFA government should resume negotiations without delay and that the agenda of the talks should center on the LTTE's ISGA proposals. With this, the LTTE has begun the exercise of agenda setting for the talks.

Constraints

There are two basic constraints that the UPFA leadership will have to overcome in preparing for talks with the LTTE.

Foremost among them is to reinvent the Alliance's approach to the engagement with the LTTE, as particularly evolved during the past year. The UPFA was formed in opposition to the way in which the Wickramasinghe administration was handling the peace process, alleging that the UNF had allowed the LTTE to use the cease-fire and negotiations to militarily strengthen itself. In the strongest version of this critique, the Alliance accused the UNF of endangering national security Sri Lanka as well as India. Now the UPFA in power no longer has the luxury to continue with its oppositionist rhetoric. It has to seek partnership with the LTTE and build anew a relationship of constructive engagement.

This requires the UPFA to re-consider its hard line approach to negotiations. For the last several years, President Kumaratunga and her key advisors developed a particular approach to negotiations with the LTTE (the so-called Kumaratunga-Kadirgamar, or KK, approach), which was based on two fundamental premises. The first is to negotiate from a position of military strength with a militarily weakened LTTE. The second is to obtain minimal assistance from the international actors, since the ethnic question was an "essentially internal matter" that did not warrant jeopardizing the country's "national sovereignty." Sri Lanka's conflict and peace processes have gone far beyond the UPFA's old thinking as enunciated in these two premises. While the LTTE's engagement with the Colombo government has been based on the premise of strategic balance, the international community has been playing a directly active role in the engagement process.

External Actors

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Meanwhile, some sections of the UPFA might want to re-define the role of the external actors in the next phase of negotiations. Norway's role has been a particular target of attack in the PA-JVP critique of the UNF-led peace process. Some were arguing for a direct role for India. Both the PA and the JVP viewed ex-Prime Minister Wickramasinghe's strategy of building an international safety net with dismay, accusing him of taking Sri Lanka's foreign policy in a decisively pro-Western direction. It would be interesting to see how President Kumaratunga now sorts out the international dimension of the peace process. She may have to disregard the UPFA's somewhat archaic and nationalist approach to the outside world while re-building the strained relations with the Norwegians. However, involving India in the negotiation process will not be an easy proposition. It will radically alter the strategic equation on which the negotiations between the government in Colombo and the LTTE will rest. Creation of a new strategic asymmetry in favor of the government can hardly help resume negotiations.

ISGA Proposals

Meanwhile, the LTTE is likely to press for early resumption of talks. For their own strategic reasons, the LTTE leadership

will continue to declare their willingness to engage with any government in Colombo. While doing so, they will also very carefully watch the signals that the new government will be sending. From the Tamil perspective, the outcome of the last parliamentary election is one that has rejected the mandate the UNF sought from the electorate to continue with the peace process. They further see the UPFA government as one that will impose strong conditionality on the peace process, while with no unambiguous commitment to a political solution. However, it is to the strategic advantage of the LTTE to repeatedly call for early resumption of talks to discuss the ISGA proposals.

The LTTE leadership has already indicated that the agenda for the next phase of talks should be on their ISGA proposals. By doing so, the LTTE leadership has begun the process of pre-negotiation maneuvers. They try to define the agenda of talks from their strategic perspectives. But, it is not clear whether President Kumaratunga has had time so far to engage in such pre-negotiation diplomacy. She has been preoccupied with the priorities of regime formation. She has not yet identified her team who would be entrusted with the negotiation process either. Regime stability is an essential precondition for any concrete step towards resumption of the peace process. An unstable and weak UPFA regime can hardly break its own shackles that prevent it from moving in the direction of peace negotiations with the LTTE.

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However, in some strange way, President Kumaratunga may be seen as placed in a better position than the former Prime Minister to work towards a stable settlement process. She has the backing of the armed forces and most of the Sinhalese nationalists are with the UPFA. This Wickramasinghe did not enjoy. Some in Colombo see Kumaratunga as having a better chance of selling among the Sinhalese masses a peace deal with the Tigers, since she commands the support of the nationalists. Kumaratunga of course has personal credentials rooted in her record of the 1994-1995 peace process as well as of the federalist constitutional package of 1995. When it comes to the ethnic conflict, Kumaratunga's heart has always been at the correct place, although she has repeatedly allowed the considerations of power politics to take the better of her heart. Meanwhile, she might continue to face challenges from her the Sinhalese nationalist allies whenever she crosses the line of tolerance in her engagement with the LTTE. Even the survival of her regime will depend on how she will approach that line of Sinhalese nationalist tolerance. Her becoming the Prime Minister, as envisaged in the new constitutional reform initiative, will hardly help her in pursuing a potentially unpopular peace deal. A President, relatively insulated from a fractured and unpredictable legislature, will be in a better position to take forward Sri Lanka's peace process from where the former Prime Minister has left it in early 2003.

JVP-LTTE Dialogue

Meanwhile, after the April 02 elections, two political forces have emerged in Sri Lanka with a decisive say in shaping the future trajectories of the island's politics. They are the JVP in the North and the LTTE in the South. The UNP and the SLFP can only react to what these two entities set as political agendas. There is also a likelihood of Sri Lanka moving in the direction of a new North-South polarization. This tendency needs to be prevented. It indeed makes it absolutely necessary for the JVP and LTTE leaderships to begin their own, independent initiatives for constructive engagement. Without a dialogue between these two, there is hardly any guarantee for a positive outcome of the next phase of Sri Lanka's peace process. Actually, Sri Lanka's future as one political entity will largely depend whether Sinhalese and Tamil nationalisms can enter into dialogue for accommodation. This makes it all the more necessary for the foremost forces of Sinhalese and Tamil nationalisms, now with a stake in the parliament and the central government, to explore a common ground. Therefore, the international actors as well as civil society groups involved in Sri Lanka's peace should now focus on promoting a JVP-LTTE dialogue parallel to formal peace negotiations, with or without junkets.

Peace Process under the UPFA: Some Unsolicited Advice

Within one month of gaining control of the government, President Kumaratunga has taken steps to resume the stalled peace talks with the LTTE. The day she lost the parliamentary vote on the Speaker, she had reportedly telephoned the Norwegian Prime Minister to ask the Royal Norwegian government's assistance to resume role as peace broker in Sri Lanka. This was a dramatic move made by the Sri Lankan President that obviously surprised both the critic and the ally. Judging by what has been happening these days, it seems that Kumaratunga is determined to use her presidential power and authority to propel forward her agenda in two fronts, peace negotiations and constitutional reform.

Rush

The Norwegian government has immediately obliged to Kumaratunga's request. The Norwegian team of facilitators arrived in Colombo on the May Day and spoke to both the government and the LTTE. Although President Kumaratunga seems to be in a hurry to set early dates for talks with the LTTE, the Norwegian team appears to be somewhat cautious. They have requested the two sides to maintain the cease-fire while making preparations for talks. It may also be the case that the Norwegian government might want a firm, possibly written, commitment from President Kumaratunga concerning their expected role in assisting

negotiations under the new UPFA administration. With contradictory stands taken by the UPFA's constituent parties as well as some of President Kumaratunga's key advisors, the Norwegian government will certainly need guarantees from the President that they will not be humiliated again as happened in 2000 and just a few months ago.

For President Kumaratunga, the early resumption of talks with the LTTE is crucially important for the survival of the new regime led by her. Hers is a regime without even a simple majority in parliament. The immediate tactical objectives of the President in initiating talks with the LTTE are quite obvious. According to the arithmetic of parliamentary balance of forces, keeping the LTTE-backed TNA out of a working alliance with the opposition UNP may guarantee the regime survival, even if the UPFA does not have an absolute majority in the House. Similarly, resumption of the peace process might provide a record of some success for a regime the stability of which is as yet uncertain. It is also necessary to ensure the continuing flow of foreign economic assistance that is linked to the progress in the peace front. These are pragmatic considerations. Even then, President Kumaratunga has re-activated a process that needs to be supported and strengthened. It is the iron law of politics that politicians usually take good initiatives for reasons of political exigency. It is up to the alert citizens to seize the opportunity, review the options, correct the weaknesses and push forward for positive and win-win outcomes.

Caution

Obviously, tactical considerations of regime survival and stability have prompted President Kumaratunga to re-launch the peace process in a great hurry. This is where a word of caution would be both useful and necessary. Kumaratunga seems to be rushing into talks with the LTTE without preparing the country's political forces to come to terms with the outcome of the next phase of negotiations with the LTTE. The coming phase of negotiations will center on the theme of LTTE's proposals for an interim self-governing authority. A positive outcome of the talks will have to grant the LTTE a substantial degree of autonomy in the North and East, even exceeding the parameters of the present constitution. It will even necessitate re-shaping of the constitutional architecture of the Sri Lankan state. That is at least what the LTTE's ISGA proposals presuppose.

It seems that President Kumaratunga is ready to concede quite a lot to the LTTE, far exceeding what Ranil Wickramasinghe did, in exchange of the TNA's support for regime stability as well as the participation in the constituent assembly process. Although this is a courageous move on Kumaratunga's part, it is fraught with dangerous political pitfalls. That should be avoided. Kumaratunga should ask a team of her private sector viz kids to do a risk analysis of her peace move. Here is some food for thought, free of consultancy fee.

Parallel Initiative

Parallel to the peace move, President Kumaratunga should launch a new initiative to prepare her coalition to support her engagement with the LTTE with the assistance of the much maligned Norwegians. During the past two years, Kumaratunga, her allies and advisors thrived on a campaign that portrayed the ceasefire, UNP-LTTE talks, the Norwegian mediation and the role of the international community in Sri Lanka's peace process in most negative terms. They saw the Norwegian role as one inimical to Sri Lanka's national interests and pride. They viewed the talks with the LTTE as leading only to strengthening of the LTTE at the expense of the military preparedness of the Sri Lankan state. They reacted to the LTTE's ISGA proposal branding it as a blueprint for separation. The UPFA was indeed formed last year, and the subsequent election campaign was conducted this year, on ideological positions that stand in sharp contrast to all the political assumptions and implications of President Kumaratunga's new, post-election agenda.

The point is not that Sri Lanka's President does not have the liberty to change her positions so radically and without a prior warning. It actually concerns whether she can prepare her coalition, its partners and allies as well as the country's political forces to accept the far-reaching consequences of the next phase of the negotiations with the LTTE. Kumaratunga's new move will really be tested not at the negotiation table with the LTTE, but when the outcome of the engagement with the LTTE is presented to the Sinhalese masses whom she herself politicized in recent years not to tolerate the LTTE in its present form.

Lessons

This is exactly where our political leaders should learn lessons from the past. When SWRD Bandaranaike signed a perfectly reasonable deal with the Federal Party in 1958, he thought he could carry the country with him. But his compromise with Chelvanayakam went against the grain of the political coalition which he himself built up and brought to power on an essentially Sinhalese nationalist ideological agenda. Prime Minister Bandaranaike paid a dear price for not preparing his coalition to accept his deal with the Federal Party for power sharing. It was 'reform from above' that the powerful coalition partners of the MEP regime of 1956 immediately and passionately rejected.

President Jayewardene's Indo-Lanka Accord of 1987 was another example of disastrous reform from above. Without preparing the cabinet, the parliamentary group, the party or the country to accept such a radical and sudden change as envisaged in the Indo-Lanka Accord, Jayewardene merely created conditions for a bloody nationalist rebellion. There is no reason for President Kumaratunga to repeat those tragic mistakes in the year 2004.

Options

What then are the options that President Kumaratunga should pursue? The answer to this question depends on the possible outcome of her government's engagement with the LTTE in this

second phase of the current peace process. The first phase, initiated by the former Prime Minister Ranil Wickramasinghe, produced a relatively stable cease-fire and the Oslo Communiqué of December 2002. The latter contained a joint commitment by the government of Sri Lanka and the LTTE to explore a federal solution to the ethnic conflict within the conceptual parameters of internal self-determination. The first phase could not elaborate the details of the Oslo consensus. The ISGA proposals presented by the UNP government and the LTTE were non-starters. Now, in the current second phase of the process, negotiations will have to produce the outcome of an interim administration under the LTTE's control for the Northern and Eastern provinces. This is a huge challenge for any Colombo government to undertake. Hopefully, President Kumaratunga is aware of what she is called upon to deliver through talks in this second phase of Sri Lanka's peace process.

In order to meet the challenge posed by her own initiative, President Kumaratunga should re-invent the ideological thrust of the UPFA coalition. Such an undertaking will prepare the UPFA coalition to accept the inevitability of an autonomy-based political settlement to the ethnic conflict. It would be a grave mistake if she thinks that she can impose an autonomy settlement on her coalition partners after signing an interim or final accord with the LTTE. The UPFA coalition is a political force that is simply not ready to accept the political consequences of what Kumaratunga herself is initiating now, with the involvement of a few advisers of some repute. The structural shape of a nation-state cannot be altered by the wishes and maneuvers of a leader and a few loyal and pliant consultants. It requires the participation of class forces as well as reformist political constituencies that are mobilized to undertake the historical task of backing state reforms. Without such preparation, Kumaratunga can only provoke Sinhalese nationalist resistance within the ruling coalition as well as without. To prevent resistance to reform from above, President Kumaratunga should at least broaden the stakeholder basis of her new initiative.

Difficult Steps

To make her peace initiative successful, President Kumaratunga needs to take a series of difficult political steps. She will have to win over her formidable coalition partner, the JVP, to her peace project. Then she should ensure that the opposition UNP does not play the role of the spoiler, which she successfully played when the UNP was talking to the LTTE. The challenge for her is to make the UNP a stakeholder partner in the new peace initiative. Parallel to bringing the UNP on board is the expanding of the bases of the UPFA coalition to give the regime as well as the negotiation process the much needed stability. Last, but not the least, is the task of working out a mutually acceptable interim administrative arrangement with the LTTE. This is a tall order. Ranil Wickramasinghe must be a relieved man to realize when he wakes up in the morning that these difficult tasks are no longer on his lap. ■