

Background Note to April 5th 2009 Round Table

**Towards a Sustainable Peace
Going Beyond the Thirteenth Amendment**

By Lal Wijenaik

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 ARPC proposal that was submitted to 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 (1931) 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 comparable 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” – fifty percent of the seats in the legislature for the majority Sinhalese

and the balance fifty percent for the minorities - 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 on constitutional reform (1944) and the discussion that took place between the leaders of the two communities centered 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 nondiscrimination. 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) were no doubt a letdown 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 Pilail 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 in 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 (especially 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, 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 an 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.

In 1978 the Second Republican Constitution came into force. The creation of a presidential system of government with executive power vested with an all powerful Executive President under the new constitution and the constitutional

meddling that was seen during this period, such as the enactment of the 6th Amendment to the constitution (1983) 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 intrinsic 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" (Sidgwick and Jackson 1972) 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."

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