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Sri Lanka: What to do about the Thirteenth Amendment?

Submitted by asiaadmin2 on Mon, 11/12/2012 - 10:17

Paper No. 5291

Dated 12-Nov-2012

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The national question has dragged on unresolved for 65 years since independence. The country has lived through a brutal civil war where thousands perished; Tamils have suffered pogroms which saw arson, rape and murder; political distrust between communities never ceased and Tamils have fled Sri Lanka in hundreds of thousands never to return. The national question festers on like an open wound.

The nation has lived with the Thirteenth Amendment to the Constitution (13A) for 35 years and as far as Northern Tamils are concerned, devolution, the right to manage their own affairs and build their lives, is still an empty dream. The intention of 13A was to devolve a certain amount of power on the Tamils. What mockery! Every other province enjoys an elected provincial council, except the Northern Province which has never had one. Some power has been devolved elsewhere; the North suffers under the heel of military occupation.

It is this long history of getting nowhere that motivates rethinking. This essay does not present finished ideas; it simply thinks aloud. After the civil war and the end of the LTTE, Lanka is in new territory. The international scenario is also different and livelier; think of India, the USA and the UN Human Rights bodies. It is time to be productive, not be imprisoned by fixed positions or to ignore openings. This is where the difficulty begins; not abandon principles for opportunist reasons, but be flexible; that's tricky! Wisdom is the art of taking the next step correctly, not the endless repetition of articles of faith, which any fool can do.

Navigating between basic truths and the correct next step is a challenge. Opportunists who have sold themselves (Douglas, Pilleyan, KP) will achieve nothing. At the same time, the obstinacy and stupidity of the LTTE in prioritising a military approach over an all-sided political

strategy sealed its fate and ensured its defeat. Ask: “When and what mistake sealed the fate of the LTTE?” The answer is unambiguous: “Right at the beginning, when it put war at the apex of its agenda and rejected the primacy of the political. Subsequent errors, they were many and grievous, all flow from this one cardinal blunder”.

Principles and compromises

Let us first enunciate three guiding principles.

- (a) The Tamils are a nation, and therefore endowed with the right, commonly referred to as the ‘Right of nations to self-determination, including the right to secession’. Whether the Tamils are indeed a “nation”, and how a determination can be made, and what the criteria in modern times, are open to discussion. Prima face they are entitled to the same option as the Scots, the Basques, the Catalans, the peoples of former Yugoslavia, and the Kashmiris. They would be unwise to secede, as would the Scots; conversely, Kashmiris are better off free of India and Pakistan. The intelligent exercise of the self-determination right differs case by case and depends on circumstances.
- (b) The state-form in Sri Lanka is Sinhala-Buddhist (SB), from which the Tamils are alienated. This is a “scientific” appraisal based on the hegemonic ideology of the state, the Constitution, the mono-ethnic composition of the armed forces, and realities of governance. It should be replaced by a modern, pluralistic and democratic state.
- (c) Further to (b), a principle that underlies a pluralistic and democratic state is a high degree of devolution for the Tamil people to administer their affairs in their traditional homelands. One should not pre-empt how the constitution should be rewritten for meaningful devolution, but what have come to be known as land powers and police powers must be devolved to the Tamil unit. Which districts in the country wish to be a part of the Tamil devolutionary unit (linkage) should be determined in referenda, district by district. There are as many models as there are countries that practice devolution, hence it is best at this stage to refrain from terms like federalism, cantons, provinces and states.

The principles from (a) to (c) are arranged from the most general to the most immediate. To put it in another way; self-determination is the most difficult to get the Sinhalese people to accept. Their consciousness is nowhere near as modern as, say England. Hence a referendum on Tamil secession, similar to the Scottish question, will not happen in the foreseeable future. As a principle (a) stands, but I distinguish between the art of the possible and butting one’s head on a wall.

There is a further reason for not pushing for a self-determination referendum (the only way to give it concreteness). Currently there is little interest in *Thamil Eelam* among Tamils living in Lanka (the diaspora must accept the leadership of in-country Tamils). Before the end of the war there was indeed a minority, but not negligible, of Tamils interested in *Eelam*. Now that the Tamil people are not demanding secession,

why should others bang their heads against a brick wall?

Item (b) overlaps the repression the Rajapakses impose on the whole country. The SB state specifically oppresses Tamils, but as a generality, authoritarianism undermines the democratic rights of all, including Sinhalese. Tamils can progress on (b) by joining the bigger movement against corruption, erosion of democracy, breakdown of law and order, and the foundation of it all, the Executive Presidency (EP).

Item (c) is an immediate issue and relates to 13A, negotiations between Rajapakse, TNA and Delhi, and the concerns of the international community. There is a backlash against 13A spearheaded by Sinhala extremists. Resolving the 13A conundrum is of immediate interest.

For a devolutionary, parliamentary, secular constitution

The revulsion of ordinary Sinhalese for 13A is visceral and stems from two readings; it is seen as an Indian imposition, which is true, and it is seen as a concession to the Tamils, which is not true in practice as I explained. The Sinhalese man in the street does not know what 13A contains, but has acquired a conditioned reflex to detest it. Do not have illusion that anybody can change that.

The Tamils see in 13A a promised land way out in the distance. It is typical of Lanka that a constitutional provision introduced to grant the Tamils a degree of autonomy has done everything except that! The LTTE joined Sinhala chauvinists in rejecting 13A, partly for similar reasons (Indian edict) and partly a contrary one (to expedite *Eelam*, not settlement). The TNA sees Jerusalem afar, on the other side of Delhi, and cherishes illusions that Sonia-Singh, or their successors, will one day arm-twist the Rajapakses, or their successors, into giving the Tamils what the Sinhalese abhor. As Omar Kayyam said of life's fleeting joys, 13A too was "dead yesterday, unborn tomorrow".

Strangely the curators of the Sinhala State, from JR to Mahinda, dare not repeal 13A, despite the racists baying at the moon. It is a case of good-cop bad-cop; Mahinda Rajapakse and GL Peries play the accordion in Delhi and Geneva, Gothabaya Rajapakse, Wimal Weerawansa and the JHU beat the drum at home in calculated dissonance. To put it in a nut shell, 13A (plus, minus, divided or multiplied) will not be implemented, nor will it be repealed, the charade will go on.

The Sinhalese will not accept 13A. The Tamils will not forego the right to run their affairs in their traditional homelands. Delhi and the West will not renege on a modicum of political rights for the Tamils – though Tamil-fatigue is visible in Delhi, Washington and London. The diaspora will not retreat from insistence that two Rajapakses, one Fonseka and others be brought to trial for war crimes. It's an imbroglio from which there seems no way out. I do not see any simple resolution of the Tamil problem or the larger crisis of the Lankan state. The crisis of the state and the Rajapakse sibling's plan to impose politico-constitutional autocracy is the principal contradiction in the political conjuncture in this Island.

There is no silver bullet to put things right with one magical shot; but history addresses only such tasks as it can cope with. There is a

credible agenda which, though short of a final solution, is the best next step. The agenda addresses three priorities in one; abolish EP, replace 13A by autochthonous provisions in the body of the constitutional text to devolve power to minorities and regions, and third rationalise the constitution by replacing articles granting a special place to one religion, or entrenching bigoted language rights, with a secular charter to gain Lanka a place in the modern community of nations.

What has placed this triple agenda on the table is a growing demand to rid Lanka of EP. The demand is universal; religious leaders, communities, opposition parties, and in private a goodly portion of the governing alliance want it. Abuse of power by the sibling-regime is out of control, naked impunity is accompanied by swollen arrogance; the call to be rid of EP has lit up a bonfire. It can be the winning issue at or before the next presidential election and can unify opponents. Though there is a long way to go before Lanka's dysfunctional opposition can rise above petty squabbles and arrive at common actions, it is doable.

Constitutional amendment

The Single-Issue (SI) concept of one shared and sharply focussed objective, to abolish EP, has come into prominence. It requires a Rainbow Coalition of reds, greens and blues, Tamils, Muslims and Singhalese, religious leaders and social classes, all pursuing a single purpose. A politico-socio-economic (p-s-e) programme, alongside the constitutional objective, is out of place. What's the purpose of a p-s-e programme? A new president must hang on to power to implement p-s-e; but that's the fraud Chandrika Bandaranaike and Mahinda Rajapakse already pulled on the nation. A p-s-e programme amounts to preparing the ground for a third impostor. (Different p-s-e manifestos will, of course, be placed before the people at parliamentary elections subsequent to abolishing EP).

However, if we abolish EP, a new constitution, or far reaching amendments have to be enacted simultaneously. Hence a minimal consensus on the replacement is necessary. The SI challenger's manifesto will consist of two pages. Side one will say in gigantic bold letters: "I will come, I will dispose of the Executive Presidency, and I will go!" The reverse will contain a brief statement of the principles of a replacement version for the current constitution and its obnoxious Sixth and Eighteenth Amendments.

This is where a three pronged approach becomes unavoidable. The first matter is obvious and self evident; replace EP by a conventional parliamentary system. That's the easy one; a bunch of lawyers can quickly draft it in line with the mandated manifesto.

Second, replacing 13A by provisions, within the body of the constitutional text, to provide devolution through autochthonous formulations will be acceptable to many who oppose 13A because it is an Indian imposition. The JVP and *Peratugami* (JVP breakaway) will go along with devolution if it is autochthonous and not a foreign imposition. This may turn out to be a win-win scenario where those who grieve about 13A being an Indian yolk are mollified while the Tamils and Muslims secure power sharing, and the grassroots gain something.

What about secularism? Lanka needs to grow up. Constitutions that enshrine a special place for this religion or that are a reactionary left-

over of a bygone era. Plural societies like India, South Africa and the USA entrench secularism in their constitutions and laws. Religion is phoney if people want the state to come along and give it a helping hand? If it is in decay and unable to survive without a state prop, why not just let it wither away?

Language rights as enshrined in Constitutions need to be practical not emotional. Why all this fuss with one sentence for Sinhala and another for “Tamil also”? Isn’t it a way of pandering to the prejudices of those who want Tamil to be treated differently? Replace all by one sentence: “English, *Thamil* and *Sinhala* shall be the official languages of Lanka. QED.

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