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D. Nathan

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An outline**

G. Palanithurai

**Sri Lanka: A Study in Ethnic
Equalization**

N. Satyendra

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Sri Lankan constitution**

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EDITORIAL

The second number of the Journal of Eelam Studies is here, at last - delayed but stubbornly here. It is our fond, though, ambitious hope that our readers will help in its prompt publication henceforth. In view of the current situation in Sri Lanka it becomes imperative that we spare no efforts in keeping the discourses of and about Eelam alive and sound our critical refrain periodically. Sri Lankan Tamils have become a people in political exile and their varied experiences of diaspora need to be articulated and documented for posterity, for keeping the memory of their struggles and victories alive and fresh. Hence we would like our readers to write for this journal - not just political commentary, cultural asides and sociological studies, but we would be glad to receive memoirs of the struggle at home, poems, fiction, reviews of books on Eelam and related issues, accounts of life in diaspora, of what it is to be a Tamil refugee in, say, Switzerland, in Germany, in India...

The struggle for self-determination of minority peoples extends today from the North Sea right up to the gulf of Mannar and resonates over the northern and cold waters of the Baltic. It is becoming increasingly clear that the Nation-State as a political concept is not a viable option anymore on both sides of the North-South divide. Europeans talk of a common home these days, the days of the Cold War are behind us and the Iron Curtain would, in all likelihood, be substituted by the traditional "Mittel Europa" configuration. In India the Republic's compulsive integrity as a Nation is being undermined by everyday struggles in the north-east, in Punjab... This phenomenon of Nation-state vs nationality bears closer examination and it would be useful and instructive if the struggles for a Eelam homeland could be seen in this perspective. One immediately thinks of Israel, South Africa, the Basque country, Northern Ireland where analogous situations exist though the specific details of the struggle may be markedly different. Expressions of ethnicity and nationality are always diverse. Voices that had remained silent for generations struggle to be heard, forbidden thoughts find uncensored articulation and there is a veritable explosion of discourses.

These need to be identified, understood and written about. The women's struggle in Eelam, the nature of its articulation with the common struggle for a homeland, whether the national struggle is thereby feminised or whether the feminist struggle is "ethnicised" these are issues that ought to be written about. The varied and contradictory searches for a Tamil identity, the forms it has assumed and the discourses this search may have inaugurated - in areas such as anthropology, historiography, literature are fit subjects for a journal such as this one.

Finally the Journal has to be seen as a forum, a space for the coming together of Tamil voices that are struggling to be heard on foreign soil, that are in the midst of the struggle at home and that are raised in sympathy for the cause of Eelam. We also invite writings from those who are likewise engaged in battle for a homeland, whether in Belfast, in the West Bank, in Jharkhand or in the vast plains of the USA and Canada.

S.V. RAJADURAI

INDIAN EXPANSIONISM: AN OUTLINE★

DEV NATHAN

In analysing Indian expansionism we must turn to three levels at which the denial of the rights of nationalities and nations operates. The first is the centralisation of powers in Delhi and the economic, political and linguistic - cultural suppression of non-Hindi nationalities, manifested in the blocking of the paths of bourgeois development of the existing or aspiring national (regional) bourgeoisies. The second is the denial of the right of secession of the border nationalities that either wish to secede (Nagas and Mizos) or do not accept their integration in India (Kashmiris). The third is the whittling down of the sovereignty of the neighbouring small powers of South Asia. The economic, political, military and culturo-linguistic processes operate at all three levels simultaneously. For example, we have existing today, the linguistic suppression of the Tamils, the military denial of the Sikh demand for federalism, the military suppression of the Naga movement for secession and the whittling down of Sri Lanka's sovereignty - all operating together.

The differentia specifica of expansionism lies in the subjugation of sovereign states. But this is only the logical extreme of a process of denying the right of nations to self-determination, beginning with the suppression of the national development of the various nationalities that constitute India, advancing through the denial of the right of the border nationalities to secede and culminating in the whittling down of the sovereignty of existing nation states. In a sense the crucial suppression is the first, for it is on the suppression of the national development of the various nationalities that the Indian state is founded. Further, it is the success in this endeavour that determines (along with the support of the relevant imperialism), the strength the Indian state can deploy in its subversion of the sovereignty of the neighbouring states.

Colonial Legacy

India was very much a base from which British imperialism operated in a large part of the world from Africa upto Australia. Indian finances were used to finance expeditions in this whole theatre. The colonial government helped Tatas set up a steel plant so as to be able to supply this theatre in the event of communication with Europe being cut. The Indian Army was used not only to police India and its environs but this entire theatre.

When the Indian ruling classes got a share of power in 1947 they did not repudiate this colonial legacy. Till today units of the Indian Army recount their exploits in the service of the British Empire.

★ Excerpts from a much longer unpublished paper by the author under the same title. An activist in a faction of CPI (ML), the author contributes regularly to Economic and Political Weekly (Bombay)

The British colonial government had forced unequal treaties on neighbouring countries like Nepal, Bhutan and Sikkim, and reduced them to the position of protectorates. The colonial government had also extracted a number of extra-territorial privileges in Tibet.

The successor India Government moved to secure this colonial heritage and privileges. It militarily annexed the lossely connected North-East and continued the unequal treaties and privileges extracted by the British.

Sikkim

Among the countries of South Asia, Sikkim has travelled the full distance from being a protectorate to becoming a colony, incorporated as a state into the Indian Union. This account of the annexation of Sikkim is based on Sunanda Datta Ray's book 'Smash and Grab' (1984).

Till 1950, Sikkim's relations with India were governed by the 1861 Treaty of Tumlong. The Treaty described Sikkim as a "Country". Unlike the "native" states which handed over defence and foreign relations to the Indian Government, Sikkim retained its right to raise and use an army. The Chogyal had transferred Darjeeling and its environs to the British Indian Government and was paid a rent for the use of the same. This transfer became void on the lapse of paramountcy that followed the transfer of power.

In International law Sikkim had the status of a protectorate, with its foreign affairs and defence being in the hands of the British Indian Government. But with the transfer of power paramountcy was neither retained by the British Government nor transferred to the new Government of India. The Government of India, however, arrogated to itself the paramountcy of the British Crown. It refused to implement Article 73 of the UN Charter which called on all members to progressively remove restraints on protectorates and such like non-self governing territories. Instead the Government of India moved in the direction of increasing the restraints on Sikkim and step by step extinguishing its existence as a separate state. Even if it were granted that Sikkim was a protectorate of India, a protectorate still remains a state under international law.

In 1949 there was a local movement, supported by India. This movement demanded the abolition of feudal estates and accession to India. The demand to abolish feudal estates, was in a way "democratic"; but rather than democracy the real objective was to secure "merger" into India. The occasion of the anti Chogyal movement was used to force the Government of Sikkim into making concessions with regard to its sovereignty. The Treaty of 1861 was replaced by the Treaty of 1950. In addition to the former restrictions on foreign affairs and defence, the Government of India forced acceptance of its role in internal matters too. These increased powers were grabbed both by the terms of

the Treaty and by the letter subsequently sent by the Political Officer to the Chogyal.

Article 6 of the December 1950 Treaty, placed all communications in the hands of the Government of India. It said:

"(1) The Government of India shall have the right of constructing, maintaining and regulating the use of railways, aerodromes and landing grounds and the air navigation facilities of posts, telegraphs and wireless installations in Sikkim; and the Government of Sikkim shall render the Government of India every assistance in their construction and protection;"

(2) The Government of Sikkim may, however, construct, maintain and regulate the use of railways and aerodromes and landing grounds and air navigation facilities to such extent as may be agreed to by the Government of India;"

"(3) The Government of India shall have the right to construct and maintain in Sikkim roads for telegraphic purposes and for the purpose of improving communications with India and other adjoining countries and the Government of Sikkim shall render to Government of India every assistance in the construction, maintenance and protection of such roads. (Vohra. 1980, 100) This very comprehensive clause gave the Government of India full control over Sikkim's communications.

The letter sent by the Indian Political Officer to the Chogyal on 25th February, 1951 (Datta - Ray, 1984, 61) arrogated to the Government of India (GOI) sweeping powers in the internal political and administrative affairs of Sikkim. The letter proscribed the employment of foreigners without the permission of the GOI. It stated that the Principal Adviser would be nominated by the GOI; that any difference of opinion between the Chogyal (referred to as "Maharaja" in the letter) and the Principal Adviser would be referred to the GOI for decision. The letter entitled the Chogyal to seek GOI aid for the maintenance of law and order. But, the letter made clear, "Independently of such a request the GOI will be entitled in such a situation to give such advice as they may consider necessary and appropriate for dealing with the situation and the Maharaja shall be bound to act in accordance with such advice".

From the position during the British time where Sikkim was to be guided in defence and foreign affairs by the British Crown, the position deteriorated in 1950-51 to one where the GOI also acquired complete control over communications and unlimited powers to interfere in local political and administrative matters.

Economically, Sikkim's wealth was concentrated in the hands of Marwari traders who had a strong hold over commerce. The firm of Jethmull Bhojraj acted as state bankers and took a cut on all transactions. The Marwari traders bought up Sikkim's cardamom for just Rs. 460 a maund and sold it in the middle east for Rs. 2,000 per maund.

The GOI refused Sikkim's request for a separate foreign exchange account; and then rejected Sikkim's application to import machinery, on the ground that Sikkim did not earn any foreign exchange, though Sikkim cardamom was sold by Indian traders in foreign countries. In discussions on the Five Year Plans the Chogyal wanted sophisticated small scale industries, but Nehru stressed agriculture. The GOI was bent upon maintaining Sikkim as a market for Indian manufactures. The "aid" given by India was set-off against the cost of the ropeways and other communication projects that the GOI took up for its own military needs, and for paying the high salaries of the Indian officials who were the agents of Indian intervention.

Alongwith all the economic, political, and military instruments, India also had those of political cum-ethnic movements. From the nineteenth century onwards there had been a considerable migration of Nepalese into Sikkim. By the 1950s they were a majority. Their ethnic aspirations were combined with the demand for a measure of democracy. But under cover of both these movements there was the real movement for annexation by India.

As the ethnic factor combined with the plea for democracy pitted the Nepalese against the Chogyal, King Mahendra of Nepal tried to influence the Nepalese community to stand by the Chogyal. Koirala, the leader of the Nepalese Congress, used his influences to get the Nepalese community to stand in favour of "accession" to India -- in the name of democracy, of course. (Sen Gupta, 1988, 34) In the wake of India's victory over Pakistan in the 1971 war, the GOI moved to strengthen its hold over Sikkim and to prepare the ground for its annexation.

An orchestrated campaign for "democracy" paved the way for Indian military intervention and the final denouement. In May, 1973, while the Assembly House in Gangtok was surrounded by the Indian Army and CRP, the Assembly members were taken in covered army jongsas to vote on the resolution for "accession" to India. Nur Bahadur Khatriwar, one of the participants in this military annexation was to later say, "The so-called request for participation in the political institutions of India and the resolution upon which the 35th amendment of the Indian Parliament, making Sikkim an associate state of India, was never passed in the Sikkim assembly. This fact, we as members of the Sikkim assembly can vouch for fearlessly." (Dutta - Ray, 1984, 245)

After this fraud the Indian Parliament passed the 35th Amendment incorporating Sikkim as a state of the Indian Union. When this was challenged in the United Nations, the Indian representative completely falsified the status of Sikkim saying "Sikkim was a princely state under British protection exactly like the other 500 odd princely states that were protected by Great Britain". (Dutta-Ray, 1984, 253)

The truth was that Sikkim had been a protectorate of Great Britain and as a protectorate it still remained a State under international law. One of the few dissenting voices in the bourgeois press was that of B.G.

Verghese, editor of Hindustan Times, who wrote, "Elsewhere, protectorates are graduating to independence and colonies are marching to freedom. In Sikkim, a protectorate is moving to 'freedom within India' by annexation through constitutional legerdemain". (Dutta-Ray, 1984, 230)

In the 1971 Bangladesh war the Indian State showed how it could turn national ethnic conflicts in South Asia to its own advantage. The annexation of Sikkim demonstrated the ruthlessness and utter disregard for norms of international behaviour with which the Indian state could end the independent status of a weak neighbour. This episode was a grim warning to Nepal and Bhutan, both bound to India by restrictive unequal treaties.

Nepal★

Unlike Sikkim, Nepal was never a protectorate of the British. The British preferred to maintain it as an independent state, as a buffer between British India and China. The 1923 treaty of peace and Friendship recognised Nepal as an independent and sovereign state. On the eve of the transfer of power, in July, 1947, Britain reaffirmed Nepal's independence when their respective legations in Kathmandu and Nepal were raised to the embassy level.

Well before this, however, the seeds of India's domination of Nepal had been sown. The Nepalese Terai contained a population of largely Indian extraction. Marwari and other Indian traders had spread through the country, occupying key positions in trade and commerce. They sold industrial products manufactured in British India and sent back rice and other agricultural commodities in return. In the second half of the thirties Indian big business groups set up jute, sugar and match factories in Nepal. (Lama, 1985, 150).

While encouraging a movement against the autocratic Ranas, the GOI signed the 1950 Indo-Nepalese Treaty, a treaty that holds even today and legalises some aspects of the unequal relations between Indian and Nepal. According to Article 6 of the treaty, the Governments of India and Nepal agree to grant on a reciprocal basis to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and privileges of a similar nature. This combined with free movement across the borders and the full convertibility of currency has enabled Indian traders, contractors and industrialists to buy up economic assets in Nepal and dominate its economic life. The granting of formally equal rights only legitimises inequality, as the Indian migrants to Nepal are essentially businessmen of various hues, while

★ Since the paper was written in May 1988, it does not cover the subsequent efforts by the Indian Government to subjugate Nepal economically - Ed.

the Nepali migrants to India are Gorkha soldiers and low-paid labourers, working in hotels, restaurants and as domestic help.

The letters exchanged with the Treaty spelt out the military aspects "(1) Neither Government shall tolerate any threat to the security of the other by a foreign aggressor. To deal with such a threat, the two Governments shall consult with each other and devise effective counter measures.

"(2) Any arms, ammunition or warlike material and equipment necessary for the security of Nepal that the Government of Nepal may import through the territory of India shall be so imported with the assistance and agreement of the Government of India.

"(3) Both Governments agree not to employ any foreigners whose activity may be prejudicial to the security of the other.

What this effectively does is to tie down Nepal to India's perception of the military situation. The GOI can further determine the arms that Nepal may buy. The GOI has done this not only with regard to arms purchased through India, but all arms purchased by Nepal. In 1987 the GOI objected to Nepal's purchase of anti-aircraft guns from China. (India Today, Dec. 15, 1987). Nepal's right to employ any foreign nationals, of its choice is restricted by India's necessary agreement. Faced with the growing conflict in South Asia, Nepal has proposed that it be declared a zone of peace. India has objected to this on the ground that it implies a revision of the 1950 treaty, which forces Nepal to act on the basis of Indian military perceptions. Neutrality, when India is one of the partners in the conflict, is something that India is determined not to allow Nepal.

Nepal is a land-locked country, or, rather, as it has sometimes been described, an India-locked country. India has used this position to force various harmful "Trade and Transit Treaties" on Nepal. The first Treaty of 1950 forced Nepal to levy export duties on Nepalese manufactures equal to Indian excise duties so that Nepalese manufactures may not become competitive. The Treaty prohibited Nepal from selling its goods in third countries at rates cheaper than those in India. It imposed GOI control on the foreign exchange earned by Nepal, which was deposited in the Reserve Bank of India. Further, all goods imported by Nepal through India, were charged import duties at Indian rates. These monies were later refunded, not to the Nepali importers but to the Nepali Government.

What India had imposed on Nepal was a customs union, an area within which trade would be free, while the area would face the rest of the world with common import duties. Export duties on exports of Nepali manufactures to India equivalent to Indian excise duties, were aimed at discouraging Nepali manufactures. Food and other primary products from Nepal faced no such duties, thus their export was encouraged relative to that of manufactures. At the same time imports by Nepal from third countries faced import duties at the same rates

as levied by India. Thus, Indian manufacturers got the same protection in Nepal that they did in India. The scheme of returning these import duties to the Nepali Government, only made the Nepali Government a party to the destruction of Nepali manufacture; it did not change the economic effects of the customs union.

As one study pointed out, "Urban petty manufacturing of 'industrial' goods has become increasingly threatened compared with the growth of new forms of production and servicing, by 'the Indian connection', which demonstrates the extent to which small scale 'industrial' enterprises are dependent on large scale factory production outside Nepal. The former includes brass and clay pot makers, straw mat weavers, and makers of bamboo screens or winnowing trays; and the latter motor mechanics, watch and radio repairers, and tailors using imported Indian cloth". (Blaikie et al. 1980, 56)

Questions of trade and transit have continued to be major issues in Indo-Nepalese relations. The GOI has insisted on clubbing together trade and transit, so that it can make use of Nepal's weakness in transit to force concession on matters of trade. Nepal, on the other hand, has been trying to get the two issues delinked and separate treaties entered into for both. It was only in 1978, during the Janata Party rule in Delhi, that the GOI agreed to enter into separate treaties for trade and transit.

The GOI has frequently used strong-arm tactics to force Nepal to accept its dictates. In 1971 there was a virtual economic blockade of Nepal, prior to the new Indo-Nepal Treaty (1971) being signed. India stopped supplies of petroleum products and Nepal was threatened with a virtual transport shutdown. Nepal had to give up its demand to separate trade and transit and to agree not to raise the tariffs on new industries (conceded in the 1960 treaty.) This economic blockade was the culmination of a series of trade measures in the late sixties. As Nepal undercut India in raw jute and stainless steel utensils and synthetic fabrics that came into India (the factories for their manufacture in Nepal having themselves been set up by Indian business groups) the GOI in 1969 banned all imports of textiles from Nepal. At this time Nepal had also approached China for help in cotton cultivation in the Terai. The GOI insisted on keeping the Chinese out of the Terai and responded with an economic blockade.

Keeping the Chinese out of any projects in the Terai has been a clearly enunciated aim of Indian policy. The reason is supposed to be one of defence, but what this actually means is that of keeping Nepal as dependent as possible on India. To make sure that no project in the Terai goes out of Indian hands, the GOI has even used outright military pressure. After China was awarded a contract to build a section of the East West Highway in the Terai, the Indian Army was moved into position along the Nepalese border and remained there till Nepal agreed to cancel the Chinese contract.

The net result of India's economic thrust, backed up by continuous pressure from the Indian Government, is that Nepal's exports are chiefly primary products, maize, rice, herbs, ghee, dried ginger, timber and jute. Some of these, like wheat, ghee and oil seeds, are reexported to Nepal in processed form. India's exports, on the other hand, are of a variety of manufactured goods, chiefly chemical and drugs, metal manufactures, and machinery and transport equipment. The classical colonial pattern of the nineteenth century free trade (Primary products versus manufactures) is the pattern India has imposed on Nepal. This pattern is reinforced by government pressure, and its aid programme. Needless to say, Nepal's terms of trade with India have deteriorated in line with the fall in primary goods prices relative to those of manufactures.

The trade pattern has also led to a large deficit for Nepal, to cover which Nepal has, at times, had to convert several million dollars worth of hard currency into Indian rupees. Having a currency that is freely convertible into Indian rupees, the Nepalese official exchange rate with the dollar is determined by India. Nepal's trade deficit with India is largely covered by the remittances of the cheap labour it provides to India.

Besides the colonial trade relation, and the supply of cheap labour there is also the use, rather destruction, of Nepal's natural resources to India's advantage. The Kosi multi-purpose flood control power-irrigation project is one such. There were differences on the compensation to be paid for Nepali lands acquired for the project. The projects have resulted in a continuous soil erosion, while yielding negligible benefits in irrigation and flood control to Nepal (Lama, 1985, 130)

The stranglehold of Indians over trade and commerce, particularly in the Terai, has already been mentioned. Many of these traders have for convenience taken Nepal citizenship, but they retain all other business and family links with India. Other traders are Indian citizens. It has also been mentioned that Indian investments in industrial enterprises began in the late 1930s. After world war II some of the Indian business groups set up joint enterprises in collaboration with the local Nepali businessmen, compradors of compradors, as the Indian business groups had themselves set up their industrial ventures in collaboration with the TNCs. Since then some industrial units have been set up by Indian business groups. Below, a few of the units have been mentioned. But, as noted by Morris (1987), the official number of Indian joint ventures is almost certainly an underestimate.

The Sahu Jain group set up a sugar mill in 1963; Dhirajlal, Brijlal of Calcutta a starch and glucose factory. Birlas have a zinc and lead project in which they hold 25% of the shares, with another 25% being held by Golden Moffit and Associates of U.K. Union Carbide of India Limited have a dry cells plant. In Nepal Orind Magnesite, Orissa Industries hold 25% of the shares and the unit has a technical collabora-

tion with Harbingar Walkar of USA. The ubiquitous Oberoi's have a hotel, while the Mohan Meakin group brew beer. These are also units for manufacturing of glue and conversion of wood into splinters. (All the above information from Lama, 1985)

The Indian joint enterprises in Nepal fall into two clear categories. First, those in which the technology is quite standardized, as is the case with textile mills, beer brewing, sugar mills and so on. Second, those in which the enterprise has a partner from the imperialist countries, in financial and/or in technical collaboration. This confirms the earlier conclusion about the nature of capital export from India. In the case of Nepal, however, the virtual customs union between India and Nepal, which give Indian manufactures an access to the Nepali market just as though it were an Indian state, has inhibited Indian investment in Nepal. Selling to Nepal is more profitable than investing there. As a result the bourgeoisie that does grow in Nepal is linked to the Indian bourgeoisie, running repair shops and service centres for machinery and equipment manufactured in India, or using Indian equipment in small establishments like tailoring shops.

India is by far Nepal's largest trade partner and aid giver. The customs union forced on Nepal has helped India maintain its position in Nepal's trade, a position reinforced by the Indian aid programme.

It was in the mid 50s, that India became Nepal's largest aid-giver, a position it has held since. Aid, of course, is a means to promoting trade. The sectoral distribution of aid shows to what extent this programme is meant to benefit India. More than 50% was for building roads and airports. Besides their strategic military importance, these means of communication help the spread of Indian factory made goods into the far corners of Nepal, destroying the local handicrafts like basket weaving and pot making, building up in its stead a class of comprador merchants based on the sale of Indian factory made goods. This process is very familiar to Indians who know of the role played by the railways in Britain's imperial scheme.

Productive activities like agriculture, horticulture and industries, or beneficial activities like education and health, altogether got less than 8% of the total aid.

The other major sector to which Indian aid went has been "irrigation, power and water supply". As already pointed out, this was meant to benefit India and not Nepal. If anything, Nepal has paid the cost in terms of soil erosion and other forms of ecological degradation.

Sectorwise Aid Commitment by India in Nepal, 1951-72

Sector	Percentage
Roads and Airports	52.6
Posts and Telecommunications	1.1
Irrigation, Power and Water Supply	33.1
Horticulture, Agriculture, Veterinary & Forest	1.2
Community and Panchayat Development	3.8
Education and Health	0.8
Industries	0.5
Archaeology, Archives and Surveys	6.9
Technical Assistance and Training	1.6
	100.0

Source: Dewan C Vohra, India's Aid Diplomacy in The Third World, 1980

Consequent upon this aid programme, Dewan Vohra (1980) has estimated the number of Indian experts in Nepal to be around 100. 100!

Bhutan

Bhutan was one Himalayan country that had never been conquered by a foreign power, not even by the British. Its peasant economy initially gave little scope for the expansion of trade links, except in textiles.

In 1949 India signed a friendship treaty with Bhutan. It was one more in the chain of unequal treaties binding the small, Himalayan neighbours to India. By the treaty Bhutan agreed to be "guided" by India in its defence and foreign relations.

The Indian state did not pay much attention to Bhutan in the period upto the 1962 war against China, though Marwari businessmen continued to expand their trade and control, particularly at the strategic entry points from the plains into Bhutan. After the 1962 war the Indian state began to pay increasing attention to Bhutan. The Indian military road building organisation set to work to build a network of roads that would link Bhutan firmly with India, and allow the Indian Army to outflank Chinese positions. More than 70% of Indian's so called aid to Bhutan is for this purpose of road-building. Taking up first the North-South roads that lead to India and could facilitate, when needed, the movement of Indian troops, it is only now that an East-West road is being constructed.

The building of the road network and the related expansion of contracts have been accompanied by the spread of Indian business. The shifting of the capital from Paro (close to the Chinese border) to Thimpu (which is much further south), brought about under Indian pressure,

but using for that purpose ancient Bhutanese custom, has helped the expansion of Indian merchant capital. Except for some enterprises undertaken by sections of the Drukpa ruling clans (Dorji and Wangchuck), the Indian merchants dominate commerce and trade.

India has also begun using Bhutan's natural resources for its own economy. The recently-commissioned Chuka hydel project will supply electricity to India.

The Indian military presence is in the guise of a training mission (IMTRAT) and the road-building organization (BRO). The Indian military not only builds and maintains the roads, but also controls movement on them.

India has insisted on continuing the unequal treaty of 1949, whereby Bhutan "agreed" to be guided by India in matters of defence and foreign affairs. The Indian Government attempted to exclude Bhutan from participating in the 1968 Vienna Conference on the Law of Treaties, which was to discuss the termination of unequal treaties.

But the Bhutan Government came to know of the Conference and sent a delegation (Datta-Ray, 1984).

In 1979, when the Congress Party was not in power, Bhutan for the first time dared to express a difference on foreign policy, not following India's "guidance". This was at the Havana Non-Aligned Conference, when Bhutan voted differently from India on the Kampuchea issue. Indira Gandhi had pointed to this as the effect of a weak government at the Centre, and promised to undo this if she were returned to power.

While Bhutan has been trying to widen its political, economic and diplomatic relations with countries other than India, Indian business continues its penetration of Bhutan and the Indian military presence is as ominous as ever. As in the case of Sikkim, the Indian ruling class may well try to use the ethnic difference between the Drukpas and the Nepalese to push Bhutan along Sikkim's path.

Bangladesh

An aspect of the national oppression of East Pakistan was its lack of industrialisation. East Pakistan exported its raw materials in exchange for industrial products. Subsequent to the formation of Bangladesh the Indian big bourgeoisie stepped in to supply the industrial commodities that had formerly been supplied by West Pakistan. For this purpose loans were given by the Indian Government.

Besides commodities of daily use, India also supplied equipment for road and rail transport, anticipating the role that the Indian big bourgeoisie and government were to later play in Sri Lanka after forcing Jayawardane to capitulate.

The Indian state's attempts to exploit and dominate Bangladesh have centred around the sharing of river waters of the Ganga and the Brahmaputra. Before the formation of Bangladesh, India insisted that the Ganga was "almost" an Indian river and that East Pakistan had neither claim on the water of Ganga, nor any need of it. (Abbas, 1982, 3). All the while it proceeded with the construction of the Farakka Barrage, disregarding international norms that required agreement on the sharing of waters of rivers that flow through more than one country.

The Farakka barrage was completed in end 1974. "The barrage was commissioned on the pretext of test running its feeder canal for the period 21 April to 31 May 1975. But even after the expiry of this period, India continued to withdraw water, at Farakka unilaterally." (Abbas, 1982, 4) Mujibur-Rahman's acquiescence in Indian actions on Farakka was one of the chief factors in his overthrow. After his assassination the Indian state increased its pressure on Bangladesh. Border skirmishes accompanied increased withdrawals at Farakka. There was a severe crisis (soil erosion and salinity) in Bangladesh in the dry season of 1976 forcing it to take the issue to the UN.

It was only after the defeat of Indira Gandhi's emergency that Bangladesh got some relief on the Farakka issue. In the 1977 Treaty Bangladesh was guaranteed a minimum flow, and not just a share of whatever the flow, which was bound to decrease as irrigation was extended along the Ganga. Whatever the flow at Farakka, Bangladesh was guaranteed 80% of its agreed share.

The return of the Congress Party was followed by withdrawal of this guaranteed flow. The 1982 Memorandum of Understanding did not contain this 80% clause. (Crow, 1982) Having a share of a rapidly declining flow, is not sufficient to meet Bangladesh interests. Soil erosion, increased salinity and desertification have been the results in Bangladesh of India's Ganga policy. Some of the costs of the Green Revolution are being pushed off on to Bangladesh. And these adverse effects will increase in the coming years. Ben Crow (1982) quotes a senior Indian negotiator in 1978 saying that, at current rates of irrigation expansion "there will be no water at Farakka (during the dry season) in fifteen years time".

How the dry season flow of the Ganga is to be augmented has thus become an urgent question. The Ganga river basin covers not only India and Bangladesh but also Nepal. India has till recently insisted on dealing with Nepal and Bangladesh on bilateral bases alone. This has been India's usual approach to relations with neighbours in South Asia, as it becomes easier for the Indian state to browbeat each small neighbour separately. Bangladesh has insisted on bringing Nepal into the talks on augmenting the dry season flow of the Ganga.

India has proposed a Brahmaputra-Ganga link canal to bring the waters of the Brahmaputra into the Ganga at Farakka. The barrage will be in India and the canal will mostly flow through Bangladesh. Bangladesh

is understandably suspicious of a scheme in which the controlling points will be in India's hands. Besides, the land loss for the canal will be mostly borne by Bangladesh. Just as India is now able to threaten the ecological denudation of the North-Western parts of Bangladesh, a Brahmaputra Ganga canal will give India similar powers in the Eastern parts of the country.

Bangladesh has proposed a scheme for collecting rain run-off and snow melt in a series of reservoirs in Nepal to be later released into the Ganga. The scheme cannot be formulated or investigated without the participation of the Nepalese government and its officials. At least on the count of flood control in UP, Bihar and West Bengal, the Bangladesh scheme is superior to the Indian proposal. (Crow, 1982).

India has all along been proceeding with such works in the Indo-Nepal region. But it has insisted that this is a bilateral matter between India and Nepal. It is only recently after continuous pressure in SAARC, that India has agreed to multilateral discussions on the Ganga water question.

In the first flush of the victory over Pakistan in 1971 ambitious plans were formulated for virtually integrating Bangladesh into the India economy. These were proposals for a common electricity and water grid, covering the whole of eastern India and Bangladesh (Rao, 1972, 150) These have not fructified so far; but the plans have not been given up, they are being implemented in a piece-meal manner.

In trade matters too there has been continuous pressure on Bangladesh to keep its economy open to imports of manufactures from India. On the external trade front, Bangladesh initially was a supplier of only raw jute as the jute mills were all located in West Pakistan. India tried to get as much of Bangladesh jute crop as possible. In the immediate post-war period there was an open looting of Bangladesh jute. After Mujib's overthrow, Bangladesh developed a jute textile industry of its own. Since then India has been trying to get Bangladesh to stop its competition in the international jute market and instead came to an agreement with India on the marketing of jute. So far Bangladesh has refused to come to such an agreement, which would protect India's market share.

Indian investments in Bangladesh will pick up with proposed \$400 million gas-based fertilizer plant in which KRIBHCO will be a partner. Haldor Topsoe of Denmark is the main contractor. Bangladesh will supply gas at a lower price than in India or elsewhere. (Times of India, December 23, 1986) KRIBHCO will be able to buy back the product. Bangladesh cheap gas will in this way be harnessed to the Green Revolution in India

As is the case with other South Asian Countries, Bangladesh too has a considerable deficit in trade with India.

Sri Lanka

It has already been mentioned that Indian investments in Sri Lanka are quite considerable and much higher than the official estimates. Sri Lanka was one of the targets of the Chettiar trade expansion under the British flag. Unlike the case of Burma, from where they were expelled in large numbers, in Sri Lanka the Chettiar traders continued their operations often with their headquarters being in Tamil Nadu.

While the Chettiars continued their operations, in the 1950s and 60s India and Sri Lanka competed in the world tea, rubber and coconut markets. These were Lanka's main exports. Along with this competition, India showed its determination to maintain an unequal relation when it objected to Air Ceylon's resumption of overseas service and only reluctantly conceded its right to carry passengers to or from Bombay. (Kumar, 1986, 62)

With the setting up of a fairly elaborate industrial structure in India (a large and dominant part of it in collaboration with some imperialist power or the other) many of the joint enterprises began to use their Indian (or specifically Madras Offices) to carry out activities in Lanka. The British-Indian Ashok-Leyland and German-Indian TELCO are the main suppliers of trucks and buses. Bajaj has a virtual monopoly in the supply of three-wheeler auto-rickshaws. The Star Textile Engineering Corporation and the Lakshmi Machine Works, both manufacturing textile machinery with various foreign collaboration, sell their machinery in Sri Lanka and have set up textile mills there. The Danish-Indian ECC has been a major construction company. The biggest of the Indian Tamils carrying on business in Lanka, Gnanam, has, with Japanese collaboration set up industrial enterprises, including a flour mill at Trincomalee and a cement plant. This cement plant was destroyed by fighters of EROS (Much of the above information was provided by friends in Madras.)

The growing economic relations were, however, clouded by political differences between the two states. In the 60s Lanka had not supported India in the border dispute with China, rather it had tried to mediate in the dispute. During the 1971 war Sri Lanka provided refuelling facilities to Pakistani aircraft. Further, Lanka's military was being trained by Pakistan.

The movement of the Eelam Tamils for self-determination provided the Indian state with an opportunity to intervene in Lanka and force the Government of Jayawardene to capitulate. The GOI's military actions against the Eelam Tamils is proof that its one time advocacy of their rights was entirely aimed at advancing the economic - political interests of the Indian state (and its super-power backer)

Along with the Accord the exchange of letters between Rajiv Gandhi and Jayawardene reveals the extent of capitulation. In the letters it was

stated that the two would reach agreement "about the relevance and employment of foreign military and intelligence personnel with a view to ensuring that such presence will not prejudice Indo-Sri Lanka relations" (Frontline, August, 8-21, 1987) What this meant was that Lanka would cut off military relation with powers not approved by India. A senior Indian army officer made it plain, "Pakistan's military involvement in Sri Lanka came to an end on July 29, 1987, and intend to make certain it stays that way" (India Today, Dec. 15, 1987).

The letters agree, "Trincomalee or any other ports in Sri Lanka will not be available for military use by any country in a manner prejudicial to India's interests". Again it is India that will determine which forces are allowed to use Sri Lanka's ports. Given the strategic alliance between the Soviet Union and India, it is US imperialism, Pakistan and China that will be debarred from using Sri Lankan ports.

Further, "The work of restoring and operating the Trincomalee oil tank farm will be undertaken as a joint venture between India and Sri Lanka. "This is a direct economic benefit written into the Accord. The earlier contract awarded to a Singapore firm was cancelled.

The GOI gave loans to the Sri Lanka government to be able to buy various kinds of Indian equipment and manufactures, buses and the like. Improved business condition for the Indian compradors was signalled by the India-Sri Lanka Joint Business Committee meeting after a gap of eleven years. While the Indian Army has become an army of occupation, the civil administration of the Tamil areas have also been taken over by the Indian state. IAS officers have been sent to run the administration. Doordarshan has begun telecasts for Jaffna and nearby areas. The areas occupied by the Indian army are being economically integrated into India. Sri Lankan customs and trade authorities have been expelled from the areas, and Sri Lankan customs regulations have ceased to apply. Movements of Indian merchants and commodities into these areas is now no different from any part of India. There have been reports that the unregulated import of goats (to feed the Indian army of occupation) has spread foot-and-mouth disease among the cattle in these areas.

No wonder that Rajiv Gandhi told a Congress Party meeting (Indian Express July, 31) "Sri Lanka would come under the Indian orbit like Bhutan under the terms of the agreement." (Sengupta, 1988, 253).

Pakistan:

Of all the countries of South Asia it is Pakistan that has most resisted Indian expansionism. It has refused to open up its economy to trade with India, instead protecting its industries from competition with India. While India has held that the economies of the SAARC countries are complementary, Pakistan has held that its trade is competitive with India.

A note on Indo-Pak trade (Mirza, 1988) points out that the main items of exports and the main items of imports of both India and Pakistan are more or less the same.

Commodities Exported by Both India and Pakistan

1. Live animals chiefly for food
2. Fish
3. Rice (India imports too)
4. Sugar
5. Tobacco and tobacco manufactures
6. Cotton (India imports sometimes)
7. Leather and leather manufactures
8. Textile yarn, fabric and made-up articles (Both India and Pakistan import too)
9. Footwear

Commodities Imported by Both India and Pakistan

1. Milk and Cream
2. Wheat
3. Crude Rubber
4. Synthetic fibre
5. Crude fertilizers
6. Metalliferous ores and metal scrap
7. Petroleum and petro-products
8. Fixed Vegetable oil
9. Organic chemicals
10. Inorganic chemicals
11. Dying, tanning and colouring material
12. Medical and pharmaceutical products
13. Fertilizer manufactures
14. Paper, paper board manufactures
15. Iron and Steel (both export too)
16. Non-ferrous metals
17. Metal manufactures
18. Machinery including transport equipment (India exports too.)

Source: Mirza, 1988

So far, Pakistan has allowed private trade with India in just 42 items. There were reports that Pakistan is willing to increase the number of items in which private trade may be allowed.

While Pakistan has proposed a "no-war pact" with India which could give it the security it needs, the GOI has proposed a "Treaty of peace and friendship". The Indian state's objective is to get Pakistan to open up its economy to trade with India. This has been resisted by Pakistan. In fact, it was a pro-India stand on this issue that led to the removal of Mahboob Ul Haq from the post of Pakistan's Economic Minister.

Summing Up

Looking at India's position in South Asia and the objectives of the Indian state's policy, the following observations stand out:

1. South Asia has not so much been the target of Indian investment as of trade.
2. The Indian big bourgeoisie is trying to ensure that its markets, ceded to it by the collaborating TNC seniors, are not just restricted to India but include all of South Asia.
3. Towards this end, the Indian big bourgeoisie is trying to ensure that the bourgeoisies of these other countries remain subordinate to the Indian big bourgeoisie, either processing materials for export to India or working with Indian equipment and machinery.
4. The trade pattern of India with its neighbours follows the classical colonial pattern of India exporting manufactures and importing primary products.
5. To ensure and reinforce this pattern of trade the Indian state has enforced a virtual customs union with some countries. Its objective is to move from a "harmonisation" of trade policies to the formation of an economic union, under its hegemony.
6. The loans and sometimes grants given in the name of "aid" have been aimed at enabling these countries to buy more of Indian commodities and at serving the Indian state's military interests, through the building of roads.
7. The "aid" programmes have seen considerable numbers of Indian experts being employed in these countries, able to provide both commercial and politico-military intelligence, and to influence local political developments.
8. India has a considerable trade surplus with the countries of South Asia. For the three major South Asian trade partners (Bangladesh, Nepal and Sri Lanka) the surplus was more than Rs. 200 crores in 1985-86. (Mirza, 1988) This surplus results in a transfer of hard currency from these countries to India.
9. The Indian state has intervened in and used various political movements in the neighbouring countries, e.g. the deposition of the Ranas in Nepal, the formation of Bangladesh and the Tamil movement in Sri Lanka, to name just a few.
10. Along with using these movements, the Indian state has also resorted to forms of various economic blockade and the threat or actual use of military force.
11. The Indian state has arrogated to itself the power of deciding the levels and types of military equipment the neighbours should have.

12. The Indian bourgeoisie occupy important positions in the economies of some of the neighbours. This has helped the subversion of their independence and sovereignty.
13. The Indian state has formally ended the independent existence of one neighbour (Sikkim) and restricted the independence of many of the others (Nepal, Bhutan and Sri Lanka)
14. In its attempt to establish a regional hegemony the Indian State has enunciated a modified Monroe Doctrine. While demanding that India must have the predominant role in South Asian matters, it has also insisted that none of the neighbours should have relations with external powers. India alone in the region will maintain the external links.

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SRI LANKA: A STUDY IN ETHNIC EQUALIZATION

G. PALANITHURAI

Introduction

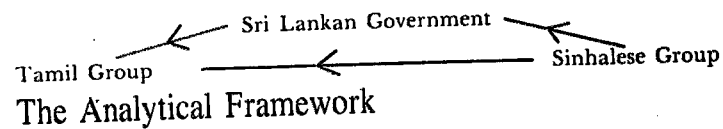
The aim of this paper is to gain a better understanding and insight into the manipulation and management of ethnic conflict in Sri Lanka. The ethnic conflict in Sri Lanka is analysed against the background of theories which attempt to explain the assertiveness of ethnic groups and the persuasive policies of Governments in different parts of the world. In particular the demands of the ethnic groups (both Tamils and Sinhalese) and the policy pursued by the Government to tackle the demands are assessed here. The whole argument stems from the premise that Sri Lanka's ethnic crisis has to be analysed from a tridimensional perspective. Ethnicity in every society possesses its own unique characteristics which necessitate a specific framework for analysis. Sri Lanka is characterised by an ethnically dichotomised society and dominated by ethnic elites. Factors such as the majority Sinhalese experiencing minority feelings due to the geographical location of the country, compulsory ethnicity produced and manipulated by ethnic leaders for political gains, the strength of the National Government, colonialism and Buddhist ethnocentrism have played a vital role in the Sri Lankan ethnic conflict. Hence an attempt is made here to analyse the objective conditions which caused the emergence of the ethnic groups and their activities, the relationship between conflicting communities and the relationship between the Government and the two groups.

On Theory

Ethnicity is a new concept that describes an old phenomenon¹ which acquired a fresh emphasis in the Social Sciences in general and political science in particular and attracted the attention of scholars in the 1960's and 1970's. This led to a situation of near panic among scholars, who tended to view ethnicity as volatile and as hampering the unity and integration of Nation-states.² Hence studies were begun with the intention of identifying the factors that are capable of destroying a Nation's solidarity and integration. Karl W. Deutsch, a pioneer in the studies on Nation building identified 'ethnic identity' as the root cause of disunity and contended that it would wither away as the modernization process occurred.³ But this premise was undermined when the technologically and economically advanced societies of Western Europe witnessed troubles, caused by ethnic unrest. Further, a global survey revealed that ethnic consciousness was definitely in the ascendancy as a political force.⁴ Following the controversy raised by Karl W. Deutsch, a team of scholars took up the theme of ethnicity and pursued their research ventures on the basis of perspectives: namely ethnicity as a genuine culture and ethnicity as a strategy for pursuing interest.⁵ Social scientists thus identified factors such as colonialism,⁶ existence of a

hierarchical cultural division of labour, and the segmented dimension of the cultural division of labour,⁷ primordial sentiment, a sense of belonging or identity based on Rin, blood, Speech and custom,⁸ awareness of their backwardness, economic interest, refusal of opportunities in Civil Service appointments⁹ and language¹⁰ as highly important, if not the prerequisites for the emergence of an ethnic group identity.

But, while the scholars identified the causes for the formation of ethnic groups, they failed to trace the course of an ethnic movement over a long period of time. James Lightbody took a different view of ethnicity and developed a graphical model,¹¹ to study the course of the ethnic movement. The graphical model of James Lightbody, however, explains the relationship between the government and the group rather than the juxtaposition of the various groups and their relationship with the government in the context of inter and intra group relations. Since the states are multinational states in the present context, an ethnic group is to be studied in the context and point of view of other groups and the response of the government to the demands of all the groups. Every state has different ethnic groups which project their demands on to the national government. Thus the stability of the national political system is determined by the relationships between various ethnic groups and the national government. In short, the direction of the ethnic movement is determined by the capacity with which demands are posed by the groups and responded to by the national government. Hence this study tries to evaluate the ethnic problems in Sri Lanka from three perspectives namely Tamils, Sinhalese and the Government.



D. John Grove in his work "A test of the ethnic equalization hypothesis: a cross-national study"¹² formulated a hypothesis that "economic development has a levelling or equalising effect on ethnic development. Economic development is believed to be an effective ethnic leveller". He identified four indicators of economic development. They are ethnic political representation, ethnic income distribution, the presence of ethnic groups in higher education and ethnic groups in professional occupations. If the above stated indicators are taken care of by the national government, ethnic inequalities would be levelled to maintain the equilibrium in the political system. National governments follow different formulae to achieve this equilibrium. Cynthia H. Enloe has evolved formulae¹³ for ethnic management on the basis of various formulae developed by scholars. These are: 1. Divide and rule; 2. Displacement; 3. Internal colonialism; 4. Sub-Machine; 5. Consociational democracy; 6. Federalism; 7. Vanguard assimilation; 8. Vanguard assimilation cum pluralism.

It is to be noted that many of these are not mutually exclusive. There is no predetermined or natural historical progression from the first to the last. "Divide and rule" is the classic formula employed by central elites when confronted with ethnic heterogeneity, potent enough to jeopardize state authority and operational efficacy. Essentially it entails a deliberate effort on the part of central political authorities not to isolate the several communities from one another but to encourage them to think of themselves as fundamentally different in values and goals when they do interact with one another. Divide and rule usually is associated with pre-modern imperial systems, but in fact it is still widely employed to-day.¹⁴

Displacement is another state strategy used primarily against the most vulnerable of ethnic groups by elites of another community which happens to control superior resources and usually controls the state apparatus as well. Displacement may entail physical elimination of a group considered so marginal to the states' needs that its loss is deemed inconsequential. It may also involve coercive physical movement from a large and fertile land area managed in such a way that its resources - especially its manual labor-can be fully utilized by the center for its own purposes.¹⁵

The internal colonialism formula presumes significant mobilization needs and levels of structural integration. Some forms of divide and rule are coupled therefore with internal colonialism while others are not. The internal colonial formula serves to manage conflict for state elites only as long as the weaker group's own potential leaders can be co-opted and its rank and file can be convinced that they are fortunate just to have a job.¹⁶

A sub-machine is an euphemism for ethnic conflict management. A submachine is the offshoot of a larger political machine organization which in turn controls it and uses it to mobilize resources on occasions when they are needed usually at elections. A machine is a political organization that is fueled by personalistic bonds of instrumental reciprocity and not by ideology. Conventionally the trade involves patronage exchanged for votes. A sub-machine is a patronage-and-favour-dispensing organ nominally controlled by a politician from a relatively weak ethnic group. His own influence and resources depend on access to the resources of the larger machine controlled by politicians of another community. In essence the sub-machine loss is the loyal lieutenant of the machine loss; but he is permitted enough autonomy to build a personal power base of his own so long as it never rivals that of the senior patron.¹⁷

Consociational democracy is a term widely used to describe the conflict management formulae prevalent in plural societies. Consociational democracy is based on the assumption that the various ethnic groups are indeed communal enough that they have internal consensus and internal mechanisms for generating leaders with sufficient intra com-

munal support that they can speak for the group at large in state affairs.¹⁸

Vanguard assimilation and vanguard assimilation cum pluralism are less conflict management strategies than conflict elimination ones and are, therefore, irrelevant to the present study. Against this background, the problems relating to compulsory ethnicity manipulated by the government and the groups, perception of the problems of Tamils by the Sinhalese, perception of the problems of Sinhalese by the Tamils, perceptions of the government about the problems of both and the resulting activities of the groups and governments are analysed here.

Equalization Process in Sri Lanka

It is a matter of common observation that the problems of ethnicity have always been created by colonial governments who adopted a policy of Divide and rule everywhere. Sri Lanka is not an exception to this. It was the colonial government which introduced communal representation in India and territorially-elected representation in Sri Lanka in the year 1920 in the name of constitutional reform.¹⁹ Thus it successfully created a wedge in the structure of Sinhalese-Tamil political unity. To acquire their share of political power, political elites began to mobilize the support of their respective ethnic communities. The Tamils thus had to take on a new self-image as a 'national minority', vocal and articulate much like the Scots and the Welsh in British politics. They even compared themselves to the Scots in their political struggles and bargains with the Sinhalese. The Tamil Political leaders demanded communal representation and constitutional and legal safeguards similar to those demanded by the Dravidian Movement in India. After 1920 a feeling of insecurity was experienced by all minority communities and reflected in the representation made by various communities in Donoughmore constitutional commission.²⁰

While the Tamils and the Sinhalese had misgivings about each other, their elites worked jointly to form a self government. However, the creation of Sinhala Mahasabha by S.W.R.D. Bandaranaike in 1937 crystallised the ethnic tensions and caused the Tamils to consolidate their position. In Sri Lanka, the First election was held in 1947 during which the Ceylon National Congress was converted into the United National Party (UNP) with D.S. Senanayake as its leader. It was an election contested by Marxist parties on the one hand and UNP on the other. The UNP won 42 out of the 95 seats. The Tamil Congress won all Seven Tamil Seats in the Northern and Eastern provinces. The Ceylon Indian Congress won all eight seats in the plantation areas. To form the Government, UNP leader Senanayaka wooed a number of Independent candidates and with their support he formed the government. On February 4th 1948 Independence was granted to the people of Sri Lanka and power was transferred to the Senanayake Government. It is worth analysing how, after Independence, the Government acted to solve the problems using the framework mentioned above.

On its inception it became the responsibility of the new government to equalise the distribution of benefits in terms of opportunities to secure employment to develop the economy. During this period, therefore, the position of the Tamils in respect of employment, education, status was compared with that of the Sinhalese.²¹ The Sinhala majority felt they had been neglected during the long years of western rule. Their grievances had been neglected by the Government even after independence. The complaint was that the Ceylon Tamils had a disproportionate share of jobs in the public and private selections. The Sinhalese tended to view the emergence of the Tamil population as a real threat to the existence of the Sinhalese race given the context of neighbouring South India's Dravidian Millions.²²

In this context, the leaders wanted to please the Sinhalese groups whose majority status would determine the fate of the ruling party. But at the same time it was necessary for them to get the support of the Tamils to maintain stability in the Political system, since the Tamil Congress and Ceylon Indian Congress had demonstrated ethnic strength in the 1947 election. At this critical juncture the feeling of deprivation was increasing among the Sinhalese and was capitalised on by Sinhalese Mahasabha. Hence the Government leaders had to necessarily adopt concrete measures to 'develop' the Sinhalese to conciliate them. This would be possible only if the political power of the Tamil was reduced. Thus the Government introduced a bill in the year 1948,²³ This marked a turning point in the history of Sri Lanka, since it accorded the Tamils of Indian origin the status of a stateless minority. The Tamils of Indian origin, prior to independence had enjoyed similar rights as other Srilankans. In 1949 the Indian and Pakistan Residents (citizenship) Act 24 was enacted for the purpose of registering resident Tamils of Indian origin and Pakistanis as citizens. The administration of the act deprived over 95 per cent of the Tamils of Indian origin their citizenship rights. And the Ceylon Parliamentary Election Amendment Act 25 deprived resident Tamils of Indian origin, who had hitherto enjoyed voting rights and had returned eight members to parliament and influenced the decision in some twenty other electorates of the right to vote. Among other causes, the above mentioned three acts were considered most serious in creating ethnic tensions among the people. But the Acts did not cause a hue and cry among the Ceylon Tamils because the affected people were of Indian origin. Moreover, these acts had been introduced with the objective of reducing the strength of Tamil groups in the parliament to enable the ruling party to sail smoothly in taking decisions. One significant result was that Tamils of Indian origin proceeded to ally with communist elements who were considered detrimental to the progress of the Buddhist and Ceylon Tamil elites. This aggravated the Sinhala animosity towards Tamils. The Ceylon government had understood the existence of a deep seated dichotomy amongst the Tamils: that which existed between Ceylon Tamils and Tamils of Indian origin. The latter were not recognised by the Ceylon Tamils as their counterparts. Besides this, the Ceylon Tamils too were against

the Communists with whom the Tamils of Indian origin were closely aligned. Since this state of affairs were clear, the acts were passed on the basis of a policy of divide and rule. The moment the acts were passed the leader, of the Tamil Congress did not, therefore, protest in the name of a Tamil ethnic identity, and instead they joined in the cabinet. This weakened the ethnic group and its unity. In parliament the group's strength was reduced. Following the decision of the leader of the Tamil Congress, another prominent leader M.P. Chelvanayakam protested and parted from the Tamil Congress along with another M.P. and formed the Federal party. By introducing the two acts (Citizenship Act and Election Amendment Act) the Sri Lankan Government achieved two things: ethnic unity was brought about between Kandiyian Sinhalese and upcountry Sinhalese by suppressing their common enemy, the Tamils, and the political power of the Tamil groups was contained. At this juncture the government of Ceylon committed a mistake by allowing India to intervene in this affair and this was to continue a permanent factor in Ceylon politics. At that moment the Ceylon Government thought the problems of the Tamils of Indian origin could be resolved only by negotiations with Indian Government without involving the Ceylon Tamils. Later the factor of 'Indian Intervention' could not be averted.

In the second phase, the leaders of the Government necessarily had to project the Sinhala as the national language because of the compulsions created by Bandaranaike. He had made up his mind to use the language factor for his political success unmindful of the future of Sri Lanka. While it was the responsibility of the politicians to be strict in adhering to policies that would bring unity to the communities, they ended up toeing Bandaranaike's line. In the 1956 election, the condition was that whomsoever used the language factor, they would win. The situation was well exploited by Bandaranaike. Since the political power of the Tamils had been contained, it was not necessary to woo the Tamil groups for acquiring political power. UNP too exploited the Sinhala language factor for electoral purposes. But this slogan had great disadvantages.

While the language factor helped to integrate and mobilise the Sinhala masses, it was equally helpful for the Tamils to form ethnic and political identity. The multifaceted implications of the language policy were not perhaps thought of by the leaders or perhaps they might have assumed that the effect and impact of the policy on society could be tackled. But already the Sinhalese had begun to feel that preferential treatment would be given to the Sinhalese in government jobs by introducing 'Sinhala only Act'. The Tamils rightly felt that this would affect the existing Tamil bureaucratic cadre and the very existence of the community itself.²⁶ Bandaranaike's forceful and vociferous concern over the Sinhalese language fetched him a great victory in the elections. To fulfil his promise he introduced the official language Act in 1956 to make Sinhala the only official language.²⁷ This caused severe hardships to several hundreds of Tamil public servants, often resulting in

their premature retirements and migration to foreign lands. The act also effectively excluded Tamils otherwise qualified from entering the public services. Thus the country seemed set for communal confrontation, brought about chiefly by the combination of two circumstances. These were the unique position of the English language which provided those educated in that language, with a tremendous occupational advantage and high social status and the existence in Lanka of more than one indigenous language. Until the time of the 'Sinhala only' Act people who were in the last rung of Sinhalese society felt they were deprived of their social and economic status because of the English language²⁸. No doubt the Swabhasha movement prior to independence laid the foundation for the displacement of English from the island by making both Sinhala and Tamil official languages. But shortly after independence a national resurgence among the Sinhalese caused the Government to turn from Swabhasha to Sinhala only as the official language. This 1956 official language act directly affected the Ceylon Tamil community. Though the introduction of the bill was basically a political gesture it was sought to be justified on social grounds as well. The argument was that the act was introduced to correct and compensate for the communal imbalance in government employment during the colonial era.²⁹ The Tamil community, conscious of the material and emotional dimensions of language, openly resisted the implementation of the act.

With the passing of the 1956 Bill a displacement policy was also adopted by the Sinhalese government. The Sri Lankan government began the process of driving persons from the densely populated southwest wet zone to the sparsely populated north-central and eastern jungle-cleared dry zones mainly in the age old Tamil areas. The migrants were mostly Sinhala, whereas much of the territory to which they migrated had been inhabited by Tamils and it was viewed by members of the Tamil community as their ancestral lands. The movement of Sinhala migrants into these areas was seen by Tamil political leaders as another effort by a Sinhala dominated government to undermine the Tamil community by encroaching on its traditional land.³⁰

These policies and formulae of the government infuriated the Tamil community and resulted in a Satyagraha observed by the Tamils. This was opposed to by the Sinhalese with the support of the Government. Amidst this the Federal party convened a National Convention and passed resolutions demanding a rational and democratic constitution which would provide a federal unit (province) for the Tamils, restoration of the Tamil language to its rightful place, enjoying parity of status with Sinhalese as an official language of the country, to repeal the present citizenship laws of Sri Lanka after a simple test, and immediate cessation of colonization of the traditional Tamil speaking areas by Sinhalese people.³¹

Bandaranaike had, probably, not realised that the language factor would acquire such dimensions. Various forces Tamil and Sinhalese,

worked to exercise pressure on him. The forces that had worked for his success tried to hold him to the promises he had made during the election. However, the Government could not ignore the pressure of the Tamil groups which were deemed just by Bandaranaike and he incorporated the demands of the Tamils in the official language bill before it was approved as Act in 1956. But due to various pressures that up he was compelled to remove those sections from the bill.³² Anyhow again the settlement came in the form of pact between Bandaranaike and Chelvanayakam popularly called the "B-C" pact. "B-C" pact brought reasonable concessions to the Tamils: Establishment of regional council with autonomous powers in decision making on agriculture, co-operatives, land development, colonization, education, health, industries and fisheries, housing and social services, electricity, water schemes and roads and the assurance that citizenship would be given all.³³ The bitterness of the Sinhala community to the pact was expressed through a small incident, the removal of the Sinhala letter "Sri" from the motor vehicles in the Tamil areas. By using this incident Bandaranaike's own cabinet member organised a procession along with Buddhist bhikkhus to abrogate the pact. This incident was used to put its repeal. Following these, the 1966 election warranted the political parties to exploit ethnic issues such as language and the new settlement. After the election, the Government was compelled to fulfil their promises by way of giving effect to the "Sinhala only" policy. It resulted in introducing the Language of the court Act in 1966 making Sinhala the only language of all courts throughout the island. Moreover effective steps were taken to implement Sinhala only Act.³⁵ Thus the Tamil Government Employees began to receive all communications in the official language. Hence Tamils were subjected to heavy hardships and this provoked the Federal party led by Chelvanayakam to launch satyagraha in the north and east which brought the government administration to a standstill. Since the government lost over the administration, the government took repressive measures by using the military. Having exhausted all methods, the FP began to feel that Tamil self government would alone find a solution to the Tamil people. As a symbolic expression, Chelvanayakam inaugurated the "Tamil Arasu (Government) Postal Service" by issuing postal stamps. Consequently Tamil MPs were arrested and they were held in detention for a period of six months.³⁶ This incident made the Tamil people feel they were being kept out from the political system of Srilanka. The next election was due in the year 1965. At this juncture the Tamil MPs had made up their mind to have an electoral alliance with UNP. Because of the inconclusive electoral verdict, Dudley Senanayake had necessarily to woo the Tamils. Since the FP had already presented a demand charter along the lines of B-C pact over the issues of Language settlement, establishment of district councils³⁷ a pact was to be concluded between Senanayaka and Chelvanayakam so as to enable Senanayaka to get the support of FP. In 1965 the Senanayake - Chelvanayakam pact was concluded. In 1966 the Dudley Senanayake's government formulated and published the regulations under the Tamil language Act 28 of 1958.

Anticipating the consequence of the regulation it remained a dead letter as the act of 1958. In the next phase after the general election in 1970 a new system of standardization of marks was introduced to provide preferential treatment to Sinhala students and to keep out Tamil medium students otherwise qualified and the result was a progressive decline in the admission of Tamil medium students. The scheme of standardization was an act deliberately designed to exclude merit as the criterion for university admissions.³⁸

Following this, Mrs. Bandaranaike's government adopted a new constitution without the co-operation or consultation of the majority of Tamil representatives in parliament. Two sections of Sri Lanka's constitution (6) and (7) clearly indicated the impending transformation of Sri Lanka into a Buddhist state and the projection of Sinhala as the official language. Another measure was introduced in 1974- the Quota system by which admission was to be made available to all districts to reduce the entry of Tamils in the educational institutions.³⁹ Apart from this, during and after the election one section of the Tamil groups was accommodated either in the cabinet or in parliament to divide the Tamils. Even though there were several attempts to unify the forces, the Sinhala political leaders whether the in SLFP or UNP, successfully created a cleavage by giving some positions in the power structure to the members of Parliament. But after 1970 events took a severe turn. In 1974 the World Tamil Congress meeting was disturbed by the efforts of the Police.⁴⁰ This time onwards the government machinery, police and army joined together with Sinhala civilians to attack the Tamils. As the intensity of repressive measures was increased the Tamil United Front formed earlier in the year 1972 became the Tamil United Liberation Front (TULF) in 1976 in order to secure an Independent Nation (Tamil Ealem). Again during the 1977 elections UNP attempted to woo the Tamil voters. But this time TULF contested, with the demand of Tamil Ealem, and won 18 seats and this intensified the feelings of the Sinhalese and Tamils along ethnic lines. Lastly, in 1978 another constitution was enacted which created a presidential form of government and enabled Sinhalese to acquire more powers and positions in contrast to the status of The Tamils. After the enactment of the constitution, the statewide genocide started which created extremists amongst the Tamils and they were branded terrorists. The politics of Sri Lanka after 1978 became genocidal with increased governmental repression over the Tamils with the Tamils turning out to be more militant than ever. An Era of war had begun between the Tamils and the government. (Development since 1978 will form a separate article).

Analysis

From the beginning, the Sri Lankan Government adopted the following means to tackle the ethnic problem. The formulae of Divide and rule, internal colonialism, displacement and submachine had been pursued and instead of solving the crisis they kindled and increased in

tensity of ethnic conflict in Sri Lanka. The Sri Lankan ethnic problem has been due to the creation of a compulsory ethnicity. The Sinhala politicians did not project ideological or dogmatic reasons for their ethnic politics. In all general elections, the Sinhalese political parties highlighted the ethnic problems in their manifesto. Their survival depended on the extent to which the political parties made use of the ethnic feelings of the people. In order to reduce the strength of the Tamil people in politics and administrative service, they introduced several measures such as depriving them of their franchise and reduce their educational and employment opportunities by introducing 'Sinhala only' and establishing industries in the southern Sinhalese areas. When tensions escalated the Sri Lankan government promised to take decisions on all matters but these decisions were never implemented and they never kept their promises. On several occasions the government took several decisions to solve the basic grievances of Tamils and even concluded two pacts. But all decisions and pacts were abrogated as and when pressures were exerted by Sinhalese groups. Stage by stage the feelings of deprivation increased. Governments decisions to deprive the political rights of the Tamil, colonise the Tamil areas, reduce the educational and job opportunities to Tamils, belittle the importance of the Tamil language gradually decreased the hope of the Tamil people that the government would solve their problems. Instead it aggravated the feeling that the government was acting in the interest of the Sinhalese. The Tamil people never identified the government as independent and it was always seen as Sinhalese. The politicians who utilised the ethnic feeling for their political gains fell victims to the conflict of ethnicity. Another important factor to be noted is that the Sinhala politician had no other option but to mobilise the masses on ethnic issues. One after another Sinhalese parties tuned the ethnic feeling. No doubt any modern government has to take steps to equalise the position of communities ethnically. To improve the position of Sinhalese, it could have taken steps to increase their educational and job opportunities instead of reducing that of the Tamils. The reduction of opportunities to Tamils intensified the ethnic crisis at every stage.

Conclusion

Sri Lankan ethnicity has thus, been deliberately created by Sinhala politicians to seek power. No doubt in the initial stage they took steps to equalise the community proportionately. But at the sametime they took steps to reduce the strength of the Tamil population in civil service and politics. Without touching upon the language issue, replacement, and reduction of civil service posts, taking away voting rights and citizenship, they could have undertaken measures to improve the Sinhalese community, and it would have definitely developed the nation without creating an ethnic havoc. Since the government openly identified with the Sinhalese, the Tamils felt that they were not being accommodated in the political system and they felt that the sinhalese and the government are one and the same. The government was not identified as a force that would resolve the crisis but one that has created the troubles in Sri Lanka.

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21. Table 1:

Tamilis in Government Service

S.No.	Nature of Service	1956	1965	1970
		(Percentage)		
1.	Ceylon Administrative Service	30	20	5
2.	Clerical Service (including Postal, Railway, Hospital, customs)	50	30	5
3.	Professions (Engineers, doctors, Lectures)	60	30	10
4.	Armed Forces	40	20	5

Source: Walter Schwarz. The Tamils of Sri Lanka (London: Minority Right Group, Report No. 25, 1975).

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THIRTEENTH AMENDMENT TO SRI LANKA CONSTITUTION

Devolution or Comic Opera ?

NADESAN SATYENDRA

It is difficult to discuss the provisions of the 13th Amendment to the Sri Lanka Constitution seriously - they are so impossibly burlesque and farcical. Yet, they have a serious aspect. They show that Sinhala despotism, like all despotisms in the same predicament, has made the time honoured, ineffectual effort to evade a settlement of the real question by throwing belated and unacceptable sops to Demogorgon. Let us, therefore, take one by one the precious and inestimable boons granted to the Tamil people by the 13th Amendment. The boons are three in number, a trinity of marvels: a Provincial Governor, a Provincial Board of Ministers with a Chief Minister, and a Provincial Council.

Constitutional Trinity headed by Provincial Governor selected by President

At the head of this constitutional trinity stands the Provincial Governor. And who will select and ordain him? Who else, but the President of Sri Lanka. But that is not all. The Provincial Governor will hold office 'during the pleasure of the President'.¹ When the President is no longer pleased with the Governor the President may dismiss him. And what is the constitutional reason for this provision that the Governor shall hold office during the pleasure of the President? The 13th Amendment does not leave us in doubt as to that reason. It declares that the Governor 'shall hold office, IN ACCORDANCE WITH ARTICLE 4(b), during the pleasure of the President'.¹ It is a rather curiously phrased provision. And, what pray, is Article 4(b) of the Constitution? This is the Article which vests 'the executive power of the people' of Sri Lanka in the President.² And so it appears that it is 'in accordance' with the provision of the Constitution which vests executive power in the President, that the Governor will hold office at the pleasure of the President. And so let us ask: wherein lies the constitutional link between the President being vested with executive power and the Governor holding office at the pleasure of the President - in what way is the latter 'in accordance' with the former?

And who will exercise Executive Power

The connection, ofcourse, lies in the character of the office of the

Governor created by the 13th Amendment. The Governor is no mere figurehead. The 13th Amendment enacts that executive power in the Province in relation to those matters which are within the competence of the Provincial Council, shall be EXERCISED by the Governor.³ But if the Governor is to exercise executive power in PROVINCIAL matters, then the Sri Lankan Constitution which vests executive power with respect to ALL matters in relation to the ENTIRETY of Sri Lanka, in the President, will be violated unless, ofcourse, such Governor holds office 'during the pleasure of the President' and is thereby subject to the control and direction of the President.

And so the reason for the curious wording of the 13th Amendment becomes clear. 'In accordance with Article 4(b)' of the Constitution which vests executive power in the President, the Provincial Governor shall hold office 'during the pleasure' of the President. The 13th Amendment reinforces the powers of the executive Presidency and secures that the executive power vested in the President by the Constitution will not be eroded in any way. **In sum, executive power in relation to provincial matters, will be exercised by a Governor who will be appointed by the President, who will hold office 'during the pleasure' of the President, and who will exercise his executive powers as the faithful and loyal servant of the Executive President of Sri Lanka.** And that is the naked political and constitutional reality of the character of a Provincial Governor under the 13th Amendment - and it is important that we should recognise that reality for what it is

A Sinhala Governor for Tamil areas?

And perhaps not surprisingly, in May 1988, two long standing Sinhala members of the ruling party who had served as Ministers in the Sri Lankan Cabinet resigned their offices and gratefully accepted appointment as Governors of the North Western and Uva Provinces, so that they may serve the President 'during his pleasure'. And in June 1988, a Tamil who had served the Government of Sri Lanka with exemplary loyalty and acceptance as its Chief Justice for the past few years, was selected and appointed by the President as the Governor of the Western Province - a Province which has a Sinhala majority. It was an appointment which was, amongst other things, presumably intended to pave the way for the appointment of a Sinhala Governor for a Tamil Province. And we can almost see in our minds eye those honourable and distinguished Sinhala gentlemen who the President of Sri Lanka will regard as being qualified to serve as the Governor of a Tamil Province. And ofcourse, it matters not whether the Northern Province is joined with the Eastern Province or not. If the Northern and Eastern Provinces are joined together, the Tamils will have one Governor. If they are not

joined together, then the Tamils will have the privilege of having two Governors.

Or perhaps even a Tamil Governor selected by a Sinhala President

And, ofcourse, it is always possible that the Sri Lankan government, in a moment of great daring, may even consider it safe to appoint a Tamil as a Governor for a Tamil Province - so long, that is, that such Tamil will serve faithfully and loyally 'during the pleasure' of the President. After all, there should be no better way of governing the Tamil people than through a Tamil Governor appointed by, and holding office during the pleasure of, a Sinhala President! It would be an approach that would rival that of Hitler who sought to govern Norway in the 1940s through a Norwegian whose name was Quisling - and thereby made an everlasting contribution to the vocabulary of the English language. In the months ahead we shall know whether a Tamil Quisling will come forward to make a similar contribution to the richness of the Tamil language.

Provincial Governor will direct Provisional Public Service

But, be that as it may, let us move on and continue with our efforts to examine the provisions of the 13th Amendment seriously - however difficult that task may be. We have seen that the Amendment enacts that executive power in respect of provincial matters shall be exercised by the Governor. But it does not stop at that. It enacts that the Governor shall exercise such executive power 'either directly or through Ministers of the Board of Ministers, or through officers subordinate to him'.³ **Executive power shall be EXERCISED by the Governor. The Board of Ministers and subordinate officers shall have executive power exercised THROUGH them - by the Governor.** As we shall see presently, the juxtaposition of the Board of Ministers with 'subordinate officers' is not without significance. But before we determine the way in which the Governor may exercise executive power 'through' Ministers let us first ask: in what way may a Governor exercise executive power 'through' subordinate officers and who are these 'subordinate officers'?

The subordinate officers through whom a Governor may exercise executive power are the members of the provincial public service. The Provincial Councils Act provides for the establishment of a provincial public service and enacts that the appointment, transfer, dismissal and disciplinary control of officers of the provincial public service of each Province shall be vested in the Governor of that Province.⁵ Furthermore, the Governor shall provide for and determine all matters relating to the terms and conditions of employment of officers of the provincial public service.⁶ And the Governor may delegate his powers of appointment to

a Public Service Commission whose members shall be appointed by him.⁷ At the same time, the Governor is empowered to alter, vary or rescind any order of the Provincial Public Commission (whose members are, in any case, appointed by him!)⁸ The intention is abundantly clear. **The administrative head of the Provincial Public Service will be the Provincial Governor and the Governor will thus be enabled to exercise executive power through officers employed in that service, who will be 'subordinate' to him and who are required to act on his directions.**

Comic Opera Role for the Board of Ministers and the Chief Minister

But if the 13th Amendment secures that executive power in relation to provincial matters shall be exercised by a Governor appointed by the President and holding office at his pleasure, and that he may exercise such power through a provincial public service which is subordinate to him, what then, is the role of the Board of Ministers and the Chief Minister? And in what way, may the Governor exercise executive power 'through Ministers of the Board of Ministers'? And it is here that the comic opera nature of the constitutional script begins to unfold. A comic opera after all needs some of its participants to provide light comedy relief.

Elected by the people

But first, let us look at the way in which Ministers may be appointed. The Governor shall appoint as Chief Minister the member of the Provincial Council who in the Governor's opinion commands a support of a majority in the Provincial Council.⁹ And the Governor shall on the advice of the Chief Minister, appoint from among the members of the Provincial Council, no more than four other Ministers.¹⁰ And these are, no doubt, unexceptionable provisions enacted in the best traditions of a constitutional democracy.

But required to acquiesce in violation of Article 25 of International Covenant

There is of course the little matter about all the Ministers being required to take their oaths in accordance with the 4th Schedule to the Constitution - a 4th Schedule which was enacted by the infamous 1983 6th Constitutional Amendment and an oath which requires the oath taker to forswear any speech or activity directly or indirectly connected with the establishment of a separate state. The 6th Amendment to the Constitution was declared by the International Commission of Jurists to be a violation of the right to freedom of expression enshrined in Article 25 of the International Covenant of Civil and Political Rights - a

Covenant to which Sri Lanka is a signatory.¹¹ And the Provincial Ministers before entering office are required to acquiesce in and become a willing party to Sri Lanka's violation of its international obligations. And of course the cynical confidence of the Sri Lankan Government that this will not be considered too heavy a price to pay by a Tamil for being permitted to function as a Minister may not be altogether misplaced. A Tamil can always rationalise his conduct and say that everything has a price - even participation in a comic opera. **The price for becoming a Provincial Minister is an open disavowal of the demand for a separate state. But let us ask: having paid the admission price, what is it that the Chief Minister and the Board of Ministers are empowered to do?**

So that they may be permitted to 'Aid and Advise' the Provincial Governor

What are the functions of this illustrious Chief Minister and this august body, the Board of Ministers? In the delightful phraseology of the 13th Amendment, **the functions of the Chief Minister and the Board of Ministers are 'to aid and advise' the Provincial Governor in the exercise of HIS functions.**¹² We already know the nature of the functions of the Governor, namely to exercise executive power in relation to provincial matters. But, it would seem that the Provincial Governor appointed by a Sinhala President will need 'aid and advice', so that the Governor may perform HIS functions - not merely 'advice' but 'aid' as well. After all, in this day and age, it will not do for an Executive Governor appointed by a Sinhala President to be seen to act like an autocrat. **Democracy must be seen to done - particularly when it is in fact not done. The Governor will seek 'aid and advice' so that he may govern the Tamil people more effectively. In days gone by, the ruler of a people appointed Ministers to 'aid and advise' him. But today we live in a 'democracy'. And so, we have an executive President, who will appoint a Provincial Governor, who will be aided and advised by Ministers, who will be elected by the people. And the Tamil people should be duly grateful that they have been permitted to 'aid and advise' their rulers.** The Tamil national struggle has at last borne fruit! The unselfish friend of the Tamil people, the Indian Government, with the might of the 4th largest army in the world, has persuaded the Sri Lankan Government that the Tamil people should be actually permitted to 'aid and advise' their rulers. The mountain has indeed laboured. And there are some amongst us who even urge that we should not look a gift horse in the mouth.

But let us continue with our efforts to examine the 13th Amendment seriously. The 13th Amendment not only states that the function of the Ministers shall be to 'aid and advice' but it also specifies some of the ways in which such function shall be carried out. Those who are required

to 'aid and advice' the ruler should not be left in doubt about their duties.

For instance, it shall be the duty of the Chief Minister to communicate to the Governor ALL decisions of the Board of Ministers.¹³ The Chief Minister is not given a discretion in the matter. After all it is only if every decision of the Board of Ministers is communicated to the Governor, that the Governor will be suitably 'aided' and 'advised'. 'Democracy' demands that the representatives of the people should be open with their ruler and keep him properly informed. There is ofcourse the further point - it will not do, for the representatives of the people to go on a frolic of their own and make decisions behind the back of the Governor. It is not that such decisions have any legal consequence but those who 'aid and advise' should know their place in the scheme of things. And, further, so that the Governor may be properly 'aided and advised' it shall also be the duty of the Ministers to furnish such information as the Governor may call for from time to time.¹⁴ And who will allocate business amongst the different Ministers? Although the Chief Minister is given the signal and ceremonial honour of selecting the Ministers it is the Governor who is empowered to make rules for the allocation of business among the Ministers.¹⁵ And of course the Governor himself may address the Provincial Council and may for that purpose require the attendance of members - including the Ministers.¹⁶ Further, where any Provincial Council fails to comply with or give effect to any directions given to it, it shall be lawful for the President to hold that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the Constitution.¹⁷ The President can thereupon, declare that the powers of the Provincial Council shall be exercisable by the Central Parliament and that the powers of the Ministers shall be assumed by the President.¹⁸ **The inherent logic of the 13th Amendment and the Provincial Council Act should be only too transparent to the meanest intelligence. The Provincial Ministers are, at every turn, placed in a subordinate position to the Governor, so that they may properly discharge their subordinate function of 'aiding and advising' the Governor to perform HIS functions.**

The Governor shall not be bound to act on the advice of the Ministers

But, as a reasonable people, let us continue with our efforts to understand the true character of this priceless boon that has been given to the Tamil people - a Board of Ministers with a Chief Minister. We have seen that the Ministers are required by law to 'aid and advise' the Governor - but what does the law require the Governor to do with the aid that is offered and the advice that is tendered? Is the Governor bound to act on the advice tendered to him by the Ministers? What does the 13th Amendment say on this important question? The 13th Amendment provides us with yet another curiously worded provision:

"The Governor shall in the exercise of his functions act in accordance with such advice, EXCEPT in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion."¹²

It is the familiar technique of giving with one hand and taking with the other hand. On the one hand the 13th Amendment provides that the Governor shall exercise his functions in accordance with the advice of the Ministers. On the other hand it enacts an exception to this requirement. And so let us ask: what is this exception about? What are the matters in respect of which not only 'by' the Constitution, but also 'under' the Constitution the Governor is required to exercise his functions 'in his discretion' and therefore, NOT on the advice of the Chief Minister?

We have seen that under the Constitution executive power in relation to the entirety of the Island is vested in the President and that in 'accordance with' this provision, executive power in respect of provincial matters will be exercised by a Governor holding office 'during the pleasure' of the President. The Ministers on the other hand, are not appointed by the President and do not hold office during his pleasure and accordingly the Constitution cannot and does not clothe the Provincial Minister with executive power. **Executive power at all times remains vested in the President and may be exercised only by his loyal and faithful servants. The result is that the exercise of executive power in respect of provincial matters is a matter in the discretion of the Governor, in his capacity as a servant of the President: and in relation to this basic and substantial function, the Ministers may 'advise' but the Governor is not obliged to act on such advice.** On the contrary, in respect of the exercise of executive power the Governor is subject to the direction and control of the President - because he holds office 'during the pleasure of the President', 'in accordance with Article 4(b)' which vests executive power in the President. The only matters in respect of which the 13th Amendment requires the Governor to act on the advice tendered by the Chief Minister are in respect of formal and ceremonial matters such as the appointment of the Ministers, the summoning of Provincial Council meetings, proroguing the Provincial Council and the dissolution of the Provincial Council - matters which do not affect the substance of the executive power vested in the President by article 4(b) of the Constitution.

Governor final arbiter on whether he should act on Ministers' advice

And what if a question arises as to whether any matter is or is not a matter in respect of which the Governor is required to act on the advice of the Chief Minister? Who will decide that question? The 13th Amendment

declares quite openly and cheerfully that if such a question arises the question shall be decided by the Governor!¹⁹ And further, that the decision of the Governor on such a question 'shall be final' and that the 'validity of anything done by the Governor shall not be called in question in any Court'.¹⁹ The 13th Amendment further takes care to expressly enact that the exercise of the Governor's discretion in this matter 'shall be on the President's direction'.¹⁹ And as if this was not enough to put the Governor's powers beyond scrutiny, it provides that 'the question whether any, and if so what advice was tendered by the Ministers to the Governor shall not be inquired into in any Court'.²⁰ **In short, the Provincial Governor, under the directions of the President, will be the final arbiter on what are the matters on which Governor shall act on the advice of the Chief Minister.**

Central Parliament shall determine the Block Grant to all the Provinces

And, now, let us ask the further question: how will work in the Province be financed? After all, executive power in respect of provincial matters cannot be exercised without expending money. And what does the 13th Amendment say on this important question of finance? Who will control the purse?

Here, the 13th Amendment enacts that there shall be a Finance Commission consisting of the Governor of Central Bank, the Secretary to the Treasury, one member to represent each of the three major communities.²¹ It would seem that communal representation is acceptable, so long as a Sinhala dominated Central Government selects the representatives. And who are these THREE major communities? Presumably the 13th Amendment looks upon the Sinhala people, the Tamil people and the Muslims as separate communities - and seeks to perpetuate the attempt of successive Sri Lankan Governments to divide the Tamil people into those who profess the Islamic religion and those who do not. The present Sri Lankan Government, in the highest traditions of a colonial master, seeks to continue with its efforts to divide and rule. But, let us pass on, and inquire: what are the duties of this body of notables - the Finance Commission? The Finance Commission shall recommend to the Central Government the amount of the funds that should be allocated from the Annual Budget for the purposes of meeting the needs of all the Provinces. And the Central Government shall then determine this total amount required for ALL the Provinces after consulting with the Finance Commission.²²

President will decide on the separate grant to each Province

But who will decide on the amount of money to be allocated to a

particular province? Here it will be the duty of the Finance Commission to make recommendations to the President as to the principles on which such funds should be apportioned between the various Provinces.²³ The President shall cause every recommendation made by the Finance Commission to be laid before the Parliament and shall notify Parliament as to the action taken thereon.²⁴ But in the end it is the President who will determine the amount of the grant to made to a particular province. **The Constitutional scheme is clear. The Central Government will determine the block grant in respect of ALL the provinces. The President will decide the amount of each separate Provincial grant. The Finance Commission of notables, owing allegiance and loyalty to the President and the Central Government will make recommendations. The Central Parliament and the President will, in the exercise of their discretion, decide the amount of money to be granted.**

And the Provincial Governor will decide on Provincial Taxes and Levies

Further, the grants made by the Central Government will go into a Provincial Fund for each Province into which shall also be paid all taxes imposed by the Provincial Council and all loans advanced to the Provincial Council from the Consolidated Fund.²⁵ But, in respect of moneys that may be collected from within the Province, the Provincial Councils Act states that a Provincial Council may not pass any statute imposing abolishing or altering provincial taxes, or authorising the receipt of money on account of the Provincial Fund except on the RECOMMENDATION of Governor.²⁶ As always, the intention is clear. **The amount of moneys that will be made available for expenditure for provincial matters shall be determined by the President, in so far as Central Government grants are concerned and by the Governor, in so far as provincial taxes and levies are concerned.**

And no money may be expended without the Governor's prior sanction

But that is not all. The custody of the Provincial Fund, the payment of moneys into the Fund and all other connected matters shall be regulated by rules made by the Provincial Governor, the loyal and faithful servant of the President.²⁷ And how may moneys be actually withdrawn from the Provincial Fund for expenditure in respect of provincial matters? And here we have yet another delightful exercise in constitutional comic opera. Section 19(3) of the Provincial Councils Act enacts that no sum shall be withdrawn from the Provincial Fund except under a warrant under the hand of the Chief Minister. But, immediately thereafter, section 19(4) enacts that no such warrant shall be issued by the Chief

Minister unless the sum has, by statute of the Provincial Council, been granted for services for the financial year in question or has been otherwise lawfully charged on the Fund. And, then, Section 24(1) enacts that statutes which make provision for the appropriation of moneys out of the Provincial Fund or which declare that any expenditure may be charged on the Provincial Fund, shall NOT be introduced into or moved in a Provincial Council, EXCEPT on the RECOMMENDATION OF THE GOVERNOR! **The result is that no moneys may be withdrawn from the Provincial Fund except with the sanction of the Governor. In respect of financial matters it is the Governor who initiates and recommends and it is he who has control and custody of the Provincial Fund.**

And if Ministers do not agree with Governor, President may take over

And what will happen, if the Chief Minister or the Provincial Council do not act in accordance with the 'wishes' of the Governor and pass the recommended statutes and issue the requisite warrants in respect of the Fund? In such a deadlocked situation, the 13th Amendment enables the President if he is satisfied that a situation has arisen in which the administration of the Province cannot be carried out, to himself assume all the functions of the Governor, the Chief Minister and the Ministers and declare that the powers of the Provincial Council shall be vested in the Central Parliament.¹⁸ And the President's action shall not be called in question in any Court.²⁸ The provisions of the 13th Amendment are intended to educate the Chief Minister and his Board of Ministers about the benefits of loyal and faithful service to their rulers.

In sum, Elected Ministers without Ministerial Power

The 13th Amendment is polite, if nothing else. To say that Ministers are required by law to 'aid and advise' the Governor is a polite way of saying that the Ministers are required to serve the Governor. They shall serve the Governor by aiding and advising him. Where the Governor chooses to act on such advise or accepts such aid, and acts through the Ministers, to that extent, the Governor is enabled to exercise executive power in respect of Provincial matters 'through' the Ministers. Under the Sri Lanka Constitution executive power will continue to be vested in the President and in respect of provincial matters it will be exercised by his loyal servant the Provincial Governor who is authorised to act through either 'officers subordinate to him' or through Ministers, who, in relation to the exercise of such executive power, are also his subordinates. And it is the Governor who will have financial control. And it is the Governor who will be in control of the provincial public service. **The 13th Amendment may, take credit for inventing a new constitutional species - Ministers without ministerial power.**

And an unelected Governor with Ministerial powers, appointed by the President

The truth, ofcourse, is that it is the Provincial Governor who is clothed with ministerial power in respect of provincial matters - the so called Provincial Governor is in fact, the Provincial 'Minister' - a Provincial 'Minister' appointed by the President and responsible to the President - a Provincial 'Minister' who combines in himself the role of both a Provincial 'Finance Minister' and a Provincial 'Minister of Public Administration'. The Provincial 'Minister' alias Governor will exercise executive power in respect of all the matters in respect of which a Provincial Council may pass statutes.³ And in respect of all other matters, executive power will be exercised by the President directly or through other Ministers appointed from the central legislature. And it is this creation of a Provincial 'Minister' alias Governor which has been sought to be passed off as 'devolution' of executive power on the Tamil people! **The constitutional reality is that the 13th Amendment does not devolve executive power. That which the 13th Amendment does is to decentralise administration by creating Provincial 'Ministers' (alias Governors) appointed by the President and responsible to him for the performance of their functions in respect of provincial matters.**

Many subjects remain outside even the Provincial Governor's powers

But despite the farcical nature of provisions of the 13th Amendment, let us persist with our efforts to consider them seriously. The constitutional scheme is not without clarity. The Provincial 'Minister' alias Governor will exercise executive power in respect of the matters on which a Provincial Council may pass statutes. In respect of other matters, executive power will be exercised directly by the President or by Ministers of the Central Government. And it is in respect of the matters on which a Provincial Council may pass statutes, that the Chief Minister and the Board of Ministers have been granted the signal honour and privilege of tendering aid or advice to the Governor. In respect of matters on which the Provincial Council is not empowered to pass statutes, the Chief Minister and his Board do not have that honour and privilege - because such matters are outside even the competence of the Governor and fall within the direct purview of the President and the Ministers of the Central Government. And so let us ask: what are these matters in respect of which the Tamil have not been granted even the honour and privilege of advising their rulers? And here it would seem that the 13th Amendment is intended to secure the exemplary principle that even in the matter of seeking 'aid and advice' a ruler should act with circumspection and care - after all it will not do for a ruler to seek 'aid and advice' from his people on all matters.

Including police and public order

The Kings of old recognised that the subject of 'police and public order' was a sensitive area in respect of which a ruler should not depend too much on the 'aid and advice' of the people whom he seeks to rule. At the same time, it was important that the people who are ruled do not see the iron hand too clearly - the velvet glove is not without its uses. And so the 13th Amendment continues with its comic opera - and adopts its familiar technique of appearing to give with one hand whilst taking away with the other.

On the one hand the Provincial Council List includes the subject of 'Police and Public Order'. On the other hand, it qualifies this subject by saying 'public order and the exercise of police powers' TO THE EXTENT SET OUT IN APPENDIX I.⁴ And what does Appendix I enact? It says that the Inspector General Police shall be the head of the Sri Lanka Police Force which shall be divided into the National Division and a Provincial Division for each Province.⁵ The Provincial Division shall be headed by a Deputy Inspector General of Police seconded from the National Service. And who will select and appoint the D.I.G.? The I.G.P. shall appoint a D.I.G. for each Province with the 'concurrence of the Chief Minister of the Province', but if there is no agreement, the President after due consultation with the Chief Minister, will make the appointment.⁶ The Chief Minister is granted the privilege of being consulted. And who will recruit to the Provincial Police Division? Recruitment shall be made by a Provincial Police Commission composed of three members viz the D.I.G., a person nominated by the Central Public Service Commission in consultation with the President and a 'nominee of the Chief Minister'.⁷ And the Central Government will be responsible for the training of all recruits.⁸ And it is the Provincial Police Division, and not the Chief Minister, (or for that matter the Governor) who shall be responsible for the preservation of public order within the Province.⁹ But here too, the prevention, detection and investigation of any offence against any public officer and any offence prejudicial to National Security or the maintenance of Essential Services, shall be outside the competence of even the Provincial Police Division.¹⁰ Such offences though committed within the Province, will fall within the jurisdiction of the National Police Division. And, in this way, the Prevention of Terrorism Act whose provisions have been condemned by the International Commission of Jurists as 'a blot on the statute book' of any civilised country,¹¹ will continue to be enforced within the Province by the National Police Division under the direct control of the I.G.P. But let us pass on and continue with our efforts to examine the 13th Amendment seriously.

The 13th Amendment provides that whilst the D.I.G. himself 'shall be responsible to and under the control of the Chief Minister'¹², all Police

Officers in the Province shall function under the direction and control of the D.I.G. of such Province.¹³ The D.I.G. 'shall be responsible to and under the control of the Chief Minister' but the D.I.G. shall be seconded from the National Division and selected by the I.G.P., and if the Chief Minister disagrees with such selection, appointed by the President. The D.I.G. 'shall be responsible to and under the control of the Chief Minister' but the D.I.G. will be under the disciplinary control of the I.G.P. and will be employed on terms and conditions determined by the Central Government. The D.I.G. 'shall be responsible to and under the control of the Chief Minister' but the D.I.G. will be the faithful and loyal servant of the I.G.P. and the President of Sri Lanka. The D.I.G. 'shall be responsible to and under the control of the Chief Minister' but the 13th Amendment provides no means by which the Chief Minister may exercise any control in respect of the actions of the D.I.G. - except by appealing to the I.G.P. or the President for assistance. Executive power lies with the President and his servants - and to the extent that a Chief Minister is not a servant of the President, the Constitution does not and indeed, cannot, vest executive power in the Chief Minister. And it is this Provincial Police Division recruited by a Commission which has a majority of members appointed by the Central Government and which functions under a D.I.G. who is under the disciplinary control of the I.G.P., who is answerable to the President, which is clothed with the responsibility of preserving public order in the Province and the 13th Amendment would have the Tamil people believe that the subject of 'Police and Public Order' is somehow 'devolved' on the Provinces. The subject of 'Police and Public Order' is not even within the competence of the Provincial Governor. It is a subject which is effectively retained in the hands of the President and the I.G.P. who may act either through the National Police Division or the Provincial Police division. And Dr. H.W. Jayawardene, appearing on behalf of his brother, President J.R. Jayawardene before the Constitutional Court in October 1987 declared openly:

"All police officers will be appointed by the Inspector General of Police who is directly under the control of the President."¹⁴

And disposition of State land

Apart from the subject of 'police and public order', there was another which was close to the hearts of the Kings of old - and that was 'disposition of state land'. It was not only a way of making friends and influencing people - it was also a way of bringing about demographic change and managing a people. And during the past several decades, successive Sinhala Governments have used their control of state land to further their efforts to secure hegemony over the entirety of the Island.

It was a process which gathered momentum in 1936 with the efforts of a pan Sinhala Cabinet of Ministers to initiate state sponsored Sinhala colonisation of the Eastern Province. The Census figures tell their own tale. In 1921, there were 8744 Sinhala people in the Eastern Province. By 1981, their numbers had increased to 243, 358 – a twenty eight fold increase in sixty years! And so, not surprisingly, the 13th Amendment secures that in the future as well, disposition of state land is retained in the hands of the Central Government. And once again, the familiar technique of seeming to give with one hand whilst taking with the other, is adopted. On the one hand, the subject of 'Land and Land Settlement' is matter in the Provincial Councils List. On the other hand this is qualified by the statement: 'Land and Land Settlement' TO THE EXTENT SET OUT IN APPENDIX II.⁴ And what does Appendix II enact? It enacts that 'state land shall continue to vest in the Republic and may be disposed of in accordance with Article 33(d) and written law governing the matter'. And what is Article 33(d) of the Constitution? This is the article which enacts that the 'President shall have the power to execute such grants and dispositions of lands and immovable property vested in the Republic'.^{3 8} **And so despite 'Land and Land Settlement' being a matter in the Provincial List, disposition of state land remains a power vested in the President and the Central Government.** And Dr. H.W. Jayawardene, who appeared on behalf of the President Jayawardene before the Constitutional Court in Sri Lanka in October 1987 was as always, open and frank:

"State land in the provinces will be vested in the President and will not be given over to the Provincial Councils. The principle of central rule will not be affected in the distribution of land. Under the Land policy as envisaged in the Amendment, no state land will be vested in a Provincial Council – in other words no giving away of state land to the provinces..."^{6 0}

In matters connected with the disposition of state land, just as much as in matters connected with police and public order, it is the President who will rule.

Third of the Constitutional Trinity of Marvels: Provincial Council

But let us not lose patience. There is a saying in Tamil: Poruthar Poomi Alvar – those who are patient will rule the land. And so let us continue with our efforts to examine seriously the provisions of the 13th Amendment which have been touted as a panacea for the Tamil people. Let us turn to the third of the constitutional trinity of marvels – the Provincial Council.

The 13th Amendment grandiloquently declares in Article 154G that

every Provincial Council may make statutes applicable to the Province with respect to the matters set out in a list referred to as 'the Provincial Council List'.^{3 9} In addition there is a Concurrent List which sets out matters in respect of which both Parliament and the Provincial Councils may legislate. And finally, a Reserved List sets out matters in respect of which only Parliament may legislate and in respect of which a Provincial Council shall have no power to make statutes.⁴

At first sight, these provisions may give the impression that the 13th Amendment confers legislative power on the Provincial Councils in respect of certain specified matters, on Parliament in respect of certain other matters and concurrently on both the Provincial Council and Parliament on certain other matters. And it would seem that these provisions have persuaded a political scientist such as Professor Jayaratnam Wilson to conclude in a recent article that 'Sri Lanka has lost its unitary character by virtue of the Thirteenth Amendment'.^{4 0} In view of Professor Wilson's involvement in 1978/79 in the negotiations between the Tamil United Liberation Front and the Government of Sri Lanka in respect of District Development Councils and in view of the high regard that the Tamil people have always had for his father in law, the late S.J.V. Chelvanayagam, it is both necessary and important to examine with some care that which he asserts. He first sets out the test for determining whether a Constitution is unitary or federal:

"The test, is can the Parliament of Sri Lanka (1) at its own will and power, over-ride statutes enacted by Provincial Councils; (2) alter powers contained in each of the Lists I, II and III by ordinary legislation, that is, by simple majority of Parliament."

And, he then proceeds to give his answers to the questions that he has raised:

"The answer to both questions is in the negative. Article 154(H)(4) answers the first question. Its substance is that when a provincial statute has been referred to the Supreme Court for a decision and where the Court determines that the statute is 'consistent with the provisions of the Constitution, the Governor shall on receipt by him of the Court's determination, assent to the statute.' There is no question of the Sri Lanka Parliament vetoing or over-riding the statute in question ... The answer to the second question is that a change in respect of the 13th Amendment must be made in accordance with Article 82 of the Constitution, that is by a two thirds majority of members of Parliament, including those not present... If the answers are in the negative, the question arises as to whether Sri Lanka is a Federal or a Unitary State. Our answer, which we will proceed to substantiate, is that Sri Lanka has lost its unitary character by virtue of the 13th Amendment... In the case Provincial Councils, Sri Lanka's Parliament has first to repeal the 13th amendment and that too by a two thirds majority before taking possession of the law making

powers of Provincial councils, contained in List I..."

But what is the constitutional reality? It is true that the Governor is required to give his assent to a provincial statute which is consistent with the Constitution. But that which Professor Wilson fails to refer to is Article 154G(10) of the 13th Amendment which enacts:

"Nothing in this Article (which empowers Provincial Councils to pass statutes) shall be read or construed as derogating from the powers conferred on Parliament by the Constitution to make laws, in accordance with the Provisions of the Constitution (inclusive of this Chapter) with respect to any matter, for the whole of Sri Lanka or any part thereof."

Neither does Professor Wilson refer to the circumstance that the first subject on the Reserved List (i.e. matters within the exclusive jurisdiction of the central Parliament) is 'National Policy on all Subjects and Functions'.⁴ He fails to recognise that these Constitutional provisions taken together will enable Parliament to legislate by a simple majority on 'all subjects and functions' on the ground of 'national policy'

On the contrary, Professor Wilson takes the view:

"In regard to the Government of India Act of 1919, Wheare states (page 31) that the Provinces were given powers 'but these powers were to be exercised subject to the supremacy of the general government'. There is no such limiting power or blanket restriction in respect of powers to be exercised under list I by Provincial Councils."

That which Professor Wilson fails to see is that the power given to the Sri Lankan Parliament to legislate in respect of 'national policy on all subjects and functions' is more than sufficient to secure the continued supremacy of the central Parliament. **'National policy' is a sufficiently broad cover to enable the central Parliament to legislate in respect of any matter on the Provincial Council List.** In a sense, Professor Wilson is right when he states that "in the case of Provincial Councils, Sri Lanka's Parliament has first to repeal the 13th Amendment and that too by a two thirds majority before taking possession of the law making powers of Provincial Councils contained in List I." But he errs in failing to point out that 'national policy on all subjects and functions' is in the Reserved List and is excluded from the Provincial Council List and that therefore the central Parliament may legislate in respect of such 'national policy' without 'taking possession of the law making powers of Provincial Councils.' The law making powers of Provincial Councils do not include 'national policy'. And it was this which impelled Counsel who appeared for the ruling United National Party to forthrightly declare before the Constitutional Court in Sri Lanka:

"India is a federal state ... in a federal state, the Central government does not have supreme control over the constituent states... Sri Lanka is a unitary state. The Provincial Councils are not beyond the

executive powers of the President... The President's directions prevail... The Provincial Councils shall not make any statutes on any matter affecting national policy..."⁶⁰

Again, it is not only that Parliament may pass laws by a simple majority, in respect of national policy on all subjects and functions but also that Parliament may by a simple majority make laws in respect of any matter set out in the Provincial Council List if such law is necessary for implementing any treaty, agreement or even any decision 'made at an international conference, association or other body'.⁴² And, **finally, to cap it all, in a country which since 1965, has been governed under emergency regulations by successive Sri Lanka governments for a period of more than 15 years, the 13th Amendment enacts that emergency regulations under the the Public Security Ordinance, may override, amend or suspend any statute made by a Provincial Council.**⁴³ But Professor Wilson has been persuaded to assert that "there is no question of the Sri Lanka Parliament vetoing or over-riding" a Provincial statute.

Further, Professor Wilson's assertion that "Sri Lanka has lost its unitary character by virtue of the 13th Amendment" fails to take into account the provisions of Article 2 of the Constitution - an entrenched provision which cannot be amended without recourse to a referendum and which remains unamended by the 13th Amendment, and which Article continues to expressly declare that:

"The Republic of Sri Lanka is a Unitary State"

If Professor Wilson is right in his view that Sri Lanka has lost its unitary character by virtue of the 13th Amendment, then it must follow by virtue of the continued operation of Article 2 of the Constitution that 'the Republic of Sri Lanka is a Unitary State' without 'unitary character' - whatever that may be. Be that as it may, Professor Wilson does concede in his article that:

"The Supreme Court of Sri Lanka, in its majority decision, argued that the 13th Amendment provided for subordinate law making bodies when Provincial Councils were created and that this was in accordance Article 76(3) of the Constitution which in substance empowers Parliament to establish subordinate law making bodies."

But the view expressed by the Supreme Court was not the 'argument' of a political scientist but the binding decision of the highest Sri Lankan Court - and the Tamil people are being called upon to accept the 13th Amendment as interpreted by that Sri Lankan Supreme Court - and that Supreme Court has held that the Provincial Councils are 'subordinate' law making bodies. Indeed, if the Supreme Court had taken the same

view as Professor Wilson and held that 'by virtue of the 13th Amendment' Sri Lanka had lost its unitary character', then the Court would have been compelled to rule that the 13th Amendment required the approval of the People at a referendum because it was in conflict with Article 2 of the Constitution. **The words of the 13th Amendment are plain. By virtue of its power to legislate in respect of national policy on all subjects and functions, the Sri Lankan Parliament is effectively empowered to legislate in respect of all the three Lists in the 9th Schedule to the 13th Amendment. The 'subordinate' legislative powers conferred on a Provincial Council in respect of the matters set out in the Provincial Councils List will be at all times subject to the dominant will of the Central Government.**

Glorified Local Authority

Further, even the 'subordinate' legislative power conferred on a Provincial Council covers a narrow and limited range of subjects and effectively excludes disposition of state land, maintenance of public order and higher education. And significantly, whilst plan implementation is a subject on the Provincial Council List, planning and formulation of plan implementation strategies is not on the List. The Provincial Council will be no more than a glorified local government authority, with power to enact subsidiary legislation in respect of a few innocuous matters, such as probation and child care services, market fairs, cooperatives, animal husbandry and pawn brokers, subject at all times to the over riding control of the Central government.

Without control of finance

And, **even in relation to those subjects in respect of which a Provincial Council may exercise 'subordinate' legislative power subject to the overriding will of Parliament, a Provincial Council may not pass statutes if involving a financial levy except on the recommendation of the Governor.**²¹ And in keeping with the powers conferred on the Governor to control the Provincial Finance Fund, it is the Governor who shall in respect of every financial year prepare and present to the Provincial Council a budget of the estimated receipts and expenditure for that year.⁴⁴ And so much of the Governor's estimates as relates to expenditure 'charged upon the Provincial Fund' shall not be even submitted to the vote of the Provincial Council! And what are these items of expenditure on which the Council may not vote? They include the emoluments of the Governor, charges payable in respect of loans advanced by the Central Government, and 'any other expenditure declared by the Constitution or by law made by Parliament' to be so charged!⁴⁵ And what are the powers of the Provincial Council in respect

of estimates of other expenditure i.e. expenditure not regarded as 'charged on the Provincial Fund'? Such estimates shall be presented by the Governor in the form of demands for grants to the Provincial Council and the Provincial Council may assent, refuse to assent, or reduce the amount of the grant. The Provincial Council shall NOT have power to increase the amount of the grant demanded!⁴⁶ And, finally, no demand for a grant shall be made except on the recommendation of the Governor.⁴⁷

Furthermore, if the President is satisfied that the financial stability of any part of Sri Lanka is threatened, he may make a declaration to that effect.⁴⁸ And during the period of such Proclamation, the President may give directions to the Governor of a Province to 'observe such canons of financial propriety as may be specified in the directions' and give 'such other directions as the President may deem necessary.'⁴⁹ And, notwithstanding anything in the Constitution, any such direction may include a provision requiring the reduction of salaries of all or any class of persons serving in the Province and a provision requiring all statutes providing for payment into or out of the Provincial Fund to be reserved for the consideration of the President.⁵⁰ **The effective control that the Governor and the Central Government exercises on the finances of the Province is well nigh total.**

The powers of the Provincial Councils may be changed by simple majority

And it would appear that the architects of 13th Amendment recognised that it would be unwise to restrict their freedom of action in the years to come. And though the Sri Lankan Constitution has been amended 12 times during the past 8 years, it was perhaps felt that the ruling Sinhala political party may not be able to secure the requisite two thirds majority to amend the Constitution in the years to come - after all it may not be possible for the ruling party to continue to postpone general elections and retain its two thirds majority in Parliament by securing a simple majority of votes cast by the Sinhala electorate at a referendum. And it may have been felt that it was important that the Sinhala rulers should have a free hand to provide for a changing future. Accordingly the 13th Amendment enacts that Parliament may by a simple majority pass and amend laws to provide for the election of members of Provincial Councils, the qualifications for membership of such Councils, the procedure for transaction of business by a Provincial council, the salaries and allowances of members of a Provincial Council, and 'any other matter necessary for the purpose of giving effect to the principles' of the 13th Amendment and for 'any matters connected with or incidental to' the 13th Amendment!⁵¹ In this way, Parliament may give effect to the so

called 'principles' of the 13th Amendment without being troubled with securing the two thirds majority required for an amendment to the Constitution. And it was in the exercise of these powers that Parliament passed the Provincial Councils Act - an Act which may itself be amended from time to time by a simple majority. Further, other laws may be passed by the Central Parliament, by a simple majority in respect of matters 'connected with or incidental to' those set out in the 13th Amendment. And that which the Sri Lankan Supreme Court may rule as being 'connected with or incidental' to the 13th Amendment may raise interesting questions related to political expediency rather than law. **The 13th Amendment not only provides a constitutional script for a comic opera - it also enables the Sinhala playwrights to change the script from time to time.**

13th Amendment: Constitutional sleight of hand

The Government of India Act enacted by the British in 1935 was described by the biographer of Subhas Chandra Bose as 'one of history's most sophisticated attempts by an occupying power to perpetuate its alien rule and yet appear not to do so'. The 13th Amendment to the Sri Lanka Constitution is no less sophisticated in its efforts to perpetuate Sinhala rule of the Tamils of Eelam and yet appear not to do so. And there are some who may even describe the 13th Amendment as a constitutional sleight of hand par excellence. But, that is to put too fine a point on the matter. The blunt reality is that those who proclaim that the 13th Amendment is intended to share power between the Tamil people and the Sinhala people, are, to use a colloquialism, 'trying to pull a fast one' on the Tamil people.

In the words of Professor Claire Palley:

"If the powers of government are organised under a single central authority, while whatever powers by local units are held at the sufferance of the central government, which can exercise supreme legislative authority, the constitution is described as unitary. If the powers of government are distributed between central and local government and the central authority is limited by the powers secured to the territorial units, the state is federal."⁶¹

Under the the 13th Amendment power will continue to reside in a Sinhala dominated Central government, within the frame of an unitary constitution. The 13th Amendment is intended to secure a constitutional frame which will enable a Sinhala majority to manage the Tamil people more effectively than before. It has created Provincial Ministers who will not exercise executive power but who will have executive power exercised 'through' them!. At the same time it has created a Provincial Governor

who is in truth a Provincial 'Minister' who will exercise executive power in respect of provincial matters - a Provincial Governor who is also the administrative head of the provincial public service and who has control of the Provincial Finance Fund. And the 13th Amendment has created a Provincial Council without control of planning, without control of the provincial budget, without control of police and public order within the province, without control of disposition of state land within the province, without control of higher education and whose remaining meagre legislative powers are subject to the over riding will of the Central Parliament. And the provisions of the Provincial Councils Act itself may be amended from time to time by a simple majority of members present and voting in Parliament! And these are the basic provisions of the 13th Amendment which Prime Minister Rajiv Gandhi's Indian Government seeks to 'persuade' the Liberation Tigers of Tamil Eelam to accept - in the interests of the Tamil people! And Prime Minister Rajiv Gandhi declared at a public meeting in Tamil Nadu on the 5th of August 1988 that 'it was unfortunate that the Tamils of Sri Lanka had not yet got the benefits of devolution of power because of LTTE intransigence. Other provinces in that country now enjoyed greater financial and police powers for dealing with law and order situations, thanks to the Indo Sri Lanka Accord signed last year. But the Northern and Eastern Provinces were not.' He went on:

"The LTTE must demonstrate its sincerity before we can even think of talks of ceasefire at all. This is the time for moral courage and political courage and not for bullets and bombs. The LTTE should face the elections with courage and moral power."⁶³

13th Amendment fails to address central issues of the Tamil national struggle

But the constitutional reality of the 13th Amendment is that the so called 'democratic electoral process' in which the Tamil people have been invited to participate refuses to address itself to the central issues of the Tamil national liberation struggle. The 13th Amendment will do nothing to share executive power with the Tamil people because such power will continue to be vested in the President and in his servants. It will do nothing to secure an equitable allocation of financial resources to Tamil areas because such allocation will continue to be determined at the discretion of a Sinhala dominated Central Government. It will do nothing to prevent continued state aided Sinhala colonisation of the Northern and Eastern Provinces because the disposition of state land will be in the hands of a Sinhala dominated Central Government. The 13th Amendment will do nothing to prevent standardisation of admission to Universities, because higher education is a subject excluded from the

Provincial List. The 13th Amendment will do nothing to control the abuse of police powers because the subject of 'Police and Public Order' in the Provinces will continue to be effectively vested in a Sinhala dominated Central Government. The 13th Amendment will do nothing to prevent the operation of the Prevention of Terrorism Act whose provisions were described by the International Commission of Jurists as a 'blot on the statute book of any civilised country' because this too will be within the competence of a Sinhala dominated Central Government. The 13th Amendment will do nothing to prevent the operation of emergency regulations which enable Tamils to be killed and disposed of without a post mortem inquiry and which regulations have been condemned by Amnesty International as an encouragement to indulge in extra judicial killings.⁵² And the 13th Amendment will do nothing to prevent the operation of the 6th Amendment to the Constitution which according to the International Commission of Jurists, violated the right to freedom of expression.⁵¹ On the contrary, the 13th Amendment will require members of the Provincial Council to take their oaths under the 6th Amendment and acquiesce in and sanction such violation. And the 13th Amendment will do nothing to energise the Tamil people to work for the rehabilitation of their homeland, because it refuses to recognise the existence of the Tamil people as a people with a homeland.

13th Amendment denies a homeland to the Tamils of Eelam

And nowhere is this refusal to recognise the existence of the Tamils of Eelam as a people with a homeland reflected more clearly than in the provisions of the Provincial Councils Act in respect of the merger of the Northern and Eastern Province. The Indo Sri Lanka Accord signed by Prime Minister Rajiv Gandhi of India and President J.R. Jayawardene of Sri Lanka, on the 29th of July 1987, acknowledged that the Northern and Eastern Province 'have been areas of historical habitation' of the Tamils in the island of Sri Lanka.⁵³ It was an acknowledgement which was watered down by the additional statement that the Tamils 'have at all times hitherto lived together in this territory with other ethnic groups'.

Be that as it may, the Indo Sri Lanka Accord was right to recognise that the togetherness of the Tamil people had grown, hand in hand, with the growth of their homelands in the North and East of Sri Lanka, where they lived together, worked together, communicated with each other, founded their families, educated their children, and also sought refuge, from time to time, from physical attacks elsewhere in Sri Lanka. The Accord was right to recognise that without an identifiable homeland the Tamils in Sri Lanka would not have become a people with a separate culture and a separate language and that without an identified homeland they will cease to exist as a people in the future. And in the words of Malcolm Shaw

in Title to Territory in Africa:

"Modern nationalism in the vast majority of cases points to a deep, almost spiritual connection between land and people. This can be related to the basic psychological needs of man in terms of the need for security and a sense of group identity... the concern for the preservation of habitat exists as a passionate reflex in all human communities. Territory is the physical aspect of the life of the community and therefore reflects and conditions the identity of that community."⁵⁴

And after all, it was this which was partially recognised both by the 1972 Constitution and by the 1978 Constitution when these Constitutions made provision for the use of the Tamil language in the Northern and Eastern Provinces. And it was this which was recognised by Professor Virginia Leary in her Report on the Ethnic Conflict in Sri Lanka in 1981 when she declared that the Tamils could be considered to a people with a distinct language, culture and to an extent, a defined territory.⁵⁴ And therefore the signatories to the Indo Sri Lanka Accord were right in taking the view that there was no need to hold a referendum before declaring that the Northern and Eastern Provinces 'have been areas of historical habitation' of the Tamil people.

And resorts to the subterfuge of a referendum

But though the Accord recognised the Northern and Eastern Provinces as areas of historic habitation of the Tamil people, the 13th Amendment and the Provincial Councils Act refuses to translate that recognition into constitutional reality. The constitutional comic opera is continued in the special acting style of the 13th Amendment - that which is seemingly given with one hand is taken with other. The Provincial Councils Act provides that the President may by Proclamation merge the Northern and Eastern Provinces if he is satisfied that all arms and ammunition held by the militant groups have been surrendered and there has been a cessation of acts of violence. The Act then goes on to provide for a referendum to be held in the Eastern Province to determine whether the people of the Eastern Province want the Eastern Province to be continued to be linked with the Northern Province. If the people of the Eastern Province vote against a linkage, then the merger will be terminated. But if the people of the Eastern Province vote for a linkage with the Northern Province, a poll shall not be required to determine the wishes of the people in the Northern Province. The Provincial Councils Act rightly assumes that the Tamil people living in the Northern Province want a merger of the Northern and Eastern Province and that a poll would be superfluous. But it refuses to accept that the Tamils living in the Eastern Province are also

a part of the same Tamil people.

A machiavelian provision intended to secure that the merger is temporary

And the reason for this Machiavelian provision is not too far to seek. A few days before the signing of the Accord, President Jayawardene stated to the National Executive Committee of the ruling United National Party:

“...Only one thing has to be considered. That is a temporary merger of the North and East. A referendum will be held before the end of next year on a date to be decided by the President to allow the people of the East to decide whether they are in favour or not of this merger. The decision will be by a simple majority vote...In the Eastern Province with Amparai included there are 33% Muslims, 27% Sinhalese and the balance 40% Tamils. Of these Tamils there are two categories. More than half of them are Batticaloa Tamils and the rest are Jaffna Tamils. Then, if the Jaffna Tamils form 20%, then I think that 80% are opposed to such a merger. Mr. Devanayagam and Mr. Majeed (members of President Jayawardene's Cabinet, one being a Tamil and the other a 'Muslim' Tamil) have told me so. Then if the referendum is held by the Central government and the approval of those who return to the East is sought, I think a majority will oppose it. Then the merger will be over. What do we gain by this temporary merger, the President asked and said that it would see the end of the terrorist movement...”⁵⁵

The enthusiastic recognition of the Northern and Eastern Province as the areas of 'historical habitation' of the Tamils was apparently a 'temporary' enthusiasm confined to the preamble of the Accord. The merger of the Northern and Eastern Province was a temporary merger intended to serve an immediate purpose and get over a pressing immediate difficulty - namely the need to 'see the end' of that which President Jayawardene chose to describe as the 'terrorist movement' in his address to his Executive Committee, and that which he himself had acknowledged as the 'militant' movement in the Indo Sri Lanka Accord which he signed on the 29th of July 1987. And at a press conference immediately after the Accord was signed, President Jayawardene confirmed that at the polls in the Eastern Province he would campaign against the merger.⁵⁵ And as President Jayawardene was careful to point out to the Executive Committee of the ruling Party, included in the Eastern Province was the Amparai District. That which he did not state and that which his listeners were well aware was that during the past fifty years, state sponsored colonisation had contributed to considerable increases in the Sinhala population in the Amparai District. On the one hand the Sri Lankan government sought to use the vote of recently settled

Sinhala colonists to prevent the merger and this led to the concerted efforts of the Sri Lankan Government to bring in more Sinhala settlers into the Eastern Province in the immediate aftermath of the Accord. On the other hand the Sri Lankan government sought to campaign on the basis of dividing the Tamil people into Jaffna Tamils and Batticaloa Tamils, and into Muslim Tamils and non Muslim Tamils. And, finally, the Sri Lankan Government ensured that the Provincial Councils Act may itself be amended by the Central Parliament by a simple majority and in this way the result of a referendum in favour of a merger, may in any event, may be nullified at a suitable and convenient time - after the surrender of arms. The legislative provisions for the merger of the Northern and Eastern Provinces constitute a subterfuge - an exercise in double speak intended to confuse not only the Tamil people but also an international audience increasingly concerned with the denial of the basic and fundamental rights of the Tamil people. But beneath the cosmetics, **the underlying political reality of the 13th Amendment was that it refused to recognise the Tamils of Eelam as a people - and it refused to recognise the existence of the Tamil homeland where the identity of the Tamil people had in fact grown.** The architects of the 13th Amendment were unable and unwilling to break away from the path trodden by successive Sinhala governments which have sought to divide the Tamil people into more assimilable smaller units and so eventually 'integrate' them into a homogeneous Sinhala nation - an assimilative path which had led to confrontation and which had culminated in the armed struggle of the Tamil people against that which they rightly regarded as attempted genocide.

13th Amendment refuses to recognise the political reality of the Tamil nation

The 13th Amendment seeks to resolve the political conflict in Sri Lanka without facing up to the existential political reality that there exist in Sri Lanka today two nations - the Tamil nation and the Sinhala nation. And to those who continue to ask what is a nation the time has come to declare with Rupert Emerson:

“The simplest statement that can be made about a nation is that it is a body of people who feel that they are a nation; and it may be that when all the fine spun analysis is concluded this will be the ultimate statement as well”⁵⁷

And in the matter of fact words of Professor Seton-Watson:

“A nation exists when a significant number of people in a community consider themselves to form a nation, or behave as if they formed one. It is not necessary that the whole of the population

should so feel, or so behave, and it is not possible to lay down dogmatically a minimum percentage of a population which must be so affected. When a significant group holds this belief, it possesses 'national consciousness'." 58

And 'when five percent of a society accepts a new idea, it is embedded in its population. As the idea spreads and reaches 20% of the population, it becomes unstoppable'. 59 And today, the 'idea' of the Tamil nation has become so embedded amongst the Tamils of Eelam, that it is no longer 'stoppable'. It is no longer stoppable because it is embedded in the direct personal feelings and the material interests of large sections of the Tamil people, whether they be public servants deprived of increments and promotions in consequence of the Sinhala Only Act, whether they be expatriate Tamil professionals who had left Ceylon in the face of a growing discrimination so that they may lead a life not of luxury but of dignity, whether they be those who continued to suffer discrimination at their workplace because they had nowhere else to go, whether they be students deprived of admission to Universities because of standardisation, whether they be parents who saw no future for their children's advancement, whether they be farmers who were forced to contend with an 'open economic' policy which granted them no protection, whether they be businessmen who had their businesses burnt and destroyed by Sinhala goon squads, whether they be those who had their kith and kin killed and raped and their homes looted not only by the Sri Lankan security forces but also by the so called Indian Peace Keeping Force, whether they be those who were rendered homeless and who lived in refugee camps in their own 'homelands', whether they be those who had left their homelands in fear and who had sought refugee in Tamil Nadu or as wandering nomads in foreign lands, whether they be those who continued to remain in Sri Lanka and live in fear because they were Tamils and whether they be those who said that 'enough was enough' and who would not take it lying down anymore and who were ready to give their lives in an armed struggle. And it was of such an idea that Sri Aurobindo wrote eloquently in 1907:

"The idea or sentiment is at first confined to a few men whom their neighbours and countrymen ridicule as lunatics or hare-brained enthusiasts. But it spreads and gathers adherents who catch the fire of the first missionaries and creates its own preachers and then its workers who try to carry out its teachings in circumstances of almost paralysing difficulty. The attempt to work brings them into conflict with the established power which the idea threatens and there is persecution. The idea creates its martyrs. And in martyrdom there is an incalculable spiritual magnetism which works miracles. A whole nation, a whole world catches the fire which burned in a

few hearts; the soil which has drunk the blood of the martyr imbibes with it a sort of divine madness which it breathes into the heart of all its children, until there is but one overmastering idea, one imperishable resolution in the minds of all beside which all other hopes and interests fade into insignificance until it is fulfilled, there can be no peace or rest for the land or its rulers. It is at this moment that the idea begins to create its heroes and fighters, whose numbers and courage defeat only multiplies and confirms until the idea militant has become the idea triumphant. Such is the history of the idea, so invariable in its broad lines that it is evidently the working of a natural law" 61

The Tamil nation in Eelam is more than an idea

The Tamil nation is an idea - and it is more. Because they err who conceive the Tamil nation as a mere intellectual platform. It would be lifeless if it were. Neither is Tamil nationalism the expression of emotion alone. It would not be sustained for long if that were true. Nor is it a matter merely of a people securing food clothing and shelter and their material conditions of existence. Because, that would deny to Tamil nationalism its rich cultural heritage. Tamil nationalism is all these - and more. It is all these together as an integrated whole - an integrated whole which is greater than the sum of its constituent parts - and an integrated whole which has taken shape through a process of opposition and differentiation. Every inside has an outside. And it was continued Sinhala discrimination during a time period of several decades, which consolidated the growth of Tamil nationalism. That which was treated separately, became separate. And it is when one begins to understand all this that one will also understand the sacrifices and the suffering undergone by the Tamil people and the militant movement in the name of the Tamil nation - understand the martyrdom of Thileepan of the Liberation Tigers of Tamil Eelam, who fasted for more than ten days without food or water, and who gave his life to the Tamil nation - understand the answering response from thousands of Tamils and understand the increasing togetherness of the Tamil people. And it is when one understands all this that one will also understand the political reality of Tamil nationalism and its power to direct and influence the conduct of thousands.

Thimpu declaration was the joint and unanimous will of the Tamil people

However, the Tamil people are not chauvinists - they do not take an exaggerated view of nationalism. The Tamils of Eelam know that no nation is an island. They know that nations live together - the question

is: on what terms? And the first step for determining the terms on which two nations may live together is for each nation to recognise the existence of the other. And the 1985 Thimpu Declaration expressed the joint and unanimous will of the Tamil people and set out a reasoned framework within which the Tamil nation and the Sinhala nation may live in Sri Lanka:

‘‘It is our considered view that any meaningful solution to the Tamil national question must be based on the following four cardinal principles -

1. recognition of the Tamils of Ceylon as a nation or nationality
2. recognition of the existence of an identified homeland for the Tamils in Ceylon
3. recognition of the right of self determination of the Tamil nation
4. recognition of the right to citizenship and the fundamental rights of all Tamils who look upon the island as their country.’’

‘‘Different countries have fashioned different systems of governments to ensure these principles. We have demanded and struggled for an independent Tamil state as the answer to this problem arising out of the denial of these basic rights of our people... However, in view of our earnest desire for peace, we are prepared to give consideration to any set of proposals, in keeping with the the abovementioned principles, that the Sri Lankan government may place before us.’’

The Tamil people recognised the existence of the Sinhala nation. The question they asked was whether the Sinhala people were ready and willing to recognise the existence of the Tamil nation. And in the end, nothing exemplifies the intellectual and moral dishonesty of Sinhala chauvinism more than its continued efforts to masquerade as a ‘Sri Lankan nationalism’ by denying the existence of not only the Tamil nation but also the Sinhala nation in Sri Lanka.

Constitutional script for a comic opera

The 13th Amendment pretends that the Tamil nation does not exist. And it denies to the Tamil people the right to sit as equals with the Sinhala people and determine the political structure within which the two people may live in equality. But, Tamil nationalism will not quietly go away and disappear from the political arena merely because the Indian government and the Sri Lankan government refuse to recognise its existence. The words of a brave young Tamil, Selvarajah Yogachandran, in a musty court house in Colombo when he was sentenced to death in 1982 continue to be relevant - ‘You may take my life, but for the life of

each Kuttimuni you take, there will be ten more who will be born’. Neither will Tamil nationalism disappear in the world arena, merely because today both, the Soviet Union and the United States have supported an Indo Sri Lanka Accord which fails to openly recognise the political reality of Tamil nationalism. Both the Soviet Union and the United States may take the view today that the stability of the Indian region will be secured by supporting Prime Minister Rajiv Gandhi’s government. But Prime Minister Rajiv Gandhi’s government will secure stability in the Indian region only if it has the strength to openly recognise that both India and Sri Lanka are multi national states - and only if it uses that strength to put into place constitutional structures which reflect that political reality. **But it would seem that both the Sri Lankan Government and the Indian Government lack the strength to deal with Tamil nationalism on equal terms. And so in their fear they hug each other and proclaim loudly that the Tamil nation does not exist.** And that which they pretend not to see, continues to haunt them. It was said of the Bourbons that they forgot nothing and learnt nothing. It would appear that those who direct the affairs of the Indian Government and the Sri Lankan Government remember nothing and learn nothing. And, if the French revolutionaries were offered cake instead of bread, the Tamils of Eelam have been offered form without content. **And the right place for the truly comic Provincial Council and its Board of Ministers, with its comic functions, created by the 13th Amendment, is an opera by Gilbert and Sullivan and not a Tamil Eelam seething with discontent and convulsed with conflict. Tamil nationalism cannot be snuffed out. It can be reasoned with. The 13th Amendment, however, seeks to create a Constitutional frame within which the Sinhala people may rule the Tamils of Eelam more effectively by creating and nurturing a class of Tamils dependent on the patronage of a Sinhala dominated Central Government for their political and perhaps, even their physical, survival. The 13th Amendment denies reason to the Tamils of Eelam. But reason denied will nevertheless prevail - and the time will come when the 13th Amendment will find itself consigned to the dustbin of history.**

(The writer acknowledges with gratitude his indebtedness to the reflections of Sri Aurobindo in an article entitled ‘Comic Opera Reforms’ in the Bande Mataram - written in 1907, some eighty years ago.)

NOTES

- (1) 13th Amendment, Article 154B(2)
- (2) Sri Lanka Constitution, 1978 - Article 4(b)
- (3) 13th Amendment, Article 154C
- (4) 13th Amendment, 9th Schedule
- (5) Provincial Councils Act, Section 32(1)
- (6) Provincial Councils Act, Section 32(3)
- (7) Provincial Councils Act, Sections 32(2), 33(1)
- (8) Provincial Councils Act, Section 33(8)
- (9) 13th Amendment, Article 154F(4)
- (10) 13th Amendment, Article 154F(5)
- (11) 1983 ICJ Report: Sri Lanka, A Mounting Tragedy of Errors p63
- (12) 13th Amendment, Article 154F(1)
- (13) 13th Amendment, Article 154B(11)(a)
- (14) 13th Amendment, Article 154B(11)(b)
- (15) Provincial Councils Act, Section 15(1)
- (16) 13th Amendment, Article 154B(10)(a)
- (17) 13th Amendment, Article 154K
- (18) 13th Amendment, Article 154L(1)
- (19) 13th Amendment, Article 154F(2)
- (20) 13th Amendment, Article 154F(3)
- (21) 13th Amendment, Article 154R(1)
- (22) 13th Amendment, Article 154R(3)
- (23) 13th Amendment, Article 154R(5)
- (24) 13th Amendment, Article 154R(7)
- (25) Provincial Councils Act, Section 19(1)
- (26) Provincial Councils Act, Section 24(1)
- (27) Provincial Councils Act, Section 19(5)
- (28) 13th Amendment, Article 154L(6)
- (29) 13th Amendment, Clause 2 of Appendix I
- (30) 13th Amendment, Clause 6 of Appendix I
- (31) 13th Amendment, Clause 4 of Appendix I
- (32) 13th Amendment, Clause 9.2 of Appendix I
- (33) 13th Amendment, Clause 12.1 of Appendix I
- (34) 13th Amendment, Schedule to Appendix I
- (35) 1983 ICJ Report: Sri Lanka, A Mounting Tragedy of Errors p33
- (36) 13th Amendment, Clause 11.1 of Appendix I
- (37) 13th Amendment, Clause 11 of Appendix I
- (38) Sri Lanka Constitution 1978, Article 33(d)
- (39) 13th Amendment, Article 154G(1)
- (40) Tamil Voice International, 1st August 1988
- (41) Sri Aurobindo: Bande Mataram, June 1987
- (42) 13th Amendment, Article 154G(11)
- (43) 13th Amendment, Article 154S(5), 155(3A)
- (44) Provincial Councils Act, Section 25(1)
- (45) Provincial Councils Act, Section 26(1)
- (46) Provincial Councils Act, Section 26(2)
- (47) Provincial Councils Act, Section 26(3)
- (48) 13th Amendment, Article 154N(1)
- (49) 13th Amendment, Article 154N(3)
- (50) 13th Amendment, Article 154N(4)
- (51) 13th Amendment, Article 154Q
- (52) Amnesty International Report, 1984
- (53) Indo - Sri Lanka Accord, July 1987, Preamble
- (54) ICJ Report by Professor Virginia Leary, 1981, p69
- (55) Sri Lanka News, 29th July 1987
- (56) Sri Lanka News, 12th August 1987
- (57) Rupert Emerson: From Empire to Nation, 1953
- (58) Seton-Watson: Nations and States, 1977
- (59) Ross Smyth: Transnational Perspectives, 1985
- (60) Sri Lanka Sun: 30th October 1987
- (61) Minority Rights Group Report on 'Constitutional Law and Minorities'
- (62) Malcolm Shaw: Title to Territory in Africa, 1986
- (63) Hindu: International Edition, 13th August 1988

NOTES

- (1) 13th Amendment, Article 154B(2):
"The Governor shall be appointed by the President by warrant under his hand, and shall hold office, in accordance with Article 4(b), during the pleasure of the President"
- (2) Sri Lanka Constitution, 1978, Article 4:
"The Sovereignty of the People shall be exercised and enjoyed in the following manner:-
(a) legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People and by the People at a Referendum;
(b) the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People;"
- (3) 13th Amendment, Article 154C:
"Executive power extending to the matters with respect to which a Provincial Council has power to make statutes shall be exercised by the Governor of the Province for which that Provincial Council is established, either directly or through Ministers of the Board of Ministers, or through officers subordinate to him, in accordance with Article 154F"
- (4) 13th Amendment 9th Schedule
- (5) Provincial Councils Act, Section 32(1):
"Subject to the provisions of any other law the appointment, transfer, dismissal and disciplinary control of officers of the provincial public service of each Province is hereby vested in the Governor of that Province."
- (6) Provincial Councils Act, Section 32(3):
"The Governor shall provide for and determine all matters relating to officers of the provincial public service, including the formulation of schemes of recruitment and codes of conduct for such officers, the principles to be followed in making promotions and transfers, and the procedure for the exercise and the delegation of the powers of appointment, transfer, dismissal and disciplinary control of such officers. In formulating such schemes of recruitment and codes of conduct, the Governor shall, as far as practicable, follow the schemes of recruitment prescribed for corresponding offices in the public service and the codes of conduct prescribed for corresponding offices in the public service and the codes of conduct prescribed for officers holding corresponding offices in the public service."
- (7) Provincial Councils Act, Sections 32(2), 33(1):
32(2): "The Governor of a Province may from time to time, delegate his powers of appointment, transfer, dismissal and disciplinary control of officers of the provincial public service to the Provincial Public Service Commission of that Province."
33(1): "There shall be a Provincial Public Service Commission for each Province which shall consist of not less than three persons appointed by the Governor of that Province. the Governor shall nominate one of the members of the Commission to be the Chairman."
- (8) Provincial Councils Act, Section 33(8):
"The Governor of a Province shall have the power to alter, vary or rescind any appointment, order of transfer or dismissal or any other order relating to a disciplinary matter made by the Provincial Public Service Commission of that Province."
- (9) 13th Amendment, Article 154F(4):
"The Governor shall appoint as Chief Minister, the member of the Provincial Council constituted for that Province, who in his opinion is best able to command the support of a majority of the members of that Council: Provided that where more than one half of the members elected to a Provincial Council are members of one political party, the Governor shall appoint the leader of that political party in the Council, as the Chief Minister.
- (10) 13th Amendment, Article 154F(5):
"The Governor shall, on the advice of the Chief Minister, appoint from among the members of the Provincial Council constituted for that Province, the other Ministers."
- (11) 1983 ICJ Report: Sri Lanka, A Mounting Tragedy of Errors p63:
"The freedom to express political opinions, to seek to persuade others of their merits, to seek to have them represented in Parliament, and thereafter to seek to persuade Parliament to give effect to them, are all fundamental to democracy itself. These are precisely the freedoms which Article of the Covenant recognises and guarantees - and, in respect of advocacy for the establishment of an independent Tamil State in Sri Lanka, those which the Sixth Amendment is designed to outlaw. It therefore appears to me plain that this enactment constitutes a clear violation by Sri Lanka of its obligations in international law under the Covenant."
- (12) 13th Amendment, Article 154F(1):
"There shall be a Board of Ministers with the Chief Minister at the head and not more than four other Ministers to aid and advise the Governor of a Province in the exercise of his functions. The Governor shall in the exercise

of his functions act in accordance with such advice, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion."

(13) 13th Amendment, Article 154B(11)(a):

"It shall be the duty of the Chief Minister of every Province - (a) to communicate to the Governor of the Province all decisions of the Board of Ministers relating to the administration of the affairs of the Province and the proposals for legislation."

(14) 13th Amendment, Article 154B(11)(b):

"It shall be the duty of the Chief Minister of every Province - (b) to furnish such information relating to the administration of the affairs of the Province and proposals for legislation as the Governor may call for."

(15) Provincial Councils Act, Section 15(1):

"The Governor shall make rules for the allocation of business among the Ministers in so far as it is not business with respect to which the Governor is by, or under, the Constitution required to act in his discretion."

(16) 13th Amendment, article 154B(10)(a):

"The Governor may address the Provincial Council and may for that purpose require the attendance of members."

(17) 13th Amendment, Article 154K:

"Where the Governor or any Provincial Council has failed to comply with, or give effect to, any directions given to such Governor or such Council under this Chapter of the Constitution, it shall be lawful for the President to hold that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the provisions of the Constitution."

(18) 13th Amendment, Article 154L(1):

"If the President on receipt of a report from the Governor of the Province or otherwise is satisfied that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the provisions of the Constitution, the President may by Proclamation -

- (a) assume to himself all or any of the functions of the administration of the Province and all or any of the powers vested in or exercisable by, the Governor or any body or authority in the Province other than the Provincial Council;
- (b) declare that the powers of the Provincial Council shall be exercisable by or under the authority of Parliament;

- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation;

Provided that nothing in this paragraph shall authorize the President to assume to himself any of the powers vested in or exercisable, by any Court."

(19) 13th Amendment, Article 154F(2):

"If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question in any Court on the ground that he ought or ought not to have acted on his discretion. The exercise of the Governor's discretion shall be on the President's direction."

(20) 13th Amendment, Article 154F(3):

"The question whether any, and if so what advice was tendered by the Ministers to the Governor shall not be inquired into in any Court."

(21) 13th Amendment, Article 154R(1):

"There shall be a Finance Commission consisting of -

- (a) the Governor of the Central Bank of Sri Lanka
- (b) the Secretary to the treasury; and
- (c) three other members to represent the three major communities each of whom shall be a person who has distinguished himself, or held high office in the field of finance, law, administration, business or learning."

(22) 13th Amendment, Article 154R(3):

"The Government shall, on the recommendation of and in consultation with, the Commission, allocate from the Annual Budget, such funds as are adequate for the purpose of meeting the needs of the Provinces."

(23) 13th Amendment, Article 154R(5):

"It shall be the duty of the Commission to make recommendations to the President as to -

- (a) the principles on which such funds as are granted annually by the Government for the use of Provinces, should be apportioned between the various Provinces; and
- (b) any other matter referred to the Commission by the President relating to Provincial Finance."

(24) 13th Amendment, Article 154R(7):

"The President shall cause every recommendation made by the Finance Commission under this Article to be laid before Parliament, and shall notify Parliament as to the action taken thereon."

(25) Provincial Councils Act, Section 19(1):

"There shall be a Provincial Fund for each Province into which shall be paid -

- (a) the proceeds of all taxes imposed by the Provincial Council of that Province;
- (b) the proceeds of all grants made to such Provincial Council in respect of the Province, by the Government of Sri Lanka;
- (c) the proceeds of all loans advanced to the Provincial Council from the Consolidated Fund of Sri Lanka; and
- (d) all other receipts of the Provincial Council."

(26) Provincial Councils Act, Section 24(1):

"A statute in relation to any subject with respect to which the Provincial Council has power to make statutes, shall not be introduced into, or moved in, a Provincial Council except on the recommendation of the Governor, if such statute makes provision for any of the following matters, namely:-

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the amendment of any law with respect to any financial obligations undertaken, or to be undertaken, in respect of the administration of the Province;
- (c) the appropriation of moneys out of the Provincial Fund of the Province;
- (d) the declaring of any expenditure to be expenditure charged on the Provincial Fund of the Province or increasing the amount of any such expenditure;
- (e) the receipt of money on account of the Provincial Fund or the custody or issue of such money."

(27) Provincial Councils Act, Section 19(5):

"The custody of the Provincial Fund of a Province, the payment of moneys into such Fund, and all other matters connected with, or ancillary to, those matters shall be regulated by rules made by the Governor."

(28) 13th Amendment, Article 154L(6):

"A Proclamation under this Article shall be conclusive for all purposes and shall not be questioned in any Court and no Court or Tribunal shall inquire

into or pronounce on, or in any manner call in question such Proclamation or the grounds for making thereof."

(29) 13th Amendment, Clause 2 of Appendix I:

"The I.G.P. shall be the head of the Sri Lanka Police Force. The Sri Lanka Police Force shall be divided into -

- (a) the National Division (including Special Units); and
- (b) a Provincial Division for each Province."

(30) 13th Amendment, Clause 6 of Appendix I:

"The I.G.P. shall appoint a D.I.G. for each Province with the concurrence of the Chief Minister of the Province. However, where there is no agreement between the Inspector General of police and the Chief Minister, the matter will be referred to the President, who after due consultations with the Chief Minister, shall make the appointment."

(31) 13th Amendment, Clause 4 of Appendix I:

"Recruitment to each Provincial Division shall be made by a Provincial Police Commission composed of three members, namely

- (a) the D.I.G. of the Province
- (b) a person nominated by the Public Service Commission in consultation with the President; and
- (c) a nominee of the Chief Minister of the Province."

(32) 13th Amendment, Clause 9.2 of Appendix I:

"The Government of Sri Lanka shall be responsible for the training of all recruits to and of all Divisions of the Sri Lanka Police Force. The President may, where he considers it necessary, provide for alternative training for members of any Provincial Division."

(33) 13th Amendment, Clause 12.1 of Appendix I:

"The Provincial Division shall be responsible for the preservation of public order within the Province and the prevention, detection and investigation of all offences (except the offences specified in the Schedule) and subject to the powers of the Attorney General in terms of the Criminal Procedure Act, the institution of prosecutions in respect of such offences."

"The National Division of the Sri Lanka Police shall be responsible for the prevention, detection, and investigation of all offences specified in the Schedule and subject to the powers of the Attorney General in terms of the Criminal Procedure Act, for the institution of prosecutions in the relevant Courts in respect of such offences."

(34) 13th Amendment, Schedule to Appendix I

(35) 1983 ICJ Report: Sri Lanka, A Mounting Tragedy of Errors p33:

"These provisions (of the Prevention of Terrorism Act) are quite extraordinarily wide. No legislation conferring even remotely comparable powers is in force in any other free democracy operating under the Rule of Law, however troubled it may be by politically motivated violence. Indeed, there is only one known precedent for the power to impose restriction Orders under Section 11 of the Sri Lankan PTA, and that - as Professor Leary rightly pointed out in her Report - is the comparable legislation currently in force in South Africa... I am naturally reluctant to re-open the wound, but I have no choice but to endorse Professor Leary's conclusion. Such a provision is an ugly blot on the statute book of any civilised country."

(36) 13th Amendment, Clause 11.1 of Appendix I:

"The D.I.G. of the province shall be responsible to and under the control of the Chief Minister thereof in respect of the maintenance of public order in the Province and the exercise of police powers in the Province as set out in this Schedule."

(37) 13th Amendment, Clause 11 of Appendix I:

"All Police Officers serving in units of the National Division and the Provincial Divisions in any Division shall function under the direction and control of the D.I.G. of such Province."

(38) Sri Lanka Constitution 1978, Article 33(d)

(39) 13th Amendment, Article 154G(1):

"Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter set out in List I of the Ninth Schedule hereinafter referred to as 'the Provincial Council List'."

(40) Tamil Voice International, 1st August 1988

(41) Sri Aurobindo: Bande Mataram, June 1907

(42) 13th Amendment, Article 154G(11):

"Notwithstanding anything in paragraph (3) of this Article, Parliament may make laws, otherwise than in accordance with the procedure set out in that paragraph, in respect of any matter set out in the Provincial Council List for implementing any treaty, agreement, or convention with any other country or countries or any decisions made at an international conference, association or other body."

(43) 13th Amendment, Article 154S(5), 155(3A):

"Article 155 of the Constitution is hereby amended by the insertion, immediately after paragraph (3) of that Article, of the following new paragraph:-

(3A) Nothing in the preceding provisions of this Constitution shall be deemed to prohibit the making of emergency regulations, under the Public Security Ordinance or the law for the time being in force relating to public security, with respect to any matter set out in the Ninth Schedule or having the effect of overriding amending or suspending the operation of a statute made by a Provincial Council."

(44) Provincial Councils Act, Section 25(1):

"The Governor of the Province shall in respect of every financial year, at least five months before the expiration of such financial year, cause to be laid before the Provincial Council of that Province, a statement of the estimated receipts and expenditure of the Province for that year, in this Part referred to as the 'annual financial statement'."

(45) Provincial Councils Act, Section 26(1):

"So much of the estimates as relates to expenditure charged upon the Provincial Fund of the Province shall not be submitted to the vote of the Provincial Council, but nothing in this subsection shall be construed as preventing the discussion in the Provincial Council of any of these estimates."

(46) Provincial Councils Act, Section 26(2):

"So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Provincial Council, and the Provincial Council shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand, subject to a reduction of the amount specified therein."

(47) Provincial Councils Act, Section 26(3):

"No demand for a grant shall be made except on the recommendation of the Governor."

(48) 13th Amendment, Article 154N(1):

"If the President is satisfied that a situation has arisen whereby the financial stability or credit of Sri Lanka or of any part of the territory is threatened, he may by Proclamation make a declaration to that effect."

(49) 13th Amendment, Article 154N(3):

"During the period of any such Proclamation as is mentioned in

paragraph(1) is in operation, the President may give directions to any Governor of a Province to observe such canons of financial propriety as may be specified in the directions, and to give such other directions as the President may deem necessary and adequate for the purpose."

(50) 13th Amendment, Article 154N(4):

"Notwithstanding anything in the Constitution, any such direction may include

- (a) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Province;
- (b) a provision requiring all statutes providing for payments into or out of a Provincial Fund to be reserved for the consideration of the President after they are passed by the Provincial Council."

(51) 13th Amendment, Article 154Q:

"Parliament shall by law provide for:-

- (a) the election or members of Provincial Councils and the qualifications for membership of such Councils;
- (b) the procedure for transaction of business by every such Council;
- (c) the salaries and allowances of members of Provincial Councils; and
- (d) any other matter necessary for the purpose of giving effect to the principles or provisions of this Chapter and for any matters connected with or incidental; to the provisions of this Chapter."

(52) Amnesty International Report 1984

(53) Indo - Sri Lanka Accord, July 1987, Preamble

(54) ICJ Report by Professor Virginia Leary, 1981, p69

(55) Sri Lanka News, 29th July 1987

(56) Sri Lanka News, 12th August 1987

(57) Rupert Emerson: From Empire to Nation, 1953

(58) Seton-Watson: Nations and States, 1977

(59) Ross Smyth: Transnational Perspectives, 1985

(60) Sri Lanka Sun: 30th October 1987

(61) Minority Rights Group Report on 'Constitutional Law and Minorities'

(62) Malcolm Shaw: Title to Territory in Africa, 1986

(63) Hindu: International Edition, 13th August 1988