

EXECUTIVE PRESIDENCY AND THE RESOLUTION OF ETHNIC CONFLICT

(M.I.M. Mohideen)

Executive Presidency

The Executive President of Sri Lanka, is the head of State, head of Government and Commander in Chief of the Armed Forces. No legal proceedings can be initiated against the Executive president in any court or tribunal in respect of anything done or omitted to be done by him or her either in his or her official or private capacity. This means that the head of Government can treat the law with absolute contempt because the law cannot touch him or her. The Executive Presidency is an all powerful institution and does not enable other institutions to function properly because all those institutions come under the shadow of the Executive Presidency.

When the Executive President's political party secures overwhelming majority as happened during the terms of President Jayawardene and President Premadasa, then the Executive President has the right to chose the Prime Minister, the right to determine the number of Ministers and appoint Ministers and assign subject and functions to them, to determine what subjects and functions shall be retained by him or her, change the assignments, alter the composition of Cabinet and the right to appoint Ministers outside the Cabinet and the absolute power to remove any one of them from office, coupled with the powers to dissolve Parliament after the expiration of one year after the general election, his or her unfettered right to appoint the highest posts in the public service, the judiciary, diplomatic representatives and the defence forces are breathtaking and make the Executive President the most powerful person in Sri Lanka.

To circumvent the requirement of Parliamentary approval for expenditure, there is a special fund known as the President's Fund and payments out of this fund do not need to conform to the procedures for payments and is operated according to President's discretion and pleasure.

When the Executive Presidential system was set up, it was thought that the presidential candidate will have to have the support of the minorities to win and therefore will be sensitive to minority sentiments and aspirations. But what had happened after the elections? The minorities had no chance what so ever to influence the Executive President during the six year of his or her tenure. This has been proved quite clearly by the three elected Executive Presidents we had earlier.

The office of the Executive President is limited to two terms only. The person who won the election for the second term had ignored the minority interests because he or she knew that he or she cannot become the President for the third time under the present constitution.

It is argued that the powers of the Executive Presidency are necessary for rapid economic development. But we have realized that the Executive Presidency had not worked the way it was expected. During the last twenty years rule of the Executive Presidency, thousands of men, women and children have been killed and injured. The number of people who have become refugees have exceeded million. Billions of

Rupees have been spent on war. The country is bankrupt, cost of living is unbearable, unemployment and inflation are at their peak.

The former Executive presidents used their powers in a dictatorial manner and plunged the country into an orgy of violence. Introduced the Provincial Councils without a satisfactory solution to the Ethnic problems in the country. Suspended the provisions of the Provincial Council Laws which prohibited the President the proclamation of the temporary merger of the Eastern Province with the Northern Province before the complete cessation of hostilities and surrendering of the arms and ammunitions by the militants. Conducted fraudulent and illegal election in the East to the North-East Provincial Council. Failed to utilize for the purpose of Law enforcement and maintenance of security in the Northern and Eastern Provinces the same organization and mechanism of Sri Lanka Government, as are used in the rest of the country.

Sri Lanka constitution discriminates minorities

United National Party – UNP and the Sri Lanka Freedom Party – SLFP which ruled Sri Lanka since Independence are responsible for the present plight of the Country. From what had happened to the minorities after the independence, we find it difficult to accept the view that the UNP and the SLFP are truly national parties. When one bears in mind the policies that have been pursued in this country by successive Governments, which were headed by one or the other of these parties, on Citizenship, Language, Education, Employment, Land Alienation, Colonization and Intercommunal Relationship, one find it difficult, in fact, impossible to accept their position as National Parties.

Sri Lanka Freedom Party of Mrs. Srimavo Bandaranaike received a mandate at the election held on May 27, 1970, to repeal the Soulbury Constitution of 1947. On May 22, 1972; having abolished the Senate, declared the country to be a Sovereign and Independent Republic within the British Commonwealth. The Republican constitution did away with some of the important safeguards provided for the minorities by the Soulbury Constitution at the time of Independence.

The provisions of Section 29 (2) and (3) of the Soulbury Constitution which were designed to give some protection to minorities against the legislations which the majority might be tempted to enact to the disadvantage of the minorities, did not find a place in Mrs. Srimavo Bandaranaike's Republican Constitution.

1972 Constitution did not re-enact the provisions of the Soulbury Constitution, which empowered the Governor General to appoint members to represent any important interest that is not represented or inadequately represented.

The Senate wherein the minorities found a forum to air their views and grievances disappeared with the Constitution that was brought in to being by the United Left Front Government.

The UNP-Jayawardene Constitution of 1978 is same as the SLFP Constitution of 1972 with regard to the abolition of safeguards to the minorities. More damaging are

its provisions with regard to the demarcation of Electoral Districts, the Proportional Representation Election System and the Executive Presidency.

Resolution of ethnic conflict

The ethnic conflict in Sri Lanka is directly related to the constitution. Despite the introduction of the 13th amendment which gave limited powers to the Provincial Councils, Sri Lanka remains by and large a unitary state.

The North-East minorities have realized that the power sharing in a unitary state is not going to solve their problems, so they are demanding devolution under federal setup. When the devolution was denied in the 1972 constitution, the Tamils formed the separatist movement.

Recent actions of the LTTE demonstrate a clear trend towards the consolidation of its authority in the Northern and Eastern Provinces which creates a grave risk of a separate state being established. The LTTE has spoken publicly of already having control of territory with its own administration, Army, Navy, Law courts, Police stations, Banks and other institutions.

The Sri Lanka Government views with great concern the continued abduction of children for compulsory military service, the continued extortion of money in the form of compulsory taxation, the smuggling of arms and the rapid expansion of the armed forces of the LTTE, ethnic cleansing of the Muslim in the North in October 1990 and the forcible occupation of Muslims Lands and Properties and the destruction of More than 150 Muslim place of worship - Mosques in the North East, reflect the LTTE's intention to create and dominate some kind of a parallel government in the North and the East not responsible to the central government, which would lead, inevitably, to the establishment of a separate State.

The LTTE has admitted that they have made serious mistakes in their relationship with the Muslims in the North East and has shown a desire to rectify the mistakes and seek a new relationship with the Muslim community. The change of attitude is clearly manifested in the LTTE agreeing to return to the Muslim their lands and properties forcibly taken over by the Tamils in the North East.

LTTE had made two fundamental concessions. Firstly, they signed a cease-fire agreement at a time when the government had no resources to fight the war, due to economic bankruptcy. Secondly they entered into the 'Oslo Consensus' with the UNF government committing themselves to explore a federal framework within which to find a political settlement to the North East ethnic conflict.

However the situation is totally different in the South. There is no united and consistent stand on the North East ethnic issues. The two major political parties in the country, who together have the support of a minimum of 70% to 80% of the population, are not in agreement, even on the question of constitutional amendment to resolve the ethnic issue.

They continuously keep criticizing each other bitterly, sarcastically and, quite often, viciously, adopting differing positions, splitting hairs at times, even on minor issues.

Whilst in power, every attempt is made to take the peace process forward. But, once in the opposition it is a question of disagreeing and opposing every move.

LTTE has publicly and unequivocally declared, that the biggest obstacle in settling the North-East conflict is the divergent views and no consensus on any issue in the South with regard to the settlement of North-East ethnic conflict.

Under these uncompromising situations the LTTE could justify the resumption of war on the basis of the incapacity of Sri Lankan state to resolve the North East conflict.

If the UNP and PA governments are serious in their commitment to substantial devolution of power as a means to resolve the North East conflict, they should get together now immediately, before it is too late, in a spirit of sacrifice and compromise in the greater interest of the Nation.

The main issue in hand is the two-third majority required in parliament to amend the constitution to resolve the North East ethnic conflict on the basis of Oslo Consensus and Tokyo declaration.

The position of the 225 members in the present Parliament after April 2004 General Election - UNP – 82, PA – 65, SLMC – 5, EPDP – 1, UPF – 1 Total – 154. JVP – 40, ITAK – 22, JHU – 9 Total – 71. The two-third majority of 150 in the present parliament of 225 is not an impossible task to amend the constitution if the main political parties UNP and SLFP get together.

We have blundered, not once, but many times over the years. When one party attempts to solve a National problem, the other party obstructs. We have seen this process repeatedly. Yet, we do not seem to have learnt any lessons from the colossal, costly blunders of the past which have hampered the Nation's progress.

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