

IMPEDIMENTS IN IMPLEMENTING THE 13TH AMENDMENT TO SRI LANKA CONSTITUTION

His Excellency the President intervening and proposing that the Thirteenth Amendment be first implemented until the final report of the APRC is made available, the full implementation of the Thirteen Amendment has become a prerequisite for a possible negotiated solution to the national question in Sri Lanka.

When the Thirteenth Amendment was first introduced in 1987, the minorities expressed strong reservations about many aspects, including the provisions on Local Government, Land, Schools, Highways, Law & Order, Agriculture Administration and Financial Powers granted to Provincial Councils. Most of our Chief Ministers from both the UNP and the UPFA are now expressing the same frustrations that were expressed initially by the minorities.

The 13th Amendment in practice

The three lists – Provincial List, Concurrent List and the Reserve List. The list dealing with Central Parliament powers is drafted in a very expansive and inclusive way, whereas the list dealing with Provincial powers is drafted in a very narrow and restricted way.

Local Government

If you look at the provisions which deals with Local Government something that can be devolved without any problems with respect to national security or sovereignty, you will see that it is drafted in such a way that there are lot of conditions attached, which mean that the Central Parliament retains powers over a number of aspect of Local Government.

Land

Land is even more interesting. It talks about alienation and use of land to be a provincial subject. Provinces are given responsibility over land through the establishment of an institution called the National Land Commission. But for twenty years, the National Land Commission has not been established.

Schools

There is no criteria spelt out as to what is a national school under the Centre and what is an ordinary school under the provinces. The Central Minister of Education can wave his ministerial wand and convert a school from an ordinary school into a national school, thereby taking it under the control of the Centre. While the Provincial Council elections were on, the Minister of Education declared a number of schools in Ampara District to be National Schools.

Highways

Thirteenth Amendment says National Highways are matters for the Centre. Who decides what a National Highway is? Under the Thoroughfares Ordinance, there is an amendment, Section 5A introduced in 1988 for the Minister, either to declare a road or a class of roads. So he has declared all A class roads and B class roads as National Highways. The roads connecting Trincomalee, Batticaloa, Kalmunai and Pottuvil all along the eastern coast are either A or B - that is for the Centre.

Law & Order

For over twenty years, the provisions on Police matters, Law & Order have not been implemented. The 13th Amendment to the Constitution devolved police powers to a certain extent on the Provinces and also provided for the establishment of Provincial Police Commissions. Yet, none of the Provinces other than the North-East showed any interest in establishing its Police Force. When she was the Chief Minister of the Western Provincial Council in 1993/94, former President Chandrika Kumaratunge insisted that the police powers be vested in the Provincial Councils, but she did not sign the relevant gazette notification when she became the Executive President.

In last years meeting of Chief Ministers a resolution was adopted to push for land and Police powers to the provinces. SLFP General Secretary and Minister Maithripala Sirisena has said in May 2008 that the Government would devolve all powers including police powers to the East in accordance with the 13th Amendment to the Constitution. Eastern Province Minister M.L.A.M. Hisbulla has also told recently that a three member committee would be appointed soon to grant land and police powers to the Provinces.

Paddy Cultivation

In 2003, the Supreme Court unanimously held that paddy cultivation is a matter for the provinces. Even after that judgment the Provincial Councils still do not implement it. The Centre is not giving up and the Provincial Councils do not want to take over. This is the unfortunate situation.

Administration

Article 154G about the power relating to executive matters. The Provincial Council have the power to make statutes. Unless and until statutes are made in respect of Provincial Council subjects and Concurrent Subjects, the Provincial administration will not be able to exercise executive powers. The average delay in the Attorney General's Department after a draft has been sent is 2-3 years and this is what has affected the legislative capacity of Provincial Councils.

Cabinet Ministerial Sub Committee

The Cabinet Ministerial Sub Committee appointed on the full implementation of the Thirteenth Amendment has not met yet. The Minister of Constitutional Affairs is not a member of that Committee. Neither is Prof. Vitharana who is the Chairman of the APRC.

National Policy on Provincial and Concurrent List Subjects

When the Thirteenth Amendment is the law of this country and if the 13th Amendment is to make any headway, what the Eastern Provincial Council could do is to pressurize the Government and tell them "Stop declaring national policy on Provincial and Concurrent list subjects without consulting us".

Specific Problems encountered by the North-East Provincial Council

The problems that the elected North-East Provincial Council faced from December 1988 to March 1990 with regard to the implementation of the powers devolved by the 13th Amendment. The 16 month administration of the first Provincial Council for the merged North East was mired in controversy and a fight for political survival. It was reported that the Muslims in the North East were harassed by province's ruling Eelam People's Revolutionary Liberation Front (EPRLF), the Eelam National Democratic Liberation Front (ENDLF), Tamil Eelam Liberation Organisation (TELO) and their guardian - the Indian Peace Keeping Force (IPKF).

On March 1, 1990, Varadharaja Perumal, the then Chief Minister of the merged N & E, convened a special meeting of the North Eastern Provincial Council and announced an ultimatum to the Premadasa Government for the fulfillment of 19 demands of his party, EPRLF. The reason was that the Provisions of the 13th Amendment was not fully implemented – powers on police and land were not granted to the periphery.

Problems in respect of the Administrative Structure

The implementation of devolution of powers down to the grassroots level cannot take place without the Provincial Council exercising control over the District Kachcheri System, the Divisional Assistant Government Agents and the Grama Sevaka Officers. A request was therefore made to the President to transfer the District Kachcheris in the Province and the offices subordinate to it to the PC. The President was not agreeable to that request but decided on an alternate solution, which was, for both the PC and the Central Government to have control over the District Government Agents, while only the PC was to exercise control over the Divisional Assistant Government Agents and Grama Sevaka Officers.

Subsequently, the President even made the appointment of the Government Agent, Trincomalee without consulting the Chief Minister, and reversed the earlier directions regarding the provincial council control over the Divisional Assistant Government Agents and Grama Sevaka Officers.

The President also proceeded to elevate the Government Agents as District Secretaries on par with Provincial Secretaries. He also elevated Divisional Assistant Government Agents as Divisional Secretaries on par with Provincial Heads of Department. These executive actions frustrated devolution of powers. Thus, the institutional structure to implement devolution at the district level and below became a major problem, reducing the NEPC to a glorified Municipal Council in Trincomalee.

Shortage of Management Services Personnel

There is an acute shortage of engineers, accountants and administrators to work in the Provincial Council. The Centre was not at all helpful in meeting the requirements of the PCs. The NEPC took the next logical step of calling for applications and recruiting engineers and accountants. This was strongly resisted by the Central Ministry in charge of Public Administration. That Ministry even wrote to say that recruitment of engineers and accountants was the prerogative of the Centre. When the NEPC was earlier pleading for engineers and accountants, that Ministry turned a deaf ear. It was at that stage that the Chief Minister A. Varatharajaperumal remarked that even if the Sinhala political leadership of Sri Lanka wished to keep the country united, the bureaucrats in the Centre would ensure the division of the country.

Sinhalisation of the Eastern Province

After demerging of the East in October 2006, the Eastern Province administration is ethnically transformed. There are many Sinhalese ex-service men now in key positions. The Eastern Province Governor, the Government Agents of Ampara and Trincomalee Districts, the Rehabilitation Co-ordinator, the Governor's Secretary, the Provincial Chief Secretary and the Secretary to the Eastern Province Public Service Commission are all Sinhalese.

The land Minister in the Eastern Provincial Council and the Secretary to this ministry are Sinhalese. 80% of schools in the Eastern Province are Tamil medium schools, the Education Minister is a Sinhalese. The combination of Sinhala Administrative and Security Officials are well equipped for the rapid implementation of the Sinhalization programme of the Eastern Province and not the full implementation of the 13th Amendment to the Constitution.

Conclusion

1. Most of the Sinhala Politicians have an anti-devolution mindset.
2. The all island management services is not devolution-friendly.
3. The existing institutional structures in the Provinces and the Districts are not conducive for devolution.
4. Even after all the Provincial Councils came into existence, only the North-East Provincial Council - NEPC was clamouring for institutionalizing devolution of powers. The other Provinces waited for the benefits of devolution to accrue to them through the efforts of the NEPC.
5. All the three Lists of devolution given in the 9th Schedule to the Constitution are weighted in favour of the Centre, due to the unitary character of the Sri Lankan Constitution.
6. The unitary character of the Sri Lankan Constitution help the Sinhala majority Central authorities, most of whom have an anti-devolution mindset to infringe upon the powers devolved to the minorities.
7. Last twenty years experience shows that even the minimum devolution to the minorities will not be possible until the anti-devolution mindset of the Sinhala politicians and bureaucrats is first got rid of.

Today there is no democracy in the Eastern Province. The Tamil community cannot go about freely, the Muslim community cannot go about freely and even the Sinhalese community cannot go about freely in the Eastern Province. If the Para-military group is not disarmed and the 13th Amendment is not fully implemented immediately as proposed by His Excellency the President, the minorities – Tamils and Muslims in the North East would soon join hands to mobilize local and international support to protect their legitimate constitutional rights in Sri Lanka.

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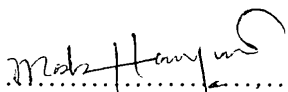
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