Sovereignty, North-East Merger and Independence

By: P Varothayasingham

Sovereignty

1. Tamils in Eelam have always voted for Tamil political parties and elected Tamil representatives. No Singhala political party has ever had any significant support in Tamil homeland, unlike in Scotland where the Labour Party has 45% support, still there is a separate Parliament for Scots). So Tamil Eelam has never been a constituent part of Singhala Sri Lanka, and the Tamils must have their own separate Parliament..

2. Parliamentary Sovereignty is a common law tradition which only applies in UK due to UK's long period of political development. With no single document which can be called UK's constitution, Parliament is supreme and it can make or unmake any law. If UK adopts a written constitution (draft written constitution legitimised by a constitutional referendum) then Parliament will have to comply with the provisions of the constitution.

3. In all other countries it is the people who are sovereign, not Parliament which is only an elected body. So Sri Lanka's National Assembly is not a sovereign body. Delhi Parliament is also not a sovereign body. They are merely elected bodies and not supreme in their own right.

4. In 1972 the Singhalese lawfully abolished the Soulbury Constitution (under which Ceylon was granted independence in 1948). But they failed to legitimise the new draft constitutions (in 1972 and 1977) by referendums. These drafts were produced by Singhala MPs but they were not approved by Tamil MPs, so they are not even approved drafts. So the island of Ceylon has had no constitution since 1972 and the Singhalese have been working to documents which have no legal status, they are rubbish!

5. Whilst the island of Ceylon was under no constitution, the Tamils, in 1977, voted for separation and independence. The Sri Lankan National Assembly has no power to override this decision because it is not a sovereign body (see paragraph 3 above).

6. The next logical step for the Tamils should have been a referendum, restricted to the Tamils, on independence. This was not in fact necessary because of 1 above, ie Tamil Eelam was never a constituent part of Singhala Sri Lanka. Besides, in the 1977 general election ALL 18 Tamil constituencies voted for independence, which was effectively a referendum giving the consent of the Tamils authorising separation and independence.

Power and Authority

7. Authority is power exercised with general approval of the people, say, following a general election. Power is getting things done by people even if they do not wish to obey. People submit to authority because they accept its legitimacy, to power out of fear for the consequences of not so doing. A government needs both authority and power. The invading forces in Eelam have power but no authority. A government in exile may have the authority but no power. In diplomacy a legitimate government which has authority is called 'de jure' government. A government that does not have authority but is nonetheless effectively in control is called a 'de facto' government.

North-East Merger

8 In the joint Northern-Eastern provincial council election held in November 1988, in the Eastern province the Tamils won 17 seats and the Tamil Muslims won 17 seats. The Singhalese won just one seat. The provincial council election was for the merger of the Northern and Eastern provinces. The merger was to be confirmed by a referendum but it was never held as it was not considered necessary due to the overwhelming Tamil victory. The people in the Eastern province exercised their sovereign authority and voted for the merger. The Colombo government has no authority to de-merge east from the north, neither does the unelected judiciary from Singhala Sri-Lanka.

UK may recognise a new state but it does not recognise regimes. Eelam may be recognised once the Tamils agree on a democratic constitution. The government formed from the elected representatives will then be recognised. The UK Institute of Public Policy Research has produced a draft written constitution for UK. This could a starting point for drafting the constitution for Tamil Eelam.

Indian Constitution and Indian Unity

9. In Canada the state of Quebec is French speaking as opposed to the rest of the states which speak English. The major political party in Quebec wanting separation won power in state parliament and took their case to the Supreme Court of Canada (which is Canada's highest constitutional court). In1998 the 9 judges of the Canada's highest court gave a unanimous 78-page judgement on the province of Quebec's drive for separation from Canada. The Supreme Court's historic ruling stated that:

"The province of Quebec does not have the right either under the Canadian Constitution or international law, to separate unilaterally from the rest of the country. But the rest of Canada must negotiate if Quebeckers vote fair and square to leave."

The Canadian Supreme Court also held that the Quebeckers did have the right to hold a referendum and if there was 'a clear majority vote on a clear question in favour of secession' then 'the other provinces and the federal government would have no basis to deny the right of Quebeckers to pursue secession'.

We can transpose this on Tamil Nadu. If in Tamil Nadu state election a political party won more than 50% seats on a manifesto for independence or on a manifesto which had independence as the larger agenda among other goodies) then that party, having won control the state government, can call for a referendum on separation. If more than 50% voted for separation in the referendum then Tamil Nadu will be recognised as an independent country.

So the rest of India must negotiate if the people of Tamil Nadu people vote fair and square to leave India!

Indian unity cannot be guaranteed by undermining the emergence of independent Tamil Eelam. India needs to reform its own constitution to make it fully federal for long term stability. The good news is that the Indian government has appointed a commission to review its constitution.

Coexistence between the Government and the TMVP

Half Head

The government after signing a Memorandom of Understanding with the Pilleyan group plans to contest local council elections in the east jointly with the outfit under the betel leaf symbol. Yet, it's not a long time since the government has vehemently denied any dealings with these people when it was accused of turning a blind eye to atrocities committed by the outfit. On the other hand, not only Sinhala opposition parties like the UNP but also the government Tamil coalition partners like EPDP and EPRLF have come out with strong criticism against the marauding role this group plays in the east.

The most logical reason for the government to be in virulent opposition to the LTTE is the undemocratic, armed existence of the latter. But to use another armed gang to combat this evil can hardly be endorsed in a democratic system. Any government using the services of an extremist group to further its own political interests would willingly or unwillingly have to let its own principles be tarnished by the extremist needs in the end.

The government protected Karuna and lavishly enjoyed the fruits of his atrocities against the Tamils, not in the least to usher in a better environment but to wipe out the menace of the LTTE presence from the east, resulting in the end having to discard him for a worse replacement, the logical outcome being the most ferocious Pilleyan group coming to the fore.

Not only in the east but also in the south Rajapakse regime is increasingly relying on extremist forces for its day-to-day survival. As witnessed in the aftermath of the last budget vote the government had to satisfy Sinhala Buddhist demands of the extremist JVP and the JHU in abrogating the Cease Fire Agreement even at the cost of earning international condemnation.

And now, to prove that the east is in full control the government has to go for unwarranted local council elections at the behest of the Pilleyan outfit that is steadfast in its reliance in using white terror as an effective tool in a smoldering political environment as prevails in the east. What is evident here is the fact that any solution to the ethnic question would tend to be further discolored by the political wishes of the perpetrators than the ethnic needs of the victims. In the south this leads to keeping all solutions within the parameters of the 13th amendment while in the east it is the farce of local council polls.

Liberating the east could not mean anything less than having a democratic space for the minorities to live in a peaceful atmosphere. But the present government's haste in holding polls in the east does not seem to have had any regard for such requirement. Nor was it any wish on the part of the government to furnish the east with any local council administration to manage their affaires on their own. The only reason behind the decision to hold local polls seems to be the futile determination of the government to show to the outside world that everything in the east has come to a happy ending as a result of the military victory, which at the same time could serve as a precedent for the north in the future.

However, as has been proved everywhere in the world, freedom is not something that can be imposed from above at the whim of a ruling class. Freedom is perceived and celebrated by none other than the people themselves. It is not improbable for a government or an armed gang to suppress the real wishes of a people for some time by way of spurious polls, but not for long.

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