

Seeking for a Solution: 13th Amendment + or 2000 +

Sumanasiri Liyanage

The United National Party has changed its policy on ethno-political question and stated that it would withdraw from a federal type solution to a unitary solution that would be based on the 13th Amendment to the Second Republic Constitution. Clarifying this change, its spokesperson, Ravi Karunanayake, even used words decentralization and devolution as synonym. At a meeting in Monaragala, Ranil Wickramasinghe talked about adopting a policy framework that is doable. This change in UNP policies may be a shock to Colombo civil society, but it would not be a shock for someone who carefully observed the political line of Ranil Wickramasinghe since 1987. He took anti-Indo-Lanka Accord position in 1987; he refused to participate fully Parliamentary Select Committee procedure in 1994; he was critical of 1995 devolution proposals and was against 2000 draft constitution bill. In spite of his action in the past, he was branded as a federalist, even as an asymmetrical federalist, mainly because of the Oslo Communiqué. Now it is clear that for Ranil Wickramasinghe, Oslo Communiqué is an exception rather than a rule as far as his policy orientation is concerned. The Editor, *Daily Mirror* has welcomed this decision with grand words about conflict negotiation, but at the end taking a position on which all the talks should be based, namely, unitary state with substantial devolution. Wickramasinghe appears to be emulating President Mahinda Rajapakse not only visiting temples and carrying babies, but also accepting unitary state label. This signifies the poor quality of the Sri Lankan current political leadership, especially of the two main parties.

UNP's new change can also be interpreted as a coup against the progressives of the APRC and APRC's attempt to find an amicable solution to contested issues in the context of pressure coming from India, the US, Tamil and Muslim civil leaders and many others. Now the UNP has given an excuse to the SLFP so that the SLFP can stick to its post 2005-policy changes, i.e. maintaining the unitary character of the Sri Lankan state. The constitutional discourse in 1994-2004 has generated a consensus that the controversial labels like 'unitary' and 'federal' should be avoided. And there has been a consensus that a new constitution should be adopted by parliamentary two-third majority and at a referendum or a single majority at a newly-elected constitution assembly and a referendum. So this will answer Ambassador Jayathilake's argument that keeping unitary would avoid a need of referendum. Mahinda Chinthanaya explicitly stated that the citizen will be allowed to vote for constitutional change at a referendum meaning Mahinda Rajapakse was ready to go for a referendum. (And he has, I agree with Dayan Jayathilake, best chance to win such a referendum)

The draft constitution of 2000 was in fact based on the 13th Amendment, Managala Munasinghe Committee suggestions, and civil society proposals for constitutional change. So it was not an outcome of radical change but result of a gradual change. The tragedy of the Sri Lankan politics was that it failed to adopt this step-by-step approach. Both the UNP and the SLFP supported Mangala Munasinghe proposals. The only significant changes introduced by the 2000 draft bill include the proposal to go back to cabinet system of government, an introduction of co-ordinate relationship between two-tiers of government as far as defined subjects are concerned and the requirement of provincial consent to make changes to power devolution. Tissa Vitharana proposals can be easily defined as 2000 draft + a second chamber.

So those who think that drafting a new constitution should begin with 13th Amendment of 1987 forget completely some of the agreements reached by two main political parties. It is necessary to emphasize that this should not be mixed up with Minister Devananda's suggestion that the full implementation of the 13th Amendment would facilitate the constitutional discourse. In fact I suggested the same idea many a time when attempts at state restructuring were at the horizon in 1995, 2001 and 2005.

So, in this article I appeal to federalists as well as to non-federalists that we should re-demarcate the boundaries of the discussion to go beyond the conventional dichotomy between federal and unitary. Why do I suggest so? I suggest it for two reasons: First, as I mentioned earlier, the international discourse on power-sharing in pluri-national democracies (PNDs) has advanced very much beyond this conventional binary analysis. Secondly, there has been a general consensus now that two constitutionally separate competencies –namely two-tiers of governments- should be established as one main element of the constitution.

In this context, the most legitimate constitutional questions to be asked are: What should be the relationship between these two constitutionally separate competencies? How this two-tier governmental arrangement could ensure co-operative governance instead of conflictual governance? We can also add a question that would have economic implications. How and in what manner could governance be effectively adhered to the principle of subsidiarity?

The setting up of constitutionally separate two-tiers of government can be justified on multiple grounds. The notion of subsidiarity has increasingly been invoked to legitimize the setting up of a lower level of government. It has multiple meaning, but what is most common and relevant here is that it refers to organizational and territorial principle requiring that decision-making and implementation be carried out in a space that is as close as possible to the citizen. This idea also goes with the notion of deliberative democracy that all the affected should be given an equal opportunity to participate in decision-making as equals in a non-coercive context. Secondly, in pluri-national societies, the concept of majority is a fluid one. Had different national groups been marginalized or dominated by the majority national group, an asymmetry of allegiances to the state would have been the result. Two-tiers or multiple tiers governance would provide a space to these national groups to exercise their authority in contiguous areas where they represent the majority. So it has conflict prevention or resolution aspect. Thirdly, as local representation in the center includes both individual and group interests, decisions that would be injurious to numerically small communities can be prevented. So that pluri-national character of the country will be reflected in making decisions.

I believe that we have now reached some kind of consensus on the above three points although there are unresolved complex issues. However, the question is how this two-tier system of governance could be institutionalized to promote cooperative governance and to minimize prevailing suspicion, mistrust and fears of different communities. Different countries have tried different mechanisms. Some worked well while the others were not that successful. This mixture of results once again makes the constitutional design more problematic. In my opinion, the concepts of division of labor and subsidiarity would contribute in resolving these problems. In any country, there are issues that are nationally relevant. These subjects include in modern polity, inter alia, national defense, macro-economic management, international relations, maintenance of minimum standards on social welfare, education, health, environment protection and

similar issues. Then there are issues that are locally specific. The distinction between national and regional may be blurred in some issues but quite clear in many issues. So the notions of subsidiarity and division of labor can be deployed in constitutional design. Hence the question of which tier is superordinate or subordinate would become a non-issue. The issue is which tier can perform the function effectively, and efficiently. In this sense, the criteria may be not political but economico-technical. So the relationship between national and provincial with regard to these two categories should be based on the principle of non-hierarchical horizontality.

In my opinion, Tissa Vitharana proposals have elegantly dealt with these issues in non-controversial manner. Why are we going to invent the wheel once again after spending so much time and resources?

e-mail: sumane_l at yahoo.com .