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THIRTEENTH AMENDMENT TO SRI LANKA CONSTITUTION

Governor, Chief Minister and Provincial Council
- Devolution or Comic Opera ?

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INTRODUCTION AND SUMMARY

On the 29th of July 1987, Prime Minister Rajiv Gandhi of India and President J.R. Jayawardene of Sri Lanka signed the Indo Sri Lanka Accord with the stated objective of bringing 'peace and normalcy' to Sri Lanka. Sometime thereafter in August 1987, the Sri Lankan Parliament passed the 13th Amendment to the Constitution and the ancilliary Provincial Councils Act. And the Sri Lankan Government declared that the enactment of these laws fulfilled the promises made in the Accord, to 'devolve power' on the Tamil people. The Liberation Tigers of Tamil Eelam, who were recognised as 'combatants' by the Accord and who had emerged as the leaders of the Tamil national struggle, rejected the basic provisions of the 13th Amendment. Its leader, Velupillai Prabhakaran declared that the set of proposals envisaged in the Indo Sri Lanka Accord had serious limitations and fell short of fulfilling the aspirations of the Tamil people. And on the 10th of October 1987, the so called Indian Peace Keeping Force, which had arrived in Sri Lanka 'to keep the peace' launched a widespread and indiscriminate attack on the Tamil people with the objective of bending them to the will of the Indian Government and securing their unconditional support for the Indo Sri Lanka Accord and the 13th Amendment. This offensive against the Tamils of Eelam continues to the present day and a reward of one million rupees has been offered for the capture of Velupillai Prabhakaran, dead or alive. At the same time the Indian Government has sought to 'persuade' the LTTE to surrender their arms, accept the 'basic provisions' of the 13th Amendment, and enter the electoral process by participating in elections for Provincial Councils established under the 13th Amendment and the Provincial Councils Act. At a public meeting in Tamil Nadu on the 5th of August 1988, Prime Minister Rajiv Gandhi declared 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 did 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.”

Prime Minister Rajiv Gandhi is right in declaring that ‘this is the time for moral courage and political courage’. But the invitation extended to the Tamil people to participate in the so called ‘democratic electoral process’ within the framework of the 13th Amendment, lacks the moral courage to face upto the political reality that under the 13th Amendment power will continue to reside in a Sinhala dominated Central government, within the frame of an unitary constitution. The 13th Amendment has created a Provincial Governor appointed by the President and holding office ‘during his pleasure’ and who will exercise executive power in respect of provincial matters – a Provincial Governor who will also be the administrative head of the provincial public service and who will control the Provincial Finance Fund. It has created elected Provincial Ministers whose function will be to ‘aid and advice’ the Provincial Governor in the exercise of HIS functions and who themselves will not exercise executive power but who will have executive power exercised ‘through’ them!. And the 13th Amendment has created an elected Provincial Council without control of finance, 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, without control of planning, and whose remaining meagre legislative powers are subject at all times 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 declares that Liberation Tigers of Tamil Eelam should have the ‘moral and political courage’ to accept – in the interests of the Tamil people!

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 Tamils of Eelam. And if patriotism is the last refuge of scoundrel, the rhetoric of morality and courage is often the first refuge of political opportunism.

Morality and political courage demand that the Indian Government should recognise that which should at least now, be plain to the meanest intelligence – 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 loyal and faithful servant, the Provincial Governor. The 13th Amendment will do nothing to share legislative power with the Tamil people because the meagre legislative power 'devolved' on a Provincial Council will be subject at all times to the overriding will of the Central Parliament. 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 the administration of this Act 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, because the 13th Amendment expressly enacts that emergency regulations shall override any statute passed by a Provincial Council. 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. 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. The architects of the 13th Amendment have been unable and unwilling to break away from the path trodden by successive Sinhala governments which have sought to divide the Tamils of Eelam 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.

The 13th Amendment prefers to pretend 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. It would seem that both the Sri Lankan Government and the Indian Government lack the 'moral and political courage' 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.

THIRTEENTH AMENDMENT TO SRI LANKA CONSTITUTION

Governor, Chief Minister and Provincial Council - Devolution or Comic Opera ?

BY 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 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 oathtaker 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 ofcourse 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 be 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.^{2 9} 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.^{3 0} 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'.^{3 1} And the Central Government will be responsible for the training of all recruits.^{3 2} 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.^{3 3} 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.^{3 4} 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,^{3 5} 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'^{3 6}, all Police

Officers in the Province shall function under the direction and control of the D.I.G. of such Province.³⁷ 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."⁶⁰

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'.³⁹ 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.⁴⁰

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'.⁴⁰ 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 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.¹¹ 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.”⁶²

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 and 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''⁴¹

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 8 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 154D:

"Parliament shall by law provide for:-

- (a) the election of 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

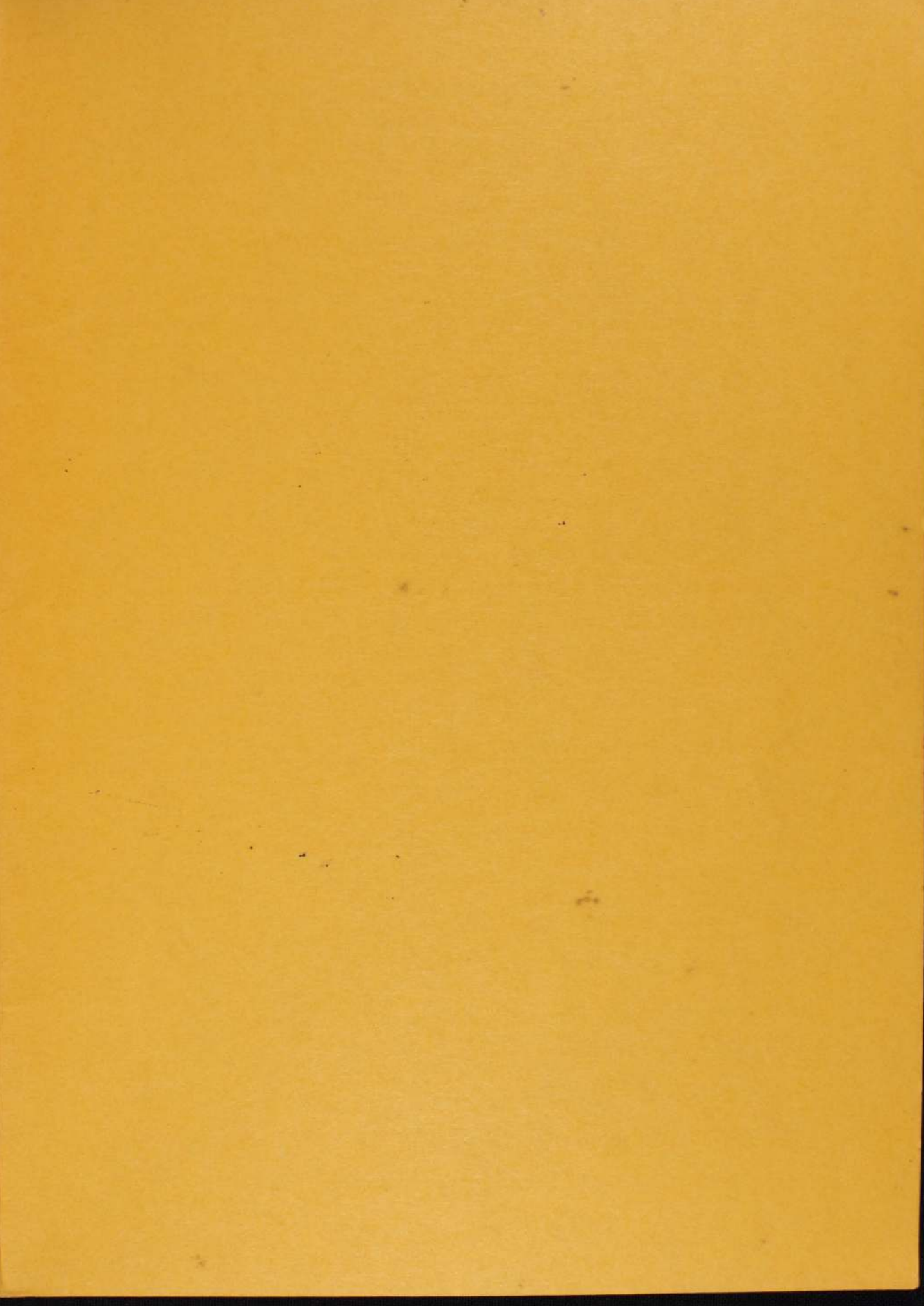
(60) Sri Lanka Sun: 30th October 1987

(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

ARCHIVES



THE LONDON TAMIL FORUM

CONSIDERING THAT THE TAMIL PEOPLE ARE A PEOPLE WITH A RICH CULTURAL HERITAGE AND AN ANCIENT LANGUAGE, AND

CONSIDERING THAT THE TOGETHERNESS OF THE TAMIL PEOPLE HAS GROWN THROUGH A PROCESS OF OPPOSITION AND DIFFERENTIATION DURING A TIME PERIOD OF MORE THAN THREE THOUSAND YEARS, AND

CONSIDERING THAT THE TAMIL PEOPLE, LIVING IN MANY LANDS AND ACROSS DISTANT SEAS HAVE BECOME INCREASINGLY AWARE OF THE LINKS THAT LINK THEM TOGETHER AND OF THE BONDS THAT BIND THEM TOGETHER, AND

CONSIDERING THAT THE TAMIL PEOPLE SEEK TO LIVE IN EQUALITY AND WITH DIGNITY AMONGST THEIR FELLOW HUMANS, AND

CONSIDERING THAT HUMAN RIGHTS ARE THOSE RIGHTS WHICH SPRING FROM THE INHERENT DIGNITY OF THE HUMAN PERSON AND

CONSIDERING THAT THE IMPERATIVE NEED TO SECURE AND PROTECT HUMAN RIGHTS TRANSCENDS THE BOUNDARIES OF STATE POWER, AND

REALISING THE CONTINUING AND URGENT NEED TO SECURE INTERNATIONAL RECOGNITION AND PROTECTION OF THE HUMAN RIGHTS OF THE TAMILS OF EELAM,

THE LONDON TAMIL FORUM CORDIALLY INVITES TAMILS EVERYWHERE TO JOIN AND PARTICIPATE IN THE EFFORT TO SECURE FOR THE TAMILS OF EELAM THE ENJOYMENT OF THOSE HUMAN RIGHTS WHICH ARE ENSHRINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND IN THE INTERNATIONAL COVENANT FOR CIVIL AND POLITICAL RIGHTS, AND IN PARTICULAR TO SECURE INTERNATIONAL RECOGNITION OF

1. THE TAMILS OF EELAM AS A NATION
2. THE EXISTENCE OF AN IDENTIFIED HOMELAND FOR THE TAMILS OF EELAM
3. THE RIGHT TO SELF DETERMINATION OF THE TAMIL NATION IN EELAM
4. THE RIGHT TO CITIZENSHIP AND FUNDAMENTAL RIGHTS OF ALL TAMILS IN THE ISLAND OF CEYLON

**JOIN THE LONDON TAMIL FORUM
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