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RE-THINKING SUBNATIONAL GOVERNMENT : ISSUES IN DECENTRALIZATION

By
Asoka S. Gunawardena

The system of sub-national government in Sri Lanka has a long history. As elsewhere it has evolved as a response to political imperatives of central control over the state machinery while at the same time and accommodation of conflict groups within the state system. The inherently contradictory imperatives of political control and accommodation have resulted in a dualistic and dichotomized system of sub-national government. The substance of the system of sub-national in Sri Lanka points out the many risks of decentralization, not the least decentralization failure. It is time to re-think, bringing the development issues to the fore, for, after all political stability is surely dependent upon development outcomes. Naturally such an approach presumes that political control is motivated by a desire to make decentralization work rather than by partisan concerns of political expediency.

FROM DECONCENTRATION TO DEVOLUTION: SYSTEM CHANGE IN SUB-NATIONAL GOVERNMENT

The system of sub-national government in Sri Lanka incorporates deconcentrated and devolved forms. It evolved as a series of successive decentralization initiatives to manage conflict and development. These constitute a set of distinct structural elements in the system of sub-national government in Sri Lanka.

Law and Order to Development: The Deconcentrated Model:

Sri Lanka on independence inherited a centralized state with an integrated territorial system as the framework for sub-national government. The Government Agent (GA) as the head of territorial, i.e., provincial administration, was in direct line of authority from the Colonial Secretary and constituted the link in most administrative chains of command, de-facto if not de-jure. The Donoughmore Reforms of 1932 introducing "limited self-government" also introduced a duality of political power and authority with the Governor and Officers of State looking after Defence, Justice and Finance and elected Ministers taking care of Home Affairs, Agriculture, Agriculture and Lands, Local Administration, health, Labour, Industry and Commerce. In the ensuing conflict between colonial and national interest and the push to "ceylonize" the administration found the national ministers opting to reach out direct to the territorial units by-passing the line of administrative authority and control of the Government Agent.

Therefore followed a rapid expansion of governmental activity with the number of government departments increasing from 40 to 92 between 1928 and 1948 and the creation of a provincial bureaucracy. Most of these new government departments established their own provincial sub-officers weakening the GAs central position in the provinces. A significant aspect of the changes was the de-linking of the local bodies, Municipal Councils, Urban Councils, Town Councils and Village Councils from the integrating authority of the GA. This de-linking provided the impetus for far reaching developments in the form of local governments as a distinct and separate system structure of decentralization. Thus the stage was set for the parallel functioning of structures and systems of government and administration at the sub-national level.

This system of sub-national government continued after independence in 1948 with the significant change in the unit of administration being made the District, leading the emergence of the "District Administration". The administrative tiers of the Division and the Village remained intact.

"Decentralization for Development" : Emergence of Administrative Deconcentration

The impetus for administrative reform came from the political and social changes set in motion by the electoral change of 1956. The scene of development activity shifted to the rural areas, leading to the establishment of rural institutions as "participatory" extension outreaches of the central departments adding a new dimension to the sub-national system. The expansion of the role of the government as the sole provider of development services also expanded the "development" role and function of the district administration. In orienting itself to the development task, the district administration was constrained by the absence of effective coordination and of machinery for planning.

The strategy for decentralized management of development was to restore the integrating role of the GA, centralizing administrative supervision of instruct development activities through a coordinating role. Local government institutions were marginal to the expansion of the developmental role of the government. Decentralized management of development thus established a dichotomy of elected and appointed systems of sub-national government.

Decentralization for Development: Incorporating Political De-concentration

The question of effective coordination of decentralized development continued to worry successive governments. The scope of such coordination was

extended to include planning, monitoring and evaluation of decentralized development. The scope of decentralized management was also extended to incorporate people's participation. While establishing "Development Committees" at the district and divisional levels, the thrust of decentralization strategy was a "partnership" between political and administrative action. In the aftermath of the youth insurrection of 1971, political action was brought into decentralized development management through a "District Political Authority" (DPA) and later formalized through a system of "District Minister". The policy instrument for decentralized development was the "Decentralized Budget" (DCB) allocating resources for works of a local nature.

In an effort to link the local government institutions with the district administration a three-tiered system of local representation was established replacing the extant system.

The district level body, the District Committee, brought together Members of Parliament and directly elected District Councilors, but the key actor was the District Minister as the Chairman of the Executive Committee of the District Council. It gave central politicians control over local finances. The involvement of central politicians in decentralized development management institutionalized "political de-concentration" in the system of sub-national government. The central transfers of finances to the sub-national level through the DCB were however disbursed at the instance of the members of the central legislature and entrenched the parallel presence of political influence in the sub-national system,

De-concentration to Devolution: Balancing National and Regional Interest

The District Councils in fact represented the first tentative move towards devolution. The hybrid system of sub-national government however proved inadequate to accommodate the demand for local autonomy amongst the Tamil people in the north and the east. A more substantive system of devolution was necessary. The establishment of Provincial Councils (PCs) was essentially a response to the threat of alienation of Tamil people and their exit from the unitary Sri Lankan state.

However PCs were established throughout the country radically transforming the system of sub-national government from a de-concentrated to a devolved system. Devolution of power through the establishment of PCs created legislative, executive and financial competence at the provincial level. Perceived to be a landmark reform of the system of sub-national government, PCs established a three-tiered system along with the concurrently reconstituted local government

system comprised of restored MCs and Ucs and newly constituted Pradeshiya Sabhas (PSs). However it is well to remember that devolution in Sri Lanka has been driven from the centre and as subsequent experience suggests with very little demand from the provinces, and indeed not functioning where the demand existed.

CURRENT ORGANIZATION OF SUB-NATIONAL GOVERNMENT: CHANGE OR CONTINUITY?

The passage from de-concentration to devolution has proved to be a difficult one. The provincial councils system sought to bring about a radical re-arrangement of the political and administrative order of the Sri Lankan State. The sub-national government system that resulted was thus a superimposition of the provincial council system upon the district system. It is therefore comprised of a duality consisting of the new devolved structures and the extant de-concentrated arrangements. Accordingly it is comprised of a several inter-dependent and independent sub-systems for sub-national government and administration. There is much continuity and some change in the system of sub-national government.

The Devolved System: Dynamics of Change:

Devolution implies balancing national and local interests. The devolved system is comprised of the provincial councils and the local government institutions. While they are distinct in terms of their powers and functions, the assignment of the supervision of the administration of local authorities has made the latter the dependent partner in the devolved sub-national system.

Provincial Council Sub-system

The Provincial Council constitutes the apex of the sub-national system. Key elements of the powers and responsibilities assigned to the province level are the following.

- Legislative responsibilities in terms of making statutes for the province, in respect of subjects assigned to the Provincial Council, under the Provincial Councils List and the Concurrent List. (See Annex 2)
- Executive responsibilities in terms of actions to be taken on the basis of powers in respect of subjects about which PCs have been assigned legislative responsibilities.
- Fiscal responsibilities in terms of managing the finances of the province, the raising revenue and incurring of expenditures for meeting executive responsibilities.

- Administrative responsibilities in terms of carrying out ensuing legislative and executive actions. In this regard the Provincial Councils Act No 42 of 1987 provides every PC with a Provincial Public Service. Powers of appointment, transfer, dismissal and disciplinary control are vested in the Governor of the province.

The key elements in the form structure, and functions of the devolved system are the following. These provide the legal and executive competence for the province to function as a sphere of devolved sub-national government.

- Statute making
A PC may make statutes applicable to the province in respect of subjects under the Provincial Councils List.
- Policy formulation and implementation
Executive power in respect of subjects where PCs may make statute are vested in the Governor of the Province, and is usually exercised through the Ministers of the Board of Ministers.
- Resource mobilization and expenditure management
The expenditure responsibilities of a PC are matched by arrangements for ensuring the availability of finances to take action in this regard. The PCs are assigned revenue and provided with transfers from the central government. A Provincial Fund is established for every province.
- Staffing and Personnel Management
A provincial Public Service is established in every province, the appointment, transfer, dismissal and disciplinary control of its officers are vested in the Governor of the Province. A Provincial Public Service Commission is appointed by the Governor to exercise these powers on his behalf.
- The Service Delivery System
The assignment of expenditure responsibilities of to PCs for the provision of public goods and services calls for institutional and organizational arrangements to take care of their delivery to people. The law does not specify any institutional or organizational arrangements for service delivery.

These powers and functions are exercised through a cluster of institutions established in every province. These are:

- The Provincial Council
- The Office of the Governor
- The Board of Ministers headed by a Chief Minister
- The Provincial Secretariat headed by the Chief Secretary
- The Provincial Public Service Commission

Local Government Sub-system

The government administration through elected Municipal Councils, Urban Councils and Pradeshiya Sabhas constitutes the lower or the primary tier of devolved sub-national government. The respective Ordinances and Acts specify their powers and functions and their actions should be based upon these. While the "supervision of the administration" of local authorities is vested in provincial councils, the "constitution, form and structure is retained by the central government. This assignment of responsibilities in respect of local government between the province and the centre makes for interdependence between the provincial council and local government sub-systems.

The principal activities of the three types of local authorities can be classified into three broad functional areas.

- Public health and environmental sanitation
- Public thoroughfares
- Public utility services including the provision of civic amenities

These have the basic objective of "promoting the welfare and comfort of the citizens" through services provided. The Pradeshiya Sabhas established in 1987 have a broader development mandate, viz., "provide opportunities for the people to participate effectively in decision making process relating to the administrative and development activities at the local level".

For budgetary purposes the operations of local authorities are organized around seven programmes as follows.

- General administration and personnel services
- Health service
- Physical planning, public thoroughfares, and land and buildings.
- Water supply
- Public utility services
- Civic amenities
- Electricity

The central government has taken over the responsibility for electricity and water in respect of most local authorities.

Subject to the overall supervision of the (provincial) Minister, local government institutions are competent spending authorities with financial and fiscal powers, appropriating expenditures and authorizing revenue instruments through the Annual Budget. Local government finances comprise of assigned sources of revenue, intergovernmental financial transfers, user fees and borrowings in meeting assigned expenditure responsibilities. The main sources of assigned revenue are rates and taxes, stamp duties, court fines and penalties and rents.

The De-concentrated System : Inertial of Continuity

The central presence at the sub-national level through de-concentrated structures functions at two levels through the District Secretariat and the Divisional Secretariat. Successors to the colonial territorial administration, they continue to report to the centre, though the division has shifted from the devolved to the de-concentrated sub-system. The relationship between the district and the division has changed during the post-devolution times, first functioning as a full-fledged class 1 department reporting directly to the centre and subsequently being brought under the supervisory purview of the district secretariat. The district and the division function as the units of administration for different governmental operations, but they do not have any original expenditure responsibilities. They are implementing agencies.

The District Sub-system

The District Secretary (successor to the Government Agent) performs a very much more limited role since the "district administration" days. District Secretary's functions are now limited to those where the district continues to be the unit of operations such as Elections, Census and Statistics, as well as the co-ordination of district programmes such as the De-centralized Budget, the Samurdhi Programme and Rehabilitation and Reconstruction in conflict affected areas.

In recent times efforts have been made to resuscitate the coordinating role of the District Secretary in terms of a planning and monitoring function. Thus District Planning Secretariats have been constituted and an elaborate expenditure monitoring function established. However it must be noted that the district sub-system performs a purely "agency" role. The District Secretary functions as the Secretary and convenor of the District Development Committee that is

co-chaired by a central Minister and the provincial Chief Minister. The District Secretary chairs the District Coordinating Committee as well as several other coordinating committees in respect of central agency activities that continue to be programmed on a district basis.

The Divisional Sub-system

The division has since emerged as the unit of administrative operations for most central government as well as provincial development activities. The division performs a dual role, linking the dual system of sub-national government. It is accordingly vested with statutory authority and agency functions of central government agencies hitherto performed by the Government Agent (by the Transfer of Powers Act No. 52 of 1992). Grama Sevaka Niladharis report to the Divisional Secretaries. The Divisional Secretary also functions under delegation from the Governor of the province in carrying out executive functions of the provincial council administration.

In this context the key functions of the Divisional Secretariat are as follows.

- Administrative and regulatory functions assigned under various legislative enactments.
- Preparation and implementation of an integrated development plan for the division.
- Agency functions for central government ministries, departments and statutory bodies as well as the provincial council.
- Coordination of administrative and development activities within the division.

Thus the Divisional Secretariat (and in a wider sense the “divisional administration”) brings together a portfolio of activities which entails accountability to multiple principals for whom it is the implementing agent as well as for the people for whom these activities provide services.

The Dual System of Sub-national Government : The Contradictions of Change and Continuity

Thus the result is a hybrid system of parallel development functions, service delivery programmes and administrative structures. The problem is that the extant

system of sub-national government duplicates administrative arrangements thereby creating confusion and ambiguity regarding roles and responsibilities of both elected and appointed arms of government.

FRAMEWORK OF INTER-GOVERNMENTAL RELATION : WHO DOES WHAT?

The fundamental role of a system of sub-national government is to improve the well being of the local people by promoting the development of the local economy and providing infrastructure and services. This is a role that involves significant responsibility for the allocation of resources. It is based on the assumption that benefits of particular services are largely confined to local jurisdictions and the appropriate mix can be set to suit local needs and preferences. Achieving efficiency in resource allocation then requires clear allocation of functions between the different tiers of government, central and sub-national even when a particular tier would be functioning both as principal and agent. However what specific functions are performed in the provision of services would need to be defined and re-defined in the context of the role of the State.

Roles and Functions : Lack of Clarity

From the point of view of resource allocation it is the devolved system that is vested with expenditure and revenue assignments, i.e., provincial and local tiers. The de-concentrated sub-systems do not have any expenditure or revenue assignments. While the District sub-system coordinates the DCB programme it does not constitute an expenditure assignment. Indeed the exercise constitutes an incoherent programme of local initiatives of central politicians to garner popular local support. It produces infrastructures that the provincial or the local level has had no hand but must rationalize and maintain. The actual DCB expenditures duplicate the expenditure assignments of the provincial and local devolved tiers. As already noted the divisional sub-system functions purely as an agent in sub-national resource allocation.

Development functions of a sub-national government would broadly involve the following purposes.

- Promoting economic development to generate productive employment opportunities for the people.
- Provide services that would enable adequate living standards and improve the extent of territorial equity in human development.

- Provide infrastructures that are necessary for the well being of the people and support the growth of economic activity.

The roles and functions of the provincial and local tiers are largely historically determined, despite wide ranging expenditure assignments. Provincial Councils took over the de-concentrated operations of the central government departments in respect of devolved subjects. It is significant to note in this regard that infrastructure and economic development activities had been taken over by central parastatals or foreign funded projects that remained outside of the activities that were taken over by Provincial Councils. Hence Provincial Councils play only a marginal role in respect of promoting economic development and providing infrastructure. Their major role and function is in the provision of services, especially human resource development services.

Local government sub-system plays a marginal role as the primary tier of sub-national government. Indeed the presidential Commission on Local Government (1999) described the extant system of local government a "system of democratic decentralization for the performance of a limited scope of functions at the local level" rather than "a comprehensive and full-fledged level of governance". Local authorities that were never in the mainstream of development were further marginalized by the supervision of their administration being assigned to Provincial Councils, de facto placing them under the administrative purview of the latter.

The mandate of "the comfort, convenience and well being of the community" is indeed a wide one. In fact however the local authorities are confined to some local physical infrastructure (such as roads, drains, parks, libraries, housing and other civic amenities) and some activities in public health (through activities pertaining to scavenging, conservancy, public lavatories, abatement of nuisances etc.). Although Pradeshia Sabhas are empowered to undertake development activities, they do not play any significant role in this regard.

Assignment of Expenditures : Duplication and Overlap

Both, Provincial Councils and Local Authorities are competent spending authorities. They are empowered to spend on subjects specified by law. In the case of the Provincial Councils, the constitution sets out in three Lists the separation of subjects, powers and responsibilities between the Centre (Reserved List) and the province (Provincial List) as well as a share list of subjects (Concurrent List). A Provincial Council is vested with executive powers in

respect of subjects under the provincial and Concurrent Lists and may undertake expenditure in respect of them. However there are ambiguities in this expenditure assignment. The Reserved List includes "all subjects and functions not specified in List I or List III, and therefore Lists I and III should be understood only in so far as is specifically provided for under each subject heading.

Therefore the expenditure assignment of PCs is effectively confined to those activities which were transferred originally. It is further circumscribed by "National policy" on all subjects and functions being reserved for the centre. The centre has declared specific service delivery infrastructures such as hospitals and schools as "national" and taken over their operational responsibilities. In fact the centre has launched several programmes of activities in the area of subjects in the Provincial List. Despite a wide area of subjects and functions that have been assigned to PCs, effectively eighty percent of expenditure is incurred in respect of social infrastructure, comprised of Education, health, Indigenous Medicine, Social Services, probation and Child Care. Education and Health account for as much as seventy percent of total PC expenditures. Overall the provincial share of all government expenditure is less than ten percent.

Local Authorities are also assigned subjects where they may undertake expenditures. The 13th Amendment guarantees the powers and functions of local authorities. The PCs cannot reduce their powers but can enhance them. IN law therefore the subjects assigned to local authorities constitute a fourth List of expenditure assignment in the system of devolution. However this implicit fourth List is not an exclusive assignment of expenditure responsibility. In fact several central agencies had entered the domain of local authorities especially in respect of the provision of public utilities and infrastructures. As already noted the provision of electricity and water has been withdrawn. Roads are apportioned between the centre, the provinces and the local authorities. In a sense the fourth List in effect is a residual list.

Thus there are many ambiguities and overlaps, perhaps gaps too, in the assignment of expenditure responsibilities to the sub-national system. The expenditure responsibilities of the centre are carried out through the district or the divisional administrations. This results in parallel expenditures. In fact there are multiple sources and channels of finances flowing to the sub national level. There is lack of clarity as to who does what as between the centre and sub-national system as well as within the sub-national system.

Revenue Assignment : Responsibility for What

The devolved sub system is assigned sources of revenue. The revenue assignment of Provincial Councils is a long list of nineteen items with a general

proviso for "other taxation within the province to raise revenue for provincial purposes". However in respect of the key sources of revenue, provincial powers of taxation are subject to law made by Parliament or limits set by parliament. Turnover tax, Stamp, Duties and Motor Vehicle License Fees account for about ninety percent of provincial revenue. Turnover tax on Wholesale and Retail Sales accounts for fifty percent of all provincial revenue. The provincial revenue assignment accounts for about twenty two percent of total expenditure needs of provinces. The revenue assignment varies from about sixty percent in provinces. Total provincial revenue constitutes approximately three percent of total government revenue. The size of the revenue assignment raises the fundamental question of the extent of provincial fiscal responsibility.

As already noted Local Authorities have a fiscal base comprised of income from taxes on movables and immovables, assigned revenue, grants, trading services, borrowing and other miscellaneous sources. On an average own revenues account for less than sixty percent of total expenditure, varying according to the tax base of the LA. In respect of small pradeshiya Sabhas own revenue may account for as little as thirty percent of expenditure.

Resolving Imbalances : Dependence on the Centre

Central transfers meet the huge expenditure gap of the devolved system. The transfers to provincial councils are comprised of four grant items.

- Block Grant for recurrent expenditures
- Criteria-based Grant for discretionary capital expenditures
- Matching Grant (to reward revenue collection) also available for discretionary spending.
- Province Specific Development Grant for specified capital expenditures.

The ratio of recurrent to capital expenditure is approximately 4:1. (See Annex 8) Transfers are determined and allocated annually and provided for in the National Budget. The cash flows are disbursed on a monthly basis with capital grants often lagging behind and often not being fully released. What is important about the assessment of recurrent financial needs of provinces is that the process is yet largely historical and does not take into account horizontal imbalances.

Local authorities also receive financial transfers. These reimburse salaries and wages of local authority approved cadres varying from hundred percent in the case of Pradeshiya Sabhas and Urban Councils to fifty percent in the case of the Colombo Municipal Council. For the smaller local authorities financial transfers may account for as much as seventy percent of total expenditure.

MANAGING SUB-NATIONAL GOVERNMENT : RISKS AND OPPORTUNITIES.

Decentralization is the basis of sub-national government. There are risks and opportunities in decentralization and these are therefore present in a sub-national system of government. Decentralization is an institutional arrangement on the part of the government to become responsive to citizens needs and preferences. It involves a reallocation of powers, on the one hand between different tiers of government and on the other between the government, the private sector and the community organizations. It can take different forms, whether de-concentration, delegation or devolution.

Decentralization Failure :

Whatever the form, closeness to people is the fundamental advantage or opportunity of decentralized modes of sub-national government. It is considered to be more efficient in so far as closeness to people enables to become responsive, better match the level of public goods provided with the collective preferences of the people, and involve people in spending decisions. However at the same time there are risks, dangers of decentralization. Decentralization failures (just as market failures) are possible.

There are several aspects in the functioning and ensuing substance of sub-national government that suggest the system has failed to make use of the opportunities that decentralization provides.

- **The Small Size**
The overall devolved sub-system accounts for about 11% of Government Expenditure and 3% of Government Revenue. Further devolved expenditure is dominated by recurrent costs of historically located service networks, as much as 80%, with little scope for reprogramming or relocation.
- **Limited Autonomy**
Central controls on sub-national service delivery structures and staffing, access to resources (with on borrowings), rates of taxation.
- **Fragmented Responsibilities**
There is no clarity in roles and responsibilities between the centre and the devolved sub-national system as well as between the different tiers of sub-national government. The devolved and de-concentrated

sub-national systems are organized at two level making for four levels of sub-national government. There is also direct engagement of central agencies in service delivery through national policy, programmes and infrastructures.

- **Large Imbalance in Devolved Expenditure and Revenue**
Devolved revenue accounts for about 20% of total devolved expenditure, and with the exception of the Western Province, less than 10% in most of the provinces. The balance is met through annual transfers. Combined with central controls, it results in lack of responsibility and accountability for performance. There is a situation of “receive and spend” creating a serious situation of fiscal discipline.
- **Weak Public Expenditure Management**
The annual cycle of assessment and transfers has left little incentive to move on to a medium term expenditure framework. The dichotomy of current and capital budgets and prevented policy/planning/budgeting linkage.
- **Lack of Information**
The advantage of proximity to the people is not backed by information available with provincial and local authorities as to their needs and preference. There is little or no systematic information and data gathering on the socio-economic situation or the status of service delivery performance in the province or the local area.
- **Inadequate Capacity**
There is overall weak planning and budgeting. There are no sub-national plans for any of the sub-national systems. Budgets are routine revisions of the current year’s estimates of expenditures.
- **Lack of Fiscal Transparency**
Resource allocation decisions pertaining to the different sub-systems are taken in different places and are not known to each other. Within each of the systems resource allocation decisions are not based upon information. Nor is information regarding resource allocation decisions available to the public.

Central Regulation

The tendency on the part of the central government is to intervene in sub national government, especially when confronted with problems of “control” over

its actions and activities. Such intervention by the central government can take many forms. What is important is that such intervention erodes the fundamental basis of decentralization when the centre decides how the sub national should respond to local needs and preferences.

The objective of decentralization is to make provincial and local authorities take responsibility for the better management of resources that are available to them. As noted above they have very little discretion in accessing and using resources. The limits on sub national autonomy have taken many forms.

- **Service Delivery Structures**

The organizational structures for delivery of services have been carryovers from the pre – provincial systems of further deconcentrated as in the case of zonal offices in Education. The provincial service delivery structures have been created by the Central Government as “National Policy” and adopted by the provinces through cadres released to the provinces from the all island services. There can be no Provincial Responsibility for such a system.

- **Service Delivery Programmes**

Most service delivery systems are “National Policy”. These entail cost that should be met and borne by the Provinces, especially in terms of allowances that are payable to the different categories of staff.

- **Cadre and Staffing**

The centre approves cadre and staffing for the Provincial Ministry, Departments and Agencies, in terms of the organization structure and posts. Once cadres are approved the Provincial Authorities cannot make any internal adjustments and deployment, again in terms “National Policy”.

- **Finances**

Control over finances takes place through control over staffing and limits over rates and taxes as well as the whole process of transfer of finances to provide for the imbalances.

Making Decentralization Work:

Decentralization does not or can take place in isolation. Accordingly sub – National Government does not function in isolation. It must function in interdependence and partnership with the National or the Central Government.

Effective decentralization calls for drive from the centre and demand from the periphery. It involves altered roles and functions that the centre and sub national levels.

- **Decentralization Rules**

The altered rules and functions must find clear expression in rules guiding the system of sub national government especially in regard to the role and role relationships of the different components. The application of rules for regulating inter – governmental relations need to be synchronized and carefully orchestrated. Clarity in Roles and Responsibilities

Managing the cross cutting implications of decentralization requires clarity in fiscal, political and administrative responsibilities between the national and sub national tiers of government. There are several success imperatives of decentralization.

- **Supportive Policy Environment**

The external institutional environment of devolution should complement and support the transfer and performance of decentralized responsibilities by the sub national government. Whereas checks and balances are necessary to ensure accountability, it is important to ensure that they do not transcend into restrictive controls that result in effect the centre taking responsibility for provincial actions.

- **Centre Province Partnership**

The relationship between the centre and provinces that should emerge then is one of partnership and not cover conflict. It should be positive and be based upon a negotiation of respective roles and responsibilities for sharing responsibilities in a holistic approach to development action. Decentralization is an evolving process and different forms of national - sub national relationships can be envisaged in different sectors of development.

- **Capacity to Perform Role and Functions of Devolved Governance**

Reallocation of responsibilities between the national and sub national tiers leads to the crucial question of public sector capacity to support the management of sub – national responsibilities. It involves on the one hand political capacity to identify and respond to local needs and preferences, and administrative capacity to provide technical support for efficient delivery of services.

RETHINKING SUB NATIONAL GOVERNMENT: THE WAY AHEAD

Sri Lanka has achieved levels of human development well above the level of its per capital income. However evidence point out that the benefits are not available to all its citizens irrespective of where they live. (UNDP, 2000) Whereas the fundamental objective of the decentralization initiatives have been reduction of inter – regional disparities and the promotion of territorial equity, the sub national government system has failed to bring about “balanced regional development”, the compulsions of political stability must be accompanied by imperatives of efficiency and equity. In the absence of a holistic strategy, devolution will only create the structures but not deliver the substance. In fact it has been said that, “Sri Lanka has not realized many of the potential benefits of decentralization”. (World Bank, 2000a)

- **Balancing National and Sub National Interests**
In the final analysis the stability of a devolved system of governance will depend upon the interest and the commitment of central and sub national political elites to cooperate in a national and sub national partnership. The balance of power will hinge on the institutional arrangements that are available for national and sub national partnership, negotiation and conflict resolution. It is a two way process.
- **Relationship Intra Sub National Roles and Responsibilities**
Efficient allocation of resources avoiding gaps, duplications and inconsistencies calls for clear statements of responsibility and authority in the delivery of public services by the devolved and deconcentrated lines of sub national government. The extant parallel functioning of political and administrative structures with little or no transparency in their respective decisions and actions makes the system dysfunctional resulting in high costs of decentralized development transactions.
- **Structure, Functions and Resources of the Sub National System**
The structure of the sub national system, what they do at the different levels and how each level is funded is critical to its ability to respond innovatively to local needs and preferences. Since the system of sub national government is constituted by parallel political and administrative structures of both the devolved and deconcentrated form, their functions and resources should be determined holistically as a system. Whether the provincial and the local tiers can act responsively depends upon their access to independent revenue bases and resources

of income. The guiding principle is that the expenditure assignment should be matched with an appropriate revenue assignment and the sub national government should operate within firm budgetary parameters.

- **Accountability of Devolved Governance**

It is accountability to local constitutes that would determine whether sub national system in fact performs its mandates and produces the expected benefits of decentralization. It concerns two aspects. On the one hand is the involvement of the civil society. What is involved is giving "voice" to the local public. On the other hand is the national accountability of the sub national system.

That the basis of decentralization is political is not an issue. But what - they lack is political willingness to allow sub national government to become focussed on and oriented to the pursuit of development. The fragmentation of the system of sub national government leaves the initiative in the hands of individuals whether political or bureaucratic. It is precisely this personalization of the sub national government that has exposed decentralization in Sri Lanka to the many inadequacies in its functioning with the concomitant failure to have benefited from the many opportunities it should have opened up. It would seem that despite the form, the substance of sub national government in Sri Lanka is not about people. The different sub systems within the sub national system have become avenues of access to state resources and means of extending political patronage rather than windows of opportunity for collective action in human development.

Central Government – Local Government Relations in Development Policy Planning

By

M. O. A De Zoysa

Introduction

Development policy planning is concerned with the Government's coordinated policies to achieve national economic goals. The development planning involves two kinds of planning activities, e.g. economic planning and physical planning. The dichotomy between these two can not be clearly demarcated, yet it is done so for the purpose of the convenience of study. The economic planning is concerned with such goals and objectives as rapid economic growth, reduce poverty and income inequality, high basic needs attainment, greater educational attainment, increase employment opportunities, maintain price stability, lower international economic dependence, reduce regional disparities promote and protect environmental quality etc. On the other hand, the physical planning is concerned with three principal activities such as public health and environmental sanitation, public thoroughfares and public utility services.

Regional development policy planning deals with carrying out above mentioned planning activities at regional level through regional bodies created under the devolution or delegated powers. Regional development policy planning becomes necessary when there are irreconcilable disparities in socio – economic development at regional levels, and when these disparities become regional development policy planning as it makes possible to solve regional problems through regional efforts based on regional economic and human resources and development requirements. Due to this the regional development policy planning occupies an important position in the overall development policy planning and this has been the main contributing factor for the emergence of various types of regional institutions for regional development policy planning and implementation. When these regional institutions are created within a framework of a unitary state, the role of the central government becomes very important, because it is the central government that decides and determines all matters relating to regional institutions such as what is to be given, how to be given, what type of institutional structure is created and what relations emerge. Thus, study on the centre local relations necessarily involves an examination of these aspects mentioned above. Based on this theme, this paper will attempt to analyse the relations of the central government with the Provincial Councils and the Local government Authorities, which are the

main regional and local level institutions, involved in development policy planning and implementation in Sri Lanka.

The Provincial Councils

The Provincial Councils were established by the central government in 1987 with a view to bring about a solution to the Tamil's ethnic problem through the devolution of powers and to accelerate their regional economic and social development based on the extended people's participation at regional level. The legal and constitutional foundation for the Provincial Councils were provided by the Provincial Councils Act No. 42 enacted by the parliament in 1987 and by the 13th Amendment to the Constitution introduced in the same year. Accordingly, nine Provincial Councils are elective bodies for a term of five years, and their members are elected on the basis of the list system of proportional representation. The total membership of each Provincial Council is determined on the basis of its land area and population. Accordingly, one member is to be elected for every 1000sq kilometres and per 40,000 persons. The membership of each Provincial Council is given below in the table.

Provincial Councils - Number of Members

Province	District	No of Members	Bonus Seats	Total for Province
Western	Colombo	43	02	104
	Gampaha	36		
	Kaluthara	23		
Central	Kandy	28	02	58
	Matale	11		
	Nuwara Eliya	17		
Southern	Galle	22	02	55
	Matara	17		
	Hambantota	14		
Northern	Jaffna	19	02	38
	Mannar	05		
	Vavuniya	04		
	Mullativu	05		
	Killinochchi	03		
Eastern	Batticaloa	11	02	37
	Ampara	14		
	Tricomalee	10		
North Western	Kurunegala	35	02	52
	Puttalam	15		
North Central	Anuradhapura	21	02	33
	Polonnaruwa	10		
Uva	Badulla	19	02	34
	Moneragala	13		
Sabaragamuwa	Ratnapura	23	02	44
	Kegalle	19		

Powers and Functions

The powers and functions of the Provincial Councils have been set out in the List- 1 and the List-III of the 9th schedule of the 13th Amendment. The List I or the Provincial Councils List contains 37 subject matters that have been exclusively devolved to the Provincial Councils. The List III or the Concurrent List contains 36 subject matters and they can be exercised concurrently by the Central Government and the Provincial Councils but the law of the centre is supreme in case of a conflict. For the convenience of the study, 73 subject matters contained in the List – 1 and List – III can be summarized under the following headings as follows.

1. Law and Order

Police and Public Order to the extent set out in Appendix –1

2. Provincial Planning

Preparation and implementation of Provincial Economic Plans, Progress Control, Evaluation of Progress, Collection of Data and Dissemination of Information, Manpower Planning and Employment, Nutritional Planning and Programmes, Special Employment Programmes relating to the Province, Promotion of Youth Activities, Technical Manpower Development Programmes, Rural Development.

3. Education, Educational Services and Higher Education. To the extent set out in the Appendix – 111

4. Finance

Taxes as set out goes in respect of subjects assigned. Borrowing to the extent permitted by the Parliament and Provincial Debt, Private Lotteries within the Province.

5. Land, Agriculture, Irrigation and Power.

Land (to the extent set out in the Appendix –III), Agriculture and Agrarian Services, Extension Services. Education and Research, Irrigation- all matters relating to Planning, designing, Implementation, Supervision and Maintenance excluding Inter- Provincial Irrigation Schemes, Mines and Mineral [permitted by law, Animal Husbandry, Surveys, Social Forestry, Protection of Wild Animals and Birds. Protection of Environment, Extension and Promotion of Electricity within the Province.

6. **Health and Health Services.**
Health, including Indigenous Medicine, Preparation and Implementation of Annual Provincial Health Development Plan. Establishment and Maintenance of Public Hospitals, Rural Hospitals, Maternity Homes and Dispensaries, Provision of Facilities (excluding the procurement of Drugs), Matters relating to Intoxicating Liquors, Adulteration of Foodstuff and other goods, Drugs and Poisons, Prevention of Infectious Diseases, Population Control and Family Planning, Control of Provincial Medical Boards, Registration of Births, Marriages and Deaths.
7. **Housing and Constructions**
Implementing, Coordinating and Monitoring Provincial Housing Projects, Supporting Self- help Housing Projects, Providing Loans and Building Materials, regulation of Matters in the Protection of Tenants Act and the Rent Act, National Housing and Constructions.
8. **Social Services and Rehabilitation**
Probation and Child care Services, Rehabilitation of Destitute Persons and Families, Rehabilitation and Welfare of Physically, mentally and Socially Handicapped persons. Relief of the Disabled and Unemployable, reformatories and Borstal Institutions.
9. **Trade, Commerce, Foods and Food Supply**
Trade and Commerce, Food Supply and Distribution within the Province, Rationing of Food and Maintenance of Food Stocks, Price Control and Consumer Protection, Fisheries, Market Fairs, Cooperative and Cooperative Development,. Cooperative Banks, Provincial Enterprises, Tourism.
10. **Transport, Highways and Infra-Structure**
Roads, Bridges, and Ferries within the Province (excluding national Highways, Bridges and Ferries), Regulation of Provincial Transport Services and Inter provincial Transport Services jointly with other provinces.
11. **Local Government**
Supervision, Resolution and Auditing of Local Government Authorities, Conferring additional powers to Local Government Authorities. Rest Houses and Circuit Bungalows Administered by the Local Government Authorities and the Government Departments, Renaming of Towns and Villages, Burials and Burial Grounds.

12. Cultural, Sports and Media

Arts, Media and Sports, Libraries, Museums and similar other institutions financed by the Provincial Council, Ancient and Historical Monuments (excluding national importance). Festivals and Exhibitions, Pilgrimages, Archaeological Sites (except national importance). Charities and Charitable Institutions,. Regulation of Unincorporated Trading, Literary, Scientific, Religious, and Other Societies and Associations within the Province, Newspapers, Books, Periodicals and Printing Presses.

13. Others.

Acquisition and Requisition of Property, Offences against statutes, Inquires and statistics relating to the matters in the Provincial List and Concurrent List.

It clearly appears from the above list that the Provincial Councils have been vested with powers and functions to deal with regional development policy planning covering its both aspects – economic planning and physical planning.

The legislative powers of the Provincial Councils are to be exercised by the Council under the Chairman. The legislative powers include the enactment of statutes relating to financial and policy matters decided by the Board of Ministers headed by the Chief Minister supported by the Chief Secretary.

The Governor

The Governor occupies a special position in the Provincial Councils System. He is the Chief Executive as well as the Chief Accounting Officer of the Provincial Council. The Governor is appointed by the President for a period of five years and can be removed either by the President himself or by a resolution passed by the Council addressing to the President to that effect. He is directly responsible to the President for the exercise of powers and functions vested to him under the Constitution. The Governor being the direct representative of the President links the Central Government with the Provincial Councils. The powers and functions of the Governor are as follows.

1. Matters relating to the Council

Summon, prorogue and dissolve the Council. Address or send messages to the Council.

2. **Matters relating to Policy Making and Statutes**
Assent statutes or refer back to the Council with his opinion for reconsideration. If passed for the second time, reserve such statutes to be sent to the President for reference to the Supreme Court. Send messages to the Council calling for statutes. Call the Board of Ministers to take policy decisions for legislation where necessary.
3. **Matters relating to the Board of Ministers**
Appoint the Chief Minister, and other Minister, Assigned duties and functions to them in consultation with the Chief Minister. Receive executive decisions of the Board of Ministers or the Ministers for his sanction. Submit executive decisions received from Ministers to the Board of Ministers.
4. **Financial Management**
Sanction of appropriation form the Provincial Fund. Making rules and regulation to administer the Provincial Fund and the Emergency Fund. Receive Auditor General's report on accounts and present it to the Council.
5. **Provincial Public Service.**
Appoint the Provincial Public Service Commission. Make rules and regulations in respect of the activities of the Provincial Public Service Commission. Make appointments, transfers and maintain disciplinary control relating to the Provincial Public Service.

The Governor can exercise these powers and functions either directly by him or through the Board of Ministers or through the officials. As the Head of the Provincial Executive it is his responsibility to ensure the proper functioning of the Provincial Councils system in conformity with the law. Therefore, he is expected to keep in close touch with all activities of the provincial Council. In this regard, he is responsible for the constitutionality of statutes passed by the Provincial Council, conformity of executive decisions taken by the Board of Ministers with national policies, proper management of the Provincial Fund, and proper administration of the Provincial Public Service. However, under normal circumstances, the Governor is expected to assume a position similar to that of a nominal executive. But under special circumstances, such as financial instability, failure of provincial administrative machinery and proclamation of Public Security Act the Governor is empowered to use his discretion with the consent and the approval of the President.

Chief Minister and the Board of Ministers.

There is a Board of Ministers headed by Chief Minister to assist and advice the governor. The Chief Minister is the political head of the provincial executive and is appointed by the Governor. In this regard the Governor has to appoint a member who can command the majority support in the Council. However, if the members are elected on party line and if there is a political party which has secured and overall majority in the Council, the Governor is bound to appoint the leader of the winning party team as the Chief Minister. The Board of Ministers comprising not more than four other Ministers are appointed by the Governor on the advice of the Chief Minister. Under normal circumstances, the Chief Minister and the Board of Ministers function as the real executive for that they are collectively responsible and answerable to the Provincial Council. The principal task of the Board of Ministers is to make policy decisions on the subject matters assigned to them and executing such decisions subject to the approval of the Council and the Governor. Prior sanction of the Governor is necessary for all executive decisions taken by the Board of Ministers on the subject matters contained in the Concurrent List. In this regard the Chief Minister is responsible for relating such decisions to the Governor for his consideration.

The Chief Secretary

The Chief Administrative Officer of the Provincial Council is the Chief Secretary who is appointed by the President in consultation with the Chief Minister. He is responsible for the proper management and administration of variety of cross – sectional functions relating to planning, finance and provincial public service personnel. It is also his responsibility to provide administrative support to the political executive. Under the Chief Secretary there are sectoral secretaries who are assisted by subject heads and supportive staff.

Financial Arrangements.

Under the Provincial Councils Act each Provincial Council has been authorized to establish a Provincial Fund and to make appropriations from the Fund to the extent permitted by law. The Provincial Fund receives proceedings from the following sources.

1. Grants made by the Central Government;
2. Taxes levied by the Provincial Council;
3. Loans advanced by the Consolidated Fund, and
4. Other Receipts;
5. Foreign Grants and Aid.

Central Government grants to the Provincial Councils are allocated by the Parliament on the recommendation of the Finance Commission which is expected to make its recommendations paying due consideration to such factors as population and per capita income in the provinces, provincial development disparities and need to eliminate such disparities. Disbursement from the Fund can be effected only for the matters set out in the Annual Financial Statement. Prior sanction of the Chief Minister and the approval of the Council are necessary for disbursements. The Governor has been entrusted with the following special powers with regard to the management of the Fund and withdrawals from it.

- (a) Make rules and regulations governing the Fund including its custody and disbursements.
- (b) Receive draft financial statutes from the Board of Ministers and present them for the approval of the Council;
- (c) Causing to be laid before the Council the Annual Financial Statement.

Provincial Public Service

Under the provincial Council Act the Provincial Councils have been permitted to organize a Provincial Public Service. The Governor has been entrusted with powers to make appointments, transfers and to maintain the disciplinary control over the provincial public service with the assistance of the Provincial Public Service Commission. The Commission is composed of six members appointed by the Governor. The Governor is also responsible for making rules and regulations pertaining to the Provincial Public Service. However, the Provincial Councils have not been permitted to organize a provincial recruiting system. As such officers for the provincial administration are absorbed from the central public service.

Relations between the Central Government and the Provincial Councils.

The distinctive feature of the Provincial Councils is that they have been established on the organic law. They have been further facilitated by the Provincial Fund and the provincial public service. Since the Provincial Councils have been established on the organic law, it can be said, that they derive powers directly from the constitution. Therefore, it can be assumed that they are free to exercise executive and legislative powers so long as they work within the premises permitted by law. Any change to the existing framework can be worked out only a consciousness between the Central Government and the Provincial Councils and by a way of an amendment to the constitution. This means that the Central Government alone cannot make a fundamental change to the Provincial Councils

System. Thus the existence of Provincial Councils system is well assured by the constitution itself. This picture would certainly lead one to come to the conclusion that the functional autonomy of the Provincial Councils has been guaranteed and well assured. This is not so in real practice and there can be seen a lot of checks and limits imposed through various constitutional devices on the working of the Provincial Councils.

The devolution of powers has taken place within the framework of a unitary state. Due to this the Parliament of the Central Government is still supreme with regard to the exercise of the sovereign power of the state. In this context the Provincial Councils virtually become subordinate to the Parliament although their powers and functions have been demarcated and set out by the constitution. Thus, the Provincial Councils have not been created on the basis of true federal principles which involves not only the division of administrative powers but also the political powers between the centre and the regional units. In the case of Provincial Councils only the administrative powers have been divided but not the political power. As a result the Provincial Councils are not sovereign and they do not have powers independent of the supremacy of the Parliament. It should be noted here that all matters relating to the origin of the Provincial Councils such as decision to establish them, demarcating their powers and functions and the form of organization were unilaterally decided and defined by the Central Government. The dominance of the Central Government over the Provincial Councils has been retained through the following constitutional devices.

1. Role of the Governor as the direct representative of the President and powers vested to him in respect of the matters relating to executive, legislative, financial and public service.
2. Control of the matters of the Provincial Council List by the Concurrent List in the following manner, (a) incorporating identical matters in the both Lists; (b) causing the Provincial Councils to exercise devolved powers within the national policy framework; and (c) retaining the supremacy of the laws of the central government over the laws of the Provincial Councils with regard to the matters contained in the Concurrent List.
3. Retaining the power with the Central Government (a) to amend the Chapter XVIIIA of the Constitution in which contains the matters pertaining to the Provincial Councils. Such an amendment can be passed by the Parliament with a simple majority if all the Provincial Councils agree to the amendment or with a special majority if all the Provincial Councils agree to the amendment or with a special majority if one or more Council do not agree, (b) to make laws in respect of any matter set out in

the Provincial Councils List following the same procedure mentioned above, (c) to make laws on any subject matter of the Provincial Councils List on a request made by the Councils or a Council.

4. Prohibition for the Provincial Councils to make laws on subject matters contained in the List II or the Reserve List, the matters come under the exclusive jurisdiction of the Central Government.
5. Special powers assigned to the President to regulate and control the Provincial Councils under special circumstances such as proclamation of Emergency Regulations Act grave financial crisis and failure of administrative machinery of Provincial Councils.
6. Prohibition for the Provincial Councils to deal with matters that have been declared as of national importance by Parliament or to operate within limits imposed by the Parliament.
7. Prohibition for the Provincial Councils to deal with activities of Public Enterprises set up under law made by Parliament.
8. Powers given to the Auditor General to audit the accounts of the Provincial Councils.

These checks and limits clarify, define and set out how devolved powers are to be exercised by the Provincial Councils. The purpose of these checks and limits is to ensure the working of the Provincial Councils in a manner consistent with the objectives of the nation and the state. On the other hand they manifest how the central government maintains relations with the Provincial Councils.

Central Government and the Local Government Authorities

Local Government authorities have not been established under the devolution of powers but on the delegation of powers through acts and ordinances enacted by the parliament. However, their existence has been recognized by the constitution. At present there are three types of local government authorities functioning at three different levels.

1. Municipal Councils for major town areas;
2. Urban Councils for developed and semi-developed urban areas;
3. Pradeshiya Sabhas for areas under Divisional Secretaries divisions.

There are 18 Municipal Councils, 37 Urban Councils and 258 Pradeshiya Sabhas. Before the 13th Amendment and the Provincial Councils Act came into

being in 1987, the local government authorities had been under the direct control of the Central Government and the Minister of Local Government was responsible and answerable to the public through Parliament for their performance. A number of changes were introduced to the local governments in 1987 with the establishment of the provincial Councils. Firstly, the Municipal Councils, Urban Councils and Pradeshiya Sabhas were recognized as local government authorities by constitution. Secondly, supervision of the performances of the local government authorities was assigned to the Provincial Councils. Thirdly, the Provincial Councils were permitted to give additional powers to local government authorities but prohibited to take back the powers already assigned to the local government authorities under the respective Acts and Ordinances. Thus under the changes most of the functions relating to local government authorities that had been earlier exercised by the central government were transferred to the Provincial Councils.

All local government authorities are corporate bodies and recognized as legal entities with perpetual succession and a common seal. They have the powers subject to the relative ordinances to acquire, hold and sell property, and also may sue as well as may be sued by such name and designation as has been assigned to them under the respective ordinances. All local government authorities are elective bodies and their members are elected for a period of four years on the basis of the list system of the proportional representation. The Chief executive of the Municipal Councils is the Mayor and of the Urban Councils and Pradeshiya Sabhas is the Chairman. The Chief Executive and the Council together are responsible for decision making and implementation. All local government authorities have been permitted to maintain a fund and make withdrawals from it as permitted by law.

The role of the local government authorities in relation to the regional development policy planning and implementation is confined only to the physical planning which involves three principal functions such as Public Health and Environmental Sanitation; Public Thoroughfares, and Public Utility Services. The functional autonomy of local authorities is rather limited due to a number of factors. Firstly, they have only a limited amount of powers delegated by the central government. Secondly, the financial resources of local authorities are very limited. Thirdly, a lot of checks and limits have been imposed on the working of the local authorities. For example they are subject to the supervision of the Provincial Councils. They are bound to follow the advice, directions and guidelines given by the central government from time to time. They have to carry out the assigned development planning activities subject to the laws contained in 30 odd various Parliamentary Acts and Ordinances dealing with national and regional economic and physical planning. Finally with regard to the physical planning and the land use planning the local authorities are bound to adhere to the requirements incorporated in the Urban Development Authority Act. The UDA Law has affected seriously the

functional autonomy of the local government authorities. In this connection it is necessary to examine the powers and functions of the UDA. The UDA Law was brought into operation in October 1982 to promote integrate planning of economic, social and physical development and its implementation in the urban areas. The powers and functions vested into the UDA are as follows.

1. Preparation and implementation of integrated plans for physical development;
2. Preparation of development plans including capital investment programmes;
3. Preparation of schemes for environmental improvement;
4. Carrying out building, engineering and infrastructure development projects;
5. Acquisition and disposal of movable and immovable property, clearance of slums and shanties;
6. Rendering of technical advice to other Government Agencies on problems of land use and location;
7. Co-ordination and control of development projects carried out by other Government Agencies;
8. Formulation of land use policy in declared areas;
9. Preparation and implementation of development plans for declared areas covering such aspects like land use and density zoning, street line set backs, height of buildings, open spaces, control of environment pollution, parking, landscaping, etc;
10. Exercising of development control to ensure conformity to development plans and planning regulations.

It clearly appears that most of these functions are also the functions of the local government authorities. By an amendment brought to the UDA Law in 1982, the UDA was authorized to prepare development plan for all areas declared under the Section 3 of the UDA Law and also to carry out physical development control in such areas with penal provisions to deal with unauthorized convictions. Since the introduction of the UDA Law, all urban areas (except those coming under the Greater Colombo Economic Commission) and areas which fall within one km of the coastline around the country have been brought under the UDA Law. At present, 95 per cent of the urban areas of the country (Municipal Councils and Urban Councils) fall within the jurisdiction of the UDA.

Conclusion

Elaborated above are the nature, functions and powers of the institutions involved in regional development policy planning and implementation in Sri Lanka. In the proceedings, two types of regional institutions have been identified. They are the Provincial Councils and the local government authorities. Of these the Provincial

Councils are the most important because they are the largest regional units bases on the organic law with sufficient powers and functions to deal with regional development policy planning. However, their functional autonomy is somewhat restricted by the various checks and limits imposed upon them. The local government authorities are totally subordinate to the Central Government as well as to the Provincial Councils. They have only a limited amount of powers and functions. Their functional autonomy is greatly restricted which is clearly evident from the ongoing discussion that the decentralization of regional planning and implementation has still not taken the full form even though there is a network of regional institutions established throughout the country. This is mainly due to the lack of commitment to the devolution of powers on a basis of clear –cut demarcation between the centre and the periphery.

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SOME THOUGHTS ON GOVERNMENT AND GOVERNANCE

By

T.K.Dassanyake

The theme of Government and Governance has emerged as the main subject in global agenda since the early 1970s. The trend towards democratization of the social order has provoked so much thinking that it is currently a “hot” topic in public policy circles both in government and non-governments. It has been the subject of national and international conferences workshops and symposia where the conceptualization is been attempted.

It is argued that “Good Governance is about pursuing and promoting the greatest good for the greatest number of citizens at all times. While equally respecting and according due protection to those who may hold a different view “ (UNDP). The universal thinking speaks out that citizens voices must be heard and attend to in the growing debate on governance, as a way of thinking about relationships between the state and other stake holders in society. The public policy focus clearly affects the nature of the discussion – how terms are defined and used, from whose perspectives, and who is able to participate.

A study conducted by the Commonwealth Foundation in 1999 has since helped to shift the discussion on governance, through its emphasis on ordinary citizens, the chief actors in civil society. It was found that citizens feel increasingly disconnected from the process that affect their lives. Disempowered by such trends, globalization, competition and individualism, and they want to play a significant role in their own development and setting policy priorities. The trend that emerged from the development experiences of the recent past is that an alternative vision on development came to be reckoned. There has been a significant shift from mechanistic top down models primarily concerned with economic development, towards more dynamic participatory development approaches focusing on “human development”. There has also been a growing realization that economic growth can enrich human development, if effective policy choices are made at the national and local levels leading to a re thinking on the meaning of governance in society. The emphasis since then in development strategies has been towards promoting more socially equitable economic growth and meeting the basic needs of the poorest groups in developing societies. Widespread participation in decision-making was considered essential to the development process and decentralization has been advocated as a way of eliciting that participation

(Rondinelli Allen). Hence in 1990's the meaning of governance was expanded to focus on the capacities of the other sectors as well as the state. A greater emphasis was given to the democratic nature of governance, on the process of participation and consensus building and on the involvement of civil society.

What is new or different about the focus on governance is that it draws attention to higher order question about development than we normally address, as questions about structures, values and overall directions of a society. The challenge for all societies in the 21st century will be to create a system of governance that promotes supports and sustains human development.

The meaning of government has been viewed in a sectoral context and this has been the traditional thinking. However a new governance concept promotes a holistic multi sectoral understanding giving consideration to the needs and capabilities of all groups in the society and moving beyond the government to consider concerns and involvement of the other sectors. This holistic approach is made operational by taking a whole system perspective, including levels spheres and sectors and seeing the community level as the entry point. This holistic approach to governance can strengthen the interaction and co-operation of each of the sectors, which are encouraged through the governance process to work together in addressing development challenges. Thus governance is seen as a whole system functioning, that which cannot be discharged by the government acting alone. It will involve partnerships of public, private, civic sectors in conducting the business of government at all levels through adopted institutionalized mechanisms. Viewed in this manner the government is only a visible part of governance. But the impact of inter-relatedness will depend on how actively do the sectors participate, interact and influence the shaping of public policy.

Governance can also be defined, as the exercise of economic, political, and administrative authority to manage a country's affairs at all levels. It will involve mechanisms, processes relationships and institutional arrangements that would ultimately result in the good for all at all times. Since governance requires greater interaction among the three sectors, there should be a defined right balance among them, with built in adjustable means that would allow for long term stability and sustainability. "Good governance will deal effectively with people's concerns and helps to make choices at all levels of the collectivity. It harnesses the energies of people engaged in addressing their concerns, it gives a focus on dialogue, feed back and adaptation" (UNDP)

Decentralized Character

The multilevel nature of human system with the principles of self-determination embodied at each level is recognized as the basis for governance

that empowers the people to be self reliant, organizing and self managing building on the autonomy of local communities. This is facilitated only through a process of decentralization which itself is a characteristic of governance . This enhances the quality and capacity of the system of governance, while increasing the authority of sub national levels. Such territorial distribution of power through decentralization, which many believe to be more conducive to good governance, as opportunity is created for local participation assisting in developing people's capacities and enhancing governments responsiveness, transparency and accountability.

It is clearly emphasized by the UNDP "decentralized governance means the systematic and harmonious inter relationships resulting from the balancing of power and responsibilities between central government other levels of government and non – governmental actors and the capacity of local bodies to carry out their decentralized responsibilities using participatory mechanisms". It can create and sustain equitable opportunities for people and lead to closer contact between local government, local private businesses and local civilian groups resulting in more effective programme design reflecting local needs and priorities. (UNDP 1998)

Role of Governance in Democracy

It would be interesting to look at how governance could blend with Democratic virtues. Governance could be discussed as a democratic path. Democracy involves three relevant concerns that promotes governance. First is an instrumental concern. Democracy is a set of procedures for making collective decisions. In order to function well it requires civilized citizens and officials individuals who act according to identities and rules consistent with democratic procedures. The second is a moral concern. Democracy is not only a system for making collective decisions. It is also a system of education and socialization in the services of human virtue, collective faith and a way of life. The institutions of democracy instills ideals, identities, beliefs and codes of behavior consistent with higher human aspirations. The third is a transformative concern. This involves the transformative nature of individuals, communities and systems. "Democracy is an arena of self reflection and redefinition of individuals, institutions and communities." This character inspires commitment to a cause that build up among people as individuals and groups. It is in many ways a synthesis of different programmes for democratic governance. J. S. Mills argues that

"The first element of Good Government being the virtue and intelligence of the human beings composing the community. The most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves" (J.S. Mill 1962)

“A key objective is to create a political community within which citizens can discuss political issues in an atmosphere of mutual trust, tolerance and sympathy.”

The institutions and practices of democracy provide opportunities for intelligent interactions discourse and engagements that serve the self reflective requirements of a transformative systems of values and identities. It requires a sense of community and a shared democratic commitment and a culture promoting the visions of togetherness in the social structure. The process also conceptualizes and moulds the individual self in citizens and builds up a role for each. Citizens do have standing as a person of political significance as one who has the right to participate in the democratic process of action. It also means defending those rights. They defend the right to vote by voting at elections, then to participate in deliberations on public policy through free speech, free association and free access to information. Such rights are inalienable. They belong to the role and not to the individual. These are citizens' rights that are utilized in practical terms in use, which gathers meaning only if used in a role of citizens actions.

Public Actions

Actions of public officials are vital to democracy. If democracy is to be active and not impotent it must delegate authority to officials such delegation will raise the need for controls as well against action inconsistent with the common interests. Institutional perspectives emphasize the socialization of public officials to an ethic of administrative duty and conformity to the laws. They are enjoined to act in a manner appropriate to their official responsibilities and duties rather than in accordance with personal preferences, loyalties or pressures. They should be rule abiding modest trustees for the polity rather than agents of particular interests. As Max Weber explains “An official could would and should, separate private sympathies and beliefs from public actions. Authorizations create public actors giving them the right to act on behalf of society. “Granting of authority provides the right to exercise discretion but authority is controlled by accountability at all levels of administration and also political levels. Thus he becomes a person of integrity basing actions on a demand of an official role. As Olson has put it “the watch word is public trust and professional integrity and the appeal is to values that transcend self” Trust and integrity may partly be promoted by organizational structures and procedures including accountability arrangements and partly by training in appropriate personal commitments that those structures provide. Many of the institutions of democracy are better portrayed as instruments of political socialization and training than as decision making bodies as decisions are socializing factors. Power entices officials into misplaced beliefs; hence training should protect selflessness from the temptations of office.

“Democratic politics, is politics of patience” they are primarily slow moving systems. But democratic institutes are often strained by internal religious, ethnic or racial intolerance, by economic adversities and by extreme inequalities in the distribution of wealth. Yet what democracy requires is not that conflict be eliminated but that it be civilized that the encounters, occurring, exhibits, empathy, generosity and patience and that political processes be based on reflection and discourse. Institutions that encourage deliberation contribute to developing the climate of democracy. Since the process is built on the principle that disagreements are settled by reflection and open competent discourse, it can create maintain and strengthen bonds of common citizenship.

Democratic identities are defined by a bundle of rights and duties. Elected official the expert the bureaucrat and others are defined on the basis of their relations to a community of free and equal citizens. These are the elements in democracy that contributes to good governance and they are the attributes as well.

It is observed that traditional methodologies of governance seem to be fast changing. Could citizens' participation in governance be limited to the process of voting at election to councils. The elected members then govern of course theoretically representing the voters. This process is being questioned because in reality it does not merge with the feelings in the community. There is still the proposition, that as societies becomes diverse and pluralistic it becomes difficult for elected member to represent each member or a constituency. This stems from thinking where citizens are increasingly seen as clients in a global market where the focus on markets and trade opportunities have replaced the focus on constituents. Elizabeth Dowdeswell former head of the United Nations Environmental programme has identified this in her words as “Current attention to governance reflects the understanding that institutions have not kept pace with changes and challenges”.

As has been observed, actions of the civil society are the foundation for good governance, symbolizing the action and interaction of the trinity of actors / the civil society, the government and the market. They are identified as the key players that charter the course towards' development of the society. In this discourse the citizens demand a strong state - a strong and organized civil society, deepened democracy and a democratic culture with an enlarged role for citizens. They demand a system of governance free of corruption, favouritism, nepotism apathy neglected red tape and self-gratification by political leaders and public officials. This reflects the need to have a strong and healthy connection between the people and their governments.

Diverse factors and trends have converged underscoring the urgent need to overcome the limitations of a governance system that does not reflect the

characteristics of a democratic culture. Jim Ellsworth speaks of the following challenges.

- Complex – inter related problems – society is increasingly concerned with the growing number of complex issues beyond the capacity of a single discipline, Department, programme or policy.
- Public expectations – agencies and institutions have to adapt to the fact that citizens wish to participate. This may even be to the extent of being equal partners. This is a very forceful expectation.
- Globalization – Super Nationals that were created in the process of development has elevated many decisions to fora beyond the direct participation of the citizens, or the representatives of the people. There is a resultant change of venue of discussion from government institutions and levels, to forums where any influence or public opinion reaching has been made difficult. Thus distancing the people and there representatives.
- Collaborative capacity – collaborative problem solving has emerged as an alternative to compromise or competition. This has promoted public understanding and participation.
- Environmental limitations – such as global limitations, which creates the need to uncover new ways of revaluing and sharing.
- Traditional peoples' rights – Where societies come into terms with the inherent rights, needs and capacities giving a place for traditional knowledge and norms.
- A social cohesion - many organizations have come to share the need for interdependence and collective action which causes environments to come closer and established relationships.
- Communication technology – Advancement of knowledge base has resulted from an array of sources leading to varied interpretations rather than been traditional.
- Derivative principle – Governance has moved away from an issue response to the active pursuit of the qualities of livable sustainable communities.
- Equality, diversity – citizens increasingly expect the governments to reflect them and their outlook and also other diversities.
- Tools of public participation – This aspect is evolving as new and more acceptable tools are being constantly added.

These observations are important in that all these changes must get reflected in the ways government's function, and governance gets conceptualized.

The Commonwealth NGO Forum in Durban 1999, proposed not good government but good governance drawing a value-laden distinction and emphasizing a conceptual thinking. Good governance is the joint responsibility of players' in the public sector and civil society at national – international and multilateral levels. Here we see the notion of good governance as a joint responsibility with each set of players having roles and responsibilities.

It is also considered a neutral concept with mechanisms, processes, relationships and institutions. This embodies the practical working of a system where citizens and groups come into play with rights, obligations and interests. The UNDP also addresses the issues on allocation and management of resources to respond in a positive manner to collective problem solving needs. Among other things they identify participatory and transparent nature and accountability as characteristic of good governance.

The OECD finds governance as including citizens and institutions involved in a policy role. This implies a role for governments in helping the citizens to better understand so as to participate in policymaking. Here it is viewed that governments will not be able to conduct and effectively implement policies if their citizens do not understand and support them. This involves a sensitive educational process. Thus governments are looking for improved modules to ensure people's participation as Ellesworth further argues good governance should be collaborative transparent, inclusive responsive, accountable with equity at the base. These values need to be interrelated and re-enforcing.

Thomas G Weiss, writing in *Governance good Governance and Global Governance* focuses on changes in the political landscape and sees good governance as "more than multiparty elections, a judiciary and a parliament which have been emphasized as primary symbols of western style democracy", the list of other attributes with the necessary resources and culture to accompany them in formidable. Universal protection of human rights, non-discriminatory laws, efficient, impartial and rapid judicial processes, transparent public agencies accountability for decision by public officials devolution of resources and decision making to local levels, from the center, and meaningful participation of citizens in debating public policy and choices and a more powerful press, are all considered as values in the process of good governance.

He further contends that good governance must strike a balance between the state and the market, particularly as a way of establishing proper roles and institutions, so that benefits of growth are widely beneficial and the citizens could play a part in fostering their interests.

Former UNDP head Mahbub-Ul-Hag launched a concept of “Humane Governance” which Weiss finds to be a way of moving beyond from good governance. This term leads to a co-relation of “good political governance, good economic governance and good civic governance”.

Iain Gow comments that governance is sometimes an analytical concept and at other times normative one, and in its normative sense it seems more of a slogan than a concept. But Barry knight finds governance a persuasive word that is used by people to convey something slightly different from government. He also harps on the variations in usage. One version suggests that governance is a means of collective discussion making and action where government is only one stakeholder among others. Another suggests governance is the proper conduct of an organization emphasizing that the stakeholders are many.

All these and other literature suggests that governance is in essence a relational concept as it includes relationship among a number of stakeholders or actors, which are shifting, situation specific, and must be considered in the light of their history and tradition.

But all these indicate that there is a strong role for the state in governance regardless of the roles of the other actors. The government needs to lead the way, outline principles, define roles, make them acceptable to others and find links with citizens’ interests.

Recent writings do set out a framework for thinking about, governing government and governance. Vincent Lamieux finds a consensus on two facets of governance. First is that “governance is a new form of governing” second is that “governments” role in governance is not the same as in traditional forms of governing”. There are six roles that he identifies that government could play in governance – entrepreneur, symbol manager – referee – supervisor, one of several actors and instrumental, and finds that these can vary from one process to another. Hence a clear understanding of the process of governance would depend on the relations between the government and the actors.

Stakeholders in Governance

In the context of understanding governance it is possible to identify the following stakeholders.

- Governments and governing institutions. These imply the state and those public institutions with legitimacy to impose collective decisions. These are institutions with which the citizens interact, at the same time they are there for managing public affairs and responsible to the citizens.

- The public sector – This embraces the civil service. Those involved in economic management, financial management, and Urban and local management.
- The private sector- These are profit oriented businesses of a private ownership nature, with less concerns other than profits. There are also the public corporations, which are expected to play a dual role in being profit oriented and serving the citizens in a service-oriented role.
- Civil sector organizations – These are people’s organizations working together for a common purpose. These are seen as essential for good governance. These as Francis Brown points out shares “some focus on inclusiveness, popular participation, communication, networking, and deliberate efforts to address and redresses imbalances relating to issues of race, gender class age and origin”
- Intermediaries – Includes the media, Trade unions, Religions institutions, social movements and academia and learning institutions.
- Civil society - This is considered by some as the training ground for citizens the arena in which individuals become citizens as they engage in civic actions. They are a range of players acting in common interest the notion of active citizenship emerges here.
- Experts – These individuals or other institutions brings to bear knowledge and experience within each stakeholders group on a full range of issues related to governance.
- Ordinary citizens – They are the building blocks of society. They include the poor the disenfranchised the marginalized, vulnerable and the young.
- Community – All citizens who share a sense of place, purpose, and rich in values and traditions in society.

Daniel Wolfish and Gordon Smith have a different perspective on governance process they focus on power centers.

- State Actors- Government structures operating in an official role.
- Global city regions or economic zones
- Intergovernmental organizations created by the state.
- Non-state Actors – Non-governmental organizations and firms.
- Quasi – State institutions – Such as Banks which has a dual role democratic accountability and maintaining support for the business community.
- Transnational communities – These intensify global interconnectedness, which impacts on governance process.

Citizens in Governance

The ability of ordinary citizens to participate in governance is a key issues. They feel that citizens are both able and entitled to play a participatory role in decision-making and in policy, to provide inputs and ideas, to express concerns, and show that they need to be heard. They expect to come together to share their views. The issue is that most governments and businesses pay little attention to citizens concerns in participation. They consider citizens as lacking in experiences, and knowledge hence doesn't understand issues. They further distance the people by posing policymaking as full of complexities, bringing out the need for experts, more so in a globalizes context. This is not true, as citizens have proved that they are willing to be more involved and have demonstrated that they are well able to do so. It is hence no wonder that they are feeling disconnected disenfranchised and powerless. The fact that they are foremost as citizens is disregarded and their roles and positions are blurred, in the process of being reckoned. As Norman Uphof qualifies the citizenry " they are more likely to feel some stake and are willing to co-operate and even make sacrifices for others because they perceive some interest in common. In local arenas they have a bond of membership"

It has been found in some countries that the road from token participation to mutual engagement is long. But it is generally understood that a strong and a responsive state is the key to good governance. A proactive nature in governments would make democracy more palatable to citizens. Decentralizing of authority to local level is adopted as a mechanism to ensure the citizens involvement.

The influence of Private Sector practices in government helps the governance process in that corporate approaches can help governments to view their people more than subjects who pay taxes and obey laws but as citizens who deserve to be treated equally regardless of rank or status. Since more and more problems are crosscutting the departments of government need to work together and so should the levels of government. It should be the values that play a part in the interaction with the needs of the people in a democracy. Asok Leyland an automobile Industry in the private sector in India identifies themselves as " Being a socially responsible and sensitive corporate citizen in an extended role" is one example of a role change.

Various aspects of access are relevant to citizens' involvements. There could be historically disadvantaged groups, recognizing that social exclusions unfairly limits the involvement Elimination of social inequalities of gender, race, caste, are also considered important in accessing.

It is important to build enduring relationships, which would sustain participation by institutionalizing frameworks in which changes are inevitable.

Whose perspectives are we addressing becomes a crucial question in a participatory approaches. Elected and appointed officials may feel that they are approachable while citizens feel quite differently, hence peoples satisfaction needs analyzed tools to reach the point of interaction in participatory approaches.

The responsibility for governance lies in a great part with the citizens. Promotion of group action, institutional building to meet their aspirations is an important element in the interaction. But the greater responsibility rests with the other partners in governance for promoting a culture of engagement creating opportunities and opening the doors and hearts. These values could only be meaningful where there is economic and social security and a peaceful environment and a respect for traditions in caring and sharing together with an environment for responsive and inclusive governance. Social inclusion would mean widely shared social experiences and active participation a broad equality of opportunity towards well being resulting in a mutually beneficial partnership sharing responsibility, authority, in a collaboration towards workable solutions to complex problems. It is necessary to focus on the many ways that governance actually impacts on people's lives. As the dimension are now changing towards humane governance. It is seen as a joint enterprise a relationship where each set of players have roles and responsibilities.

But there does not seem to have emerged universally applicable prescriptions for good effective governance. A survey carried out by the Commonwealth Foundation proposes some important steps that would promote the discussion on governance.

- Enlarge the discussion on governance and the role of citizens in it.
- Discuss the issue, which limits citizens' ability to participate and seek the ways and means to address them.
- Involve citizens in the discussion on the willingness and desire for involvement.
- Work together to determine how best to build capacity at all levels for more collaborative inclusive governance.
- Develop accessible information about governance what it is, what it means to people in their daily lives.

It is stated in their report that "the language of governance is difficult but ideas are not".

In essence governance is the moving of governments and others towards peoples expectation on managing the issues faced by them. People wants basic needs met. They want respect for culture and heritage, a caring and sharing, a reassertion of values. They want healthy food, clean air pure water, access to education, shelter and sustainable livelihood. They want opportunities to participate in achieving of these. They want to make their world good.

REVENUE AND HUMAN RESOURCE THE NEGLECTED FACTORS:

An Appraisal of the Local Government Reforms Report of 1999

by

B.S Wijeweera

PART ONE

The above Report running into 400 odd pages and a further 230 pages of Appendices is a comprehensive document that will stand the test of time. Every little detail that needs to be commented on is included and for this the Commissioners should be commended. There is an excellent Chapter (Ch.14) on laws and subsidiary legislation that impinge on the activities of local government. This alone should make the Report a compulsory source of reference for Heads of Local Authorities and local government officials.

One Commissioner has not subscribed his signature to the Report and it has not been made clear whether this was due to unavoidable circumstances, or due to his inability to agree fully with its contents. If it is the latter, then the President's Warrant enjoins him to state his case in a dissent.

The more important recommendations can be identified under the following groupings:

A. Status and Internal Working of Local Authorities

01. Constitutional recognition of local government as a level of governance as in India
02. Revival of Town Councils and Village Councils in place of Pradeshiya Sabhas (MCs and UCs will remain as they are)
03. Reintroduction of the ward system to replace the PR system (Mayor/Chairman to be elected by the Council)
04. All Councils to work through compulsory Standing Committees with at least five such SCs, including a Finance and Planning Committee
05. Compulsory inclusion of competent voters in the area, and representatives of youth and women in the above SCs

B. Personnel Management

06. Re-establishment of the LGSC that was suspended after the creation of Provincial PSCs

- a. A separate LGSC in every province
- b. A separate Salaries and Cadre Committee in every province
- 07. Establishment of island wide services for local government administration: LG Managerial Service, LG Engineering Service, LG Medical Officers Service, LG Ayur. Medical Officers Service, LG Accountants Service, LG Planning Officers Service and LG Legal Officers Service
- 08. Establishment of Provincial "closed" services for the following categories: Clerks, Book-keepers, Technical Officers, Revenue Inspectors and Librarians
- 09. Compulsory and systematic training of Council Members and LG officials in local government work

C. Revenue

- 10. Assessment rates to be based on the capital value of property
- 11. Acreage tax in rural areas to be imposed on all allotments, in slabs (presently allotments below one hectare are exempt)
- 12. Additional revenue to be earned from tutorials, bookies, video showrooms tourist trade, renting of notice boards, medical clinics, legal consultation services, international schools, non-governmental schools, telephone booths and 1% tax on value of land put up for auction.
- 13. Government grants to be made directly to local authorities
- 14. Constitutional provision for a specified percentage of national revenue to be allocated to local authorities
- 15. Setting up a Local Government Finance Commission to oversee government grants to local authorities

D. Jurisdiction

- 16. Local authorities to be made the Planning Authority for the respective area
- 17. Local authorities to be the Roads Authority within its own area
- 18. Making environmental protection a function of the local authority by amending the legislation (presently they act on delegated authority)
- 19. Conventional local authority functions such as public health, maternity and child welfare, markets and fairs, toilets, conservancy, drainage, abattoirs, cemeteries, public libraries and street lighting to

be expanded to include minor irrigation, public assistance, poverty alleviation, vehicle licensing, environment protection, maintenance of waterways, and commercial activities such as public transport and the production of goods using locally available raw materials

20. Transfer of the function of water supply to local authorities which have the capacity to handle this function (other local authorities to be given a share of the profits of NWSDB)
21. Any local authority capable of handling the distribution of electricity to be assigned this function (other local authorities to be paid a share of the profits of CEB)

PART TWO

Status of Local Government

The constant theme of the Report is that local government is an ideal towards which all policies should converge. Local government is traced to a healthy tradition coming from ancient times (Ch.I), which in recent times has been allowed to atrophy. The first blow fell in 1981 with the abolition of Village Councils and the introduction of Development Councils. The final blow came in 1988 with the formation of Pradeshiya Sabhas under the PR system. This has led to an “absence of active participation of the people” in local government (p.239). “The elected representatives became strangers to the people” as the selection was done by the respective political parties (p.240). The remedy, according to the Commissioners, is to revert to the ward system of electing representatives to local authorities, expanding their powers and jurisdiction, and establishing them as a “self-sufficient and autonomous system at local level” (p.262).

As the period prior to 1981 has been held out as a benign era of participatory local government in this country (p.329), it would be pertinent to note what earlier inquiries into local government had to say on the subject.

The earliest report, after Independence, was in 1955 by the Choksy Commission on Local Government. They lamented that the degree of supervision and control exercised over Village Committees by the Centre was great (p.27) and consequently, lauded the Local Authorities (Enlargement of Powers) Act of 1952 as “a radical and generous measure” (p.19). Commenting on the membership of local authorities at that time they, with obvious understatement, expressed the view that “the quality of membership of local authorities generally has not been wholly satisfactory” (p.159), and went on to give the reasons: the gap between the governed and those that govern, with resulting ignorance of the real needs of the people (p.28).

Twenty years after the enlargement of the powers of local authorities, Tressie Leitan, a respected academic, in *Local Government and Decentralized Administration in Sri Lanka* summarised the then situation as follows (p.72):

Thus, today local government in Sri Lanka continues basically as it was in the Donoughmore era. Independence and the imperatives of planned development have had no effect on it: its functions have not increased appreciably, cramped and made impotent by (mainly) financial inadequacies.

The picture that emerges from an objective assessment of the literature is that local government was never a robust institution in this country. The events of the nineteen eighties complained of in the Report were not the causes but the last rites of an institution that was terminally ill.

Expansion of Local Government Activities and Revenue

The Report envisages a major expansion of the functions of local authorities. Among the new functions would be public assistance, poverty alleviation, vehicle licensing, rural development, sports development, environment protection, youth and women's welfare, housing development, public transport and a range of other commercial and business activities (such as tourist hotels) that would generate local employment.

There are a number of problems involved with this expansionist vision. Firstly, we cannot envisage a climate in which those who presently control these functions would voluntarily release their grip on them. To take an example, poverty alleviation is closely associated today with the Samurdhi Programme. The total cost to the state is about Rs. 12 billion. What is expected to happen when this function is assigned to local authorities? Does this mean that the operational function of identifying the families that would receive benefits under the Scheme would be entrusted to local authorities and its elected leadership? Also, does it mean that the 30,000 odd workforce presently engaged in such activities would be farmed out to be employees of local authorities or a Local Government Provincial Service? In fact, the entirety of the Samurdhi Programme, described as providing relief to vulnerable households while implementing various projects and self-employment schemes with the broad objective of alleviating poverty, is essentially of a local nature. Yet, in real life things do not work out in a rational way. It would be far more important, not only to the relevant Minister but to the entire Government, to keep this Programme as an instrument of maximizing political support at the grass-root level!! And, this would be so regardless of the political complexion of those holding the reins of power at the Centre.

To take another example, vehicle licence fees constitute about one-third of the total revenue of all PCs. If this function were transferred to local authorities, would the central government be in a position to provide the shortfall in revenue as an additional grant to PCs?

These two examples, one impinging on central government and the other on provincial administration, expose the fallacy of regarding local government as capable of being developed in isolation of other levels of government, disregarding revenue implications. The reality is that given the paucity of the national revenue base and its virtual monopoly by the central government, the expansion of the jurisdiction of local government can only take place at the expense of a reduction of the scope of other levels of government. It is a zero sum game. In fact, the logical corollary of the expansion of local government would be to abandon altogether the provincial council system (effecting a net saving of about Rs. 7 billion by way of central government transfers) and have only two levels of government as in the past: central and local. However, such a proposal would be outside the remit of the Warrant issued to the Commission. So, the Commissioners have to fall between two stools: their utopian vision of local self-government and the hard reality of their inability to dislodge those that have already commandeered the meagre financial resources of the state.

Staffing

Associated with revenue problems are the staffing problems resulting from the expansion of the jurisdiction of local government.

In the Samurdhi example discussed above, Samurdhi employees are central government employees. How does one transfer such a large number of employees into a scattered network of local authorities? Even if there is political will and the central government is prepared to do so, trade unions that find strength in numbers will resist such a move. Ultimately, one may have to compromise with an All-island Samurdhi Employees Service!! This compromise remedy, as seen with the Provincial Council experience, will be worse than the original disease.

Some valuable insights into the staffing problems of transferring functions from one level of government to another can be drawn from the Provincial Council exercise of 1988. In this transfer, two important functions, health and education (which at that time embraced about half of the total civilian workforce of the central government), were brought under the jurisdiction of Provincial Councils. Provincial Public Service Commissions were also set-up, but to this day staffing matters such as cadres and salary scales are handled by central organizations such as the Finance Commission. And, school teachers continue to trek to the Education Ministry at Battaramulla to press for transfers.

These staffing problems arise from a neglect of a cardinal principle in public administration. That is that every government, whether it be central, state, provincial or local must have *its own bureaucracy* to discharge its functions. What is meant by the term "its own bureaucracy" is recruited, paid for and controlled by the respective government. In the provincial government system, there is a marked diarchy. Salaries are paid one hundred per cent by the central government, recruitment is partly by provincial government and partly by central government because of the existence of All-island Services, and the responsibility for the control of officials varies from place to place and from time to time. Small wonder that the picture that emerges from personnel administration at provincial level is confusing and incoherent, as reported in several studies and academic papers.

The Report's recommendations in regard to staffing for local government make the above picture more confusing. The proclaimed ideal of a "self sufficient and autonomous system at local level" is completely sacrificed when it proposes seven All-island Services for managerial, engineering, medical, ayurveda, accounting, planning and legal work (pp.78-79). Being All-island Services, recruitment, promotion from one Class to another, and transfer from one Municipality to another will have to be centrally controlled. Nominally, they can be attached to a province or local authority, but on all important matters of personnel management the central body will have an important say. In regard to the middle level services (such as clerks, book-keepers, technical officers, revenue officers and librarians) the recommendations are equally inconsistent (p.80). These are to be "closed" provincial services with the control and dependence on a central body being replaced by an equally obnoxious dependence on a remote provincial body. In the case of All-island Services, a Head of a Municipality for example will have to go cap in hand to the central body asking for a good City Manager. Likewise, a Head of a Local Authority will have to negotiate with a provincial body to have its vacancy in the book-keeper cadre filled and, perhaps, have to wait sometime till all provincial book-keeper vacancies are advertised, candidates subjected to proper examination and recruited. In the meantime, the bookkeeping function of the respective local authority will go into abeyance with serious implications for accounts and budgetary control.

Miscellaneous Matters

Though revenue and staffing are the central issues on which the Report flounders, there are other ill-considered recommendations and comments that detract from the wealth of research and information that has gone into it.

Firstly, there is a proposal to set up a Local Government Grants Commission, "similar to the Finance Commission", to oversee central financial

transfers that are to be made directly to local authorities (pp.128-129). The understanding is that the Finance Commission will continue to serve Provincial Councils. Whilst the proposal for direct transfers, without an intermediary, is laudable, the same cannot be said for the setting up of another central bureaucratic body to oversee this activity. Once the principle of direct transfers to local bodies is established, the present Finance Commission should be able to handle this task without incurring additional bureaucratic expenditure. In fact, grants to Provincial Councils and grants to local authorities should be complementary functions.

Again, on the matter of revenue of local government, there is some inconsistency in the recommendations. On the one side, there is the grandiose vision of “financially independent” local authorities that will eventually “be able to manage their affairs on self-generated income without grants from outside” (p.128). In the same page, two paragraphs later, there is a recommendation for the constitutional apportionment of a “specified” proportion of government revenue for local government. Does this mean that the Constitution has to be amended in quick succession as local government progresses on its path to financial independence?

Secondly, there is a proposal that the responsibility for the distribution of water should be handed back to local authorities that have the capacity and personnel to shoulder such responsibility. A concomitant recommendation is that “a certain percentage of the profits” earned by NWSDB should be given to those local authorities that are not entrusted with water distribution functions (p.116). Now, it is well known that the NWSDB makes losses and not profits!! Also, even if profits are made in the foreseeable future, should not the benefit be passed on to direct consumers by way of reduced tariffs rather than to local authorities?

Further, this misreading of popular sentiment and expectation is evident in the following passage (p.115):

The fear that resorting to new sources of revenue would affect the popularity of Local Authorities is unfounded. Local Authorities instead of becoming unpopular would *win the admiration of the people* if they meet the needs of the people through good management of the finances and through expanding with transparency. If such good management ... is established ... *the people would agree* not only to new sources of revenue but also to new taxes. (Italics added)

These comments fly in the face of conventional wisdom that predicates that people demand good management within the existing taxation base, and whilst they will reward good performers with successive re-election their gratitude will not extend to the extent of filling the cup of revenue to overflow. The Commission had conducted workshops with Heads of MCs, UCs and PSs (p.xvi). It would be interesting to know whether the sentiments expressed in the Report are reflected in the recorded feedback obtained at these workshops from the seasoned campaigners?

The Report makes the observation repeatedly that the absorption of the LG Administrative Service into the SLAS in 1992 was a major blow to the administrative efficiency of the local government system as a whole. At page 78 it states that “the absorption of the Local Government Service into the Sri Lanka Administrative Service has contributed to the downfall of the Local Government administration to a large extent”. Again at page 79 it states that “the abolition of the Local Government Administrative Service ... can be described as an ill considered decision lacking in foresight which caused the downfall of Local Government activities in the country”. Perhaps, the abolition of the LGAS may have contributed to the neglect of local government, but what is equally true is that there is general consensus within SLAS circles that this amalgamation led to a serious erosion of the quality of the SLAS itself!! What is more, the anomalies created by this “ill considered decision lacking in foresight” are still being unraveled, some ten years after the event.

On this issue of the LGAS, the Report states that “competent pioneering officers who were well conversant with Local Government work ... went on transfer to various other posts in the Sri Lanka Administrative Service”, after the amalgamation (p.78). The senior persons were absorbed into Class I of the SLAS. Some five years after this amalgamation the R.Abeyratne Committee, reporting on the SLAS, had this to say of Class I: “The reality of the situation is that it is doubtful whether some of them are ready or even fit and competent to handle the responsibilities of the posts at Head of Department level” (p.10). Of course, not all of them came from the LGAS and the Abeyratne Committee, to be fair, did not lay the blame on the amalgamation. However, if this new blood of “competent pioneering officers” had any impact on the SLAS, then, it should not have found itself in such a sorry plight when the Abeyratne Committee conducted its inquiry.

Conclusion

Quite apart from the above critique, the Report’s unequivocal faith in the local government system is commendable. The suggested expansion of local government activities is a re-affirmation of the well-known principle of subsidiarity.

The inconsistencies and doubts noted above are not directly errors of omission of the Commission. They are problems that arise from governmental policy inconsistencies and inadequacies within which Commissions have to operate. The Victor Tennekoon Committee on Development Councils (1980) found itself in a worse predicament as a result of government policy, and this resulted in the sad spectacle of the Committee splitting itself up on communal lines.

The principle of subsidiarity demands a willingness to view central, provincial and local responsibilities in a holistic manner, and an equal willingness to share national revenue and human resources on an equitable basis commensurate with such apportioning of responsibility. In the current political context, neither of these preconditions is valid. So, Commissions have to do their best to keep afloat with their hands tied.

GOOD GOVERNANCE AND LOCAL GOVERNMENT

By
A. P. Dainis

The concept of governance in Sri Lanka was given a new dimension with the introduction of devolution through Provincial Councils, even though system of local government had existed for more than five decades. The Provincial Councils System that was introduced by the 13th amendment to the constitution in 1987 paved the way for some powers that were hitherto with center being devolved to the sub-national level. Devolution of power has been accepted presently as a prerequisite that strengthens Democracy and Good Governance. Though there has been a commitment and interest towards devolution in Sri Lanka, still there is ambiguity in the functions of the center and the sub national level. Experiences in other countries reveal if the devolution and decentralization process is to be a success the powers functions and responsibilities of institutions at the center and at the sub national level should be defined clearly and unambiguously.

As in many countries over the world the devolution process in Sri Lanka has been projected as a solution to the ethnic conflict in the country.

It was found that many countries have adopted devolution and decentralization due to various reasons such as:

1. To contain ethnic conflicts.
2. To enhance the political stability.
3. To avoid potential conflicts.
4. To solve existing conflicts.
5. To strengthen democracy.
6. To ensure equitable distribution of resources.
7. To speed up economic growth.
8. To alleviate poverty.

In a country like the Philippines, the geographical situation, ethnic problems, political and economic instability, have impacted all at the same time in devolving powers and functioning to local level.

Devolution, decentralization and governance are complex concepts that have different interpretations. In a general interpretation of the devolution of power we see as a process of transferring the powers of administration and control of resources enjoyed by the center considerably to the sub-national level. It is a power sharing exercise between the central and sub-national level.

According to the UNDP concept decentralization is considered as a part of the overall governance system of any society. It is a process by which authority, responsibility, power, resources and accountability are transferred from the central levels to sub national levels. Such a political process will invariably build up administrative structures at the sub national levels. This facilitates decisions being made at the sub national levels by elected representatives within the national policy framework. In the process of devolution / decentralization it is also essential that all national identities and citizens rights are duly safeguarded and guaranteed. If only the majority wishes are fulfilled the minority rights would be jeopardized endangering Democracy. If democracy is to be perceived and strengthened it is necessary to implement majority decisions with due consideration for minority interests. The present escalation in the ethnic unrest in Sri Lanka can be considered as a direct result of reacting to situations without fully understanding the concepts of power sharing and good governance. The disturbances that occurred when Bandaranayake - Chelvanayagam Pact was discussed and when the Rata Saba was idealized by Mr. Dudley Senanayaka and also the disturbances that occurred when the Provincial Councils system was introduced in 1987 are manifestations of such misunderstandings. We believed that if the present understanding of the concept of power sharing existed by that time such disturbances would not have occurred. Hence if we are to seek solutions to prevailing political and economic problems through a process of power sharing we need to understand the power sharing concepts clearly and the public needs to be made aware of such understanding.

Governance is a process. It is a process where the powers and functions at the national and sub national levels are exercised to manage the country's affairs. It is difficult to attribute a single meaning to "Good Governance". The world conference on governance held in Philippines in 1999 defined good governance as "A system that is transparent, accountable, just and fair, democratic and responsive to people's needs".

The United Nations too has identified following characteristics of good governance, embodying some ideas highlighted in the 1999 conference.

1. People's participation.
2. Rule of law.
3. Transparency.
4. Responsiveness.
5. Consensus seeking.
6. Equity.
7. Effectiveness and Efficiency.
8. Accountability
9. Strategic Vision.
10. Sustainability.

These are all standard practices that would lead to a good democratic social system. Hence if democracy is to be more meaningful and effective these standards have to be maintained.

Under the devolved system it was expected to have substantial power and resources at the institutions at the sub-national level. Though the decentralization and power sharing process came into operation in Sri Lanka in 1987, it did not have a satisfactory impact on the local government institutions.

Local Government system in Sri Lanka has a long history. The present local government structure originated under the British rule with the establishment of the municipal council in Colombo in 1865. Since then there had been a broad expansion in the local government system, resulting in a three tier structure of Municipal Councils, Urban Councils and Pradeshiya Sabhas. There are now 311 local government institutions functioning in the country. With the creation of the Provincial Councils the administration and supervision of Local Authorities came under the Provincial Council. But the 13th amendment while emphatically prohibiting the reduction of the power of Local Authorities under their Acts and other legislation empowered the PCC to confer more power to them.

When the Local Government System was introduced it was envisaged that people's participation in administration would be made a reality. The Pradeshiya Sabha Act in its preamble clearly states the objective of the establishment of Pradeshiya Sabhas to provide greater opportunities for the people to participate effectively in the decision making process relating to the administration and development activities at local level. Today the people activate themselves during elections of members to councils by casting their votes. But people have not taken any meaningful efforts in shaping decisions of Local Authorities in achieving their aims and expectations. People's participation is defined as a process by which people take an active and influential hand in shaping decisions that affect their lives. Hence it is necessary to empower the civil society to create such an impact.

It remains a question that to what extent the Local Government institutions in Sri Lanka have followed the principles of "governance" mentioned above. One could argue that the present local government system itself is an obstacle towards achieving the objectives of good governance. An example is that according to the present system of elections to local bodies, the chairperson of the Local Authority is chosen not by the members elected but by the secretary of a political party. As a result the allegiance of the chairperson is to the political party and not to the people. According to the present system there are no identified elected members who are accountable to the voter and no geographical area that they represent. The Local Authorities law permits the chairperson to act overriding the wishes of its members in passing the annual budget. Such undemocratic practices and provisions prevent

the LAA from implementing best practices of good governance. In spite of those impediments even within the existing framework there is still the possibility of applying the best practices of good governance. What is necessary here is to workout a joint plan of action without a political bias but acceptable to all members, thus developing a team spirit and working as a single group.

Another criticism leveled against the Local Authorities at present is that activities take place in order to satisfy political and personal needs side - stepping the legal provisions. There are also intermittent charges of violation of human rights. The only way that such complaints could be avoided is by understanding and working within the legal framework applicable to LAA and the general law of the country. Rule of law is one of the strong characteristics of good governance.

Though the people elect the members of Local Authorities, there are questions raised by people about lack of transparency in some of the activities of LAA. Hence a system needs to be developed whereby the people are kept informed of all work of LAA. This should not be limited to Tender procedure only but should embody all LAA activities. It should be kept in mind that the people have a right to information of all that happens. In some countries there is a practice that before the Budget is presented at the LAA it is published for the information of the public.

Another complaint leveled against some Local Authorities is that they are not responsive to complaints or wishes of the people. That they do not prioritize the peoples needs for action. To be responsive to peoples needs is a basic requirement in the process of good governance.

To gain consensus from members with different discipline and ideas may be difficult. But in Local Authorities, reaching consensus in order to achieve the common objectives is very essential. Just as political parties and organizations get together in solving national problems, Local Authorities too should reach a consensus in settling Local Issues. If this does not happen it will result in a grave injustice to those who have empowered the members at election. Even an opposition is elected by the people. Hence they need to be responsible. The views of the opposition should also be considered in taking decisions.

Gender or class should not be a criterion of any judgement nor should disabled be forgotten. Every one should be considered equally. These are characteristics of good governance. Unfortunately in Sri Lanka still there is no fair representation of women among the elected members. India has made provision by law providing the opportunity for 1/3 of contestants to be women.

In order to preserve these values in governance a Local Authority needs to utilize its resources effectively and efficiently. But the unfortunate fact is that most of the LAA do not possess required level of management capacity or adequate resources to produce results. This reason makes it difficult even to manage the legal obligations of Local Authorities. Such deficiencies in management skills are more prominent in the remote LAA than in urban areas.

As mentioned earlier members of LAA are responsible to the citizens in respect of the decisions taken and activities performed. Under the Proportional Representation system these members are not responsible to a particular group of citizens or to a set ward or a geographical area. Hence it appears from the way resources are being utilized that the members are unaware of their responsibility towards the electors.

Elections to Local bodies are held once in four years, and they are elected for a four-year term. Hence political leadership should have a strategic vision to formulate the appropriate long-term development plans providing for the balanced growth of all sub sectors required to improve the quality of life of the people. Most Local Authorities do not possess such forward-thinking strategies and are stranded in looking for resources for day to day activities. If planning is done to cover a period of four or five years with medium term perspectives for action LAA should be achieving what they want. A strategic vision is the present day need in working out good governance. Sustainability, which is a characteristic of Governance, needs to be embedded in the activity of LAA as an applicable principle. If participation of citizens and their organizations in administration and Development could be ensured in LAA culture, the sustainability will not be difficult to achieve. In order to achieve the objectives of good governance it is required to have a new Local government culture with enlightened leadership.

In countries like India and the Philippines there is a new awakening on the Local Government sector. There is a vigorous decentralization process in these countries where the Local Authorities play a prominent role in day-to-day activities. In this process they have been linked to the Private Sector and civil society ensuring a joint effort. Traditional bureaucratic top down decision-making systems are now completely out dated to achieve the objectives of good governance. Today Local Government Institutions need enlightened leadership with new vision and new thinking if local good governance is to be made a reality in meeting the challenges of development in the twenty first century.

FEDERALISM: MYTHS AND REALITIES

By
Rohan Edirisinha

The evolution of Sri Lanka's ethnic conflict can be likened to a snowball rolling down a hill. At the beginning it is small, but as time passes, it develops a momentum of its own, becomes larger and more complex, absorbs other elements, thereby making it more difficult to respond to. Sri Lanka's ethnic conflict has evolved from one based on questions of representation, grievances based on discrimination and language to a demand for decentralization to autonomy to devolution. More recently the focus has been on Tamil aspirations including nationhood, self determination and confederation. The response of Sri Lankan governments has often been too little too late. If the Bandaranayaka-Chelvanayakam Pact had been implemented in 1957 we might have averted the bloody and traumatic civil war that has plagued this country for many years. The Draft Constitution of August 2000 might have actually constituted the basis for a political solution to the conflict if it were introduced in the early 1990s.

Furthermore every initiative that fails or is reneged upon, every set of talks and negotiations that collapses, creates its own dynamic of betrayal, distrust and suspicion that makes the next venture or round of talks that much more difficult. In terms of process, the next round of serious negotiations will, therefore, have to contend with the failed negotiations of 1994-5. In terms of substance, the failure of the Thirteenth Amendment to the Constitution will inevitably provoke a demand for cast iron guarantees to prevent central encroachment on devolved powers in any future package of constitutional proposals. It seems likely that this will require moving beyond the frontiers of a unitary state.

One of the contentious issues that surfaced in the constitution reform project of 1995-2000 was the courageous decisions of the drafters to delete the provision/label in the constitution that Sri Lanka is a unitary state. There are widespread misconceptions about the terms "unitary" and "federal". The terms unitary and unitary are often used interchangeably particularly in the Sinhala language. Therefore, those who advocate a departure from the unitary model are perceived as advocates of division and secession. The fact that the campaign for federalism is identified so closely with Tamil political demands also exacerbates the problem. It is significant to note that long before Tamil political leaders advocated federalism, the young S.W.R.D. Bandaranayake in the 1920s and the Kandyan Sinhalese representatives before the Donoughmore Commission in the late 1920s were advocates of a federal Sri Lanka.

The decision to insert the unitary label into the first Republican Constitution seems almost perverse in that it was a direct affront to Tamil aspirations at the time. The Tamil Political leadership attempted to address the Tamil people's grievances through the Bandaranayake – Chelvanayakem and Senanayake – Chelvanayakum Pacts both of which included substantial devolution of power. The Federal Party, the main Tamil party at the time, campaigned at the 1970. General Election on a platform of Federalism. Its manifesto declared,

The Tamil-speaking people of Ceylon also believe that the Federal-type of Constitution that would enable them to look after their own affairs alone would safeguard them from total extinction. Only under such a Constitution could the Tamil speaking people of this country live in dignity and with our birthright to independence as equals with our Sinhala brethren.

Significantly the manifesto included a categorical assertion against separation.

It is our firm conviction that division of the country in any form would be beneficial neither to the country nor the Tamil speaking people. Hence we appeal to the Tamil speaking people not to lend their support to any political movement that advocates the bifurcation of the country.

There was no overwhelming need to introduce the unitary label. The Soulbery Constitution contained no label, which is the practice in most constitutions in the democratic world, as will be demonstrated later. It amounted to a slap in the face of the Tamil political leadership. To make matters worse, it was introduced as Basic Resolution No.2, very early in the proceedings of the Constituent Assembly.

Basic Resolution No 2 was introduced by Dr.Colvin R.de Silva who stated that "from the time that we can remember " Sri Lanka had been a unitary state. He defended the introduction of the unitary label on the grounds that it was essential for the well being of the country as a whole. The main criticism of the proposal was made by V.Dharmalingam, M.P. for Uduvil. He highlighted the importance of a constitution being an agreement among the people of the country and warned against the Sinhala people imposing a constitution on the Tamil people. He then presented the classic defense of a federal constitution; that it was more appropriate for a multi-ethnic, plural society. Dharmalingam argued that the Ilankai Tamil Arasu Kachchi wanted the establishment of a federal state in Ceylon ,not to divide Ceylon, but to achieve unity in diversity. He predicted that ultimately Ceylon will have to be federal state.

The unitary postulate was reinforced by Section 45 (1) of the Constitution which stated that :

The National State Assembly may not abdicate ,delegate or in any manner alienate its legislative power, nor may it set up an authority with any legislative power other than the power to make subordinate laws.

It is important to understand what these terms , unitary and federal mean. Definition is not easy as the terms embrace a spectrum of meaning. However, an attempt can be made to understand the basic ideas involved , the essence of the two terms.

The Essence of a Unitary Form of Government.

A unitary form of government is one in which all legislative and executive authority is vested in a single legislature and a single government. It has also been described as one in which

The habitual exercise of supreme legislative authority is carried out by one central power.

The single, central law making authority MAY, if it so desires, delegate powers to subsidiary, subordinate bodies. If this is done it is done from the plenitude of its own powers. Since the central law making authority gives powers to the subsidiary bodies, it can also withdraw, curtail or change these powers UNILATERALLY. As C.F. Strong has observed in Modern Political Constitutions.

It does not mean the absence of subsidiary law-making bodies , but it does mean that they exist and can be abolished at the discretion of the central authority.

The Essence of a Federal Form of Government

A system for decision making is federalist if it is an entity composed of territorially defined groups, each of which enjoys relatively high autonomy and which together, participate in an ordered and permanent way in the formation of the central entity's will.

Max Frenkel's definition cited above highlights the importance of several key features of a federal form of government: autonomy; a division of powers between the centre and provinces/regions/states; the supremacy of the Constitution (for the ordered way) and provincial/regional representation at the centre.

There are several characteristics which can be identified as the basic features of a federal form of government. Ronalds Watts, Professor of politics at Queen's University, Canada, has surveyed several scholarly writings on Federalism and identified the following attributes as the basic features of Federalism:

1. Two orders of government each acting directly on their citizens, a formal distribution of legislative and executive authority and allocation of revenue resources between the two orders of government ,including some areas of autonomy for each order; in short , a clear cut division of powers;
2. Provision for the representation of regional views within the federal (central) policy making institutions; this could be in the form of provinces/ regions electing a certain number of members to a second chamber of parliament.
3. A written supreme constitution not unilaterally amendable and requiring the consent of all or a majority of the constituent units; since a federal constitution is deemed to be a compact or covenant between the centre and the regions/provinces, amendments require the consent of both.
4. An umpire to rule on disputes between the centre and the provinces/regions; the umpire is invariably the judiciary.
5. Processes to facilitate relations between the centre and the provinces/regions where responsibilities are shared;

These five essential features of a federal form of government ensure that there is substantial devolution of power to provincial/regional units and that such devolved power cannot be undermined or unilaterally reduced or abolished.

The main deficiencies of the 13th Amendment to the Constitutions are

- a. Provincial Councils do not have complete control over any subject whatsoever;
- b. The Provinces have no political influence at the centre;
- c. Partly due to (b)above, the centre has taken devolved political power back to the centre;
- d. The Constitution of Sri Lanka is not supreme. There can be(and indeed there are)numerous laws which violate the Constitution, including constitutional provisions on devolution of power.

- e. Provincial Councils can be abolished, or their powers curtailed, by the central Parliament acting unilaterally.

The way to overcome the glaring deficiencies in the present Provincial Council system is to introduce a scheme of devolution of power which includes the five features described above as the essence of Federalism. Substantial devolution of power which is secure, guaranteed, which provides for a remedy in situations where such powers are exceeded or undermined, and which ensures that provincial/regional interests are represented at the centre and that the centre and provinces/regions do not have an adversarial relationship with each other, requires the incorporation of these basic features of federalism.

After the failure of the 13th Amendment, it is totally unreasonable to expect the minority parties to accept a system of devolution given to devolved units BY PARLIAMENT and not by the CONSTITUTION, a system of devolution that can be UNILATERALLY withdrawn by a Parliament which does not even include a second chamber to represent regional concerns. Those who want the Constitution to retain the unitary label must realize the practical implications of what they advocate.

They should also remember that the UNITY of the country was perhaps best protected when the Constitution did not expressly provide for a unitary form of government and that paradoxically the seeds for a separatist movement were sown soon after the introduction of the 1972 Constitution which expressly declared that Sri Lanka is a unitary state.

Opponents of Federalism must explain why they are so opposed to the concept of Federalism? What is so objectionable in the five features outlined above? Or have they created their own definition of the term, a strawman, which they then proceed to attack? Under a Federal system, sovereignty vests in the people. The people's sovereignty is exercised by Parliament and by Regional/Provincial Councils. Under a Federal form of government, Parliament can be given wide, sweeping powers to respond in situations which pose a threat to the unity, sovereignty and territorial integrity of the country. Parliament does not have to be sovereign. The sovereignty of Parliament is an obsolete British constitutional doctrine which has been incorporated in a handful of countries and today rejected in most of them, including the country of its origin. It is somewhat quaint that the Sinhala Nationalist forces are so besotted by this British doctrine. Which incidentally, was not a feature of our constitutional jurisprudence either from 1948-1972 or from 1978 to date. In Sri Lanka the doctrine of parliamentary sovereignty existed, and that too by implication, only between 1972 and 1978.

The Myth about Federalizing Federalism

Another myth about federalism is that a federal form of government is always established by previously independent or sovereign states coming together to constitute a new state. This myth, coupled with the provision that Sri Lanka shall be a Union of Regions has unfortunately created the impression that under the Legal Draft of January 1996 or the Draft Constitution of 2000, Sri Lanka will be divided into quasi-independent regions which will thereafter enter into a federal arrangement. There is therefore an implicit division of the country or at least an implied recognition of independent regions.

Mr. Batty Weerakoon M.P. in his writing on the subject, has not only swallowed this myth, but helped to popularize it as well. He assumes that there is just one way to establish a federal form of government; i.e. integrative federalism. In his article, The Federal Concept in Sri Lanka, he declares:

What is common to all these is the fact that it is the states that created their own respective Federal units. The states existed as a precedent fact...

The reality is that in the absence of the precedent fact, which is the existence of viable units which together can constitute the federal state, federalism does not offer it self as an available solution to the country's ethnic conflict.

Constitutional scholars recognize that there are TWO methods by which a federal form of government may be established. The more common method known as Integrative Federalism is where previously independent states integrate to form a new political entity. The second method known as Devolutionary Federalism is where a country with a previously unitary form of government opts to change to a federal system. As Patrick peeters of the University of Leuven, Belgium, has explained,

Integrative Federalism refers to a constitutional order that strives at unity in diversity among previously independent or confederally related component entities.

Devolutionary Federalism, on the contrary, refers to a constitutional order that redistributes the power of a previously unitary state among its component entities; these entities obtain an autonomous status within their fields of responsibility. The Principal goal is to organize diversity within unity.

Belgium, Spain and Nigeria are examples of countries which have adopted Devolutionary Federalism and moved from unitary to federal forms of government. The south African Constitution of 1996 has moved in that direction too.

The argument that Sri Lanka has to be first divided into autonomous regions which then amalgamate in order to adopt a federal form of government is therefore incorrect. The problem, however, is that there is an erroneous perception that this has to be done. Therefore the phrase “union of regions” has created as many problems as the term “federal” might have done.

Mr. Weerakoon's two articles are predicated upon basic assumptions that are completely erroneous. Mr. Weerakoon in his article *The Unitary State and Devolution* refers to a group of academics from the University of Colombo who have argued that substantial devolution of power cannot take place within the shackles of a unitary state. He declares

Closer examination, however exposes its fallaciousness. To allow it to pass unchallenged is dangerous. The obverse of it is that devolution of power if effected substantially in a unitary states will change the unitary nature of the state.

Perfectly correct. The argument of the group of academics and the obverse of their thesis are both valid. A country with a unitary form of government, can, by introducing substantial devolution of power change its form of government to a federal one. Federalism is all about substantial devolution of power. Ultimately it is the extent of power that the component units of a state have, that determines whether a state has a unitary or federal form of government.

Mr. Weerakoon then proceeds to make the astounding claim that

the principal that is operative in the exercise of power distribution within a federal arrangement is not devolution but delegation.

He suggests that in the United States, since the states “delegated” powers to the centre, a state could secede but that session has not taken place because in the United States, Canada and most countries with federal forms of government. It is absurd to argue that in all countries with federal forms of government, the states/regions delegated powers to the centre. Delegation implies that the powers given can unilaterally be rescinded. This is not the case in most “federal states”.

The preamble to the Australian Constitution describes the federation as “indissoluble”. After the American Civil War, the Supreme Court declared that

“the Constitution, in all its provisions, looks to an indestructible union composed of indestructible states”

While the Canadian Constitution like the American, is silent on the issue of secession, constitutional scholars are in general agreement that unilateral secession of a province would not be constitutionally valid. This position has been confirmed by the Canadian Supreme Court in its determination on the Reference on the Secession of Quebec

The Constitutions of some former communist countries in Central and Eastern Europe which has a nominal commitment to a federal form of government, did contain a nominal commitment to the right to secede. Mr. Weerakoon makes the mistake of assuming that such commitments exist in all constitutions, which incorporate a federal form of government.

Federal constitutions may or may not include the right of a state to secede. Delegation of power from either the centre to the states or the states to the centre, is incompatible with basic principles of federalism. Federal forms of government require power sharing which cannot be amended or withdrawn unilaterally; in short, power sharing with greater security and guarantees.

The logic of Batty Weerakoon's argument is that a federal form of government CANNOT be introduced in Sri Lanka. He argues that the precedent fact of independent or units "capable of making a credible claim even to relatively independent viability" is a sine qua non which does not exist in Sri Lanka. In other words, Sri Lanka has to be first divided into autonomous regions which thereafter, amalgamate and delegate power to the centre in order to adopt a federal form of government.

Apart from being wrong because it completely ignores Devolutionary Federalism, and because it attaches too much importance to Process as opposed to substance, which, as the five features outlined above, is the essence of federalism, the Weerakoon thesis supports the contention that federalism results in the break up of the country and includes the right to secession. It is therefore not surprising that the phrase "union of regions" which was suggested for incorporation in earlier versions of the Draft Constitution 2000 has created as many problems as the term "federal" might have done.

From the discussion above it is clear that

- a) A State with a unitary form of government can through the introduction of devolution of power change to a state with a federal form of government.
- b) Though the draft constitution of August 2000 abandoned the label "unitary", it did not introduce a federal form of government as a number of basic federal features have not been incorporated in the document.

Lessons from South Africa

The issue of Federalism and devolution of power featured prominently in the South African constitutional debate, which preceded the adoption of the Final Constitution in May 1996.¹¹ Like in Sri Lanka, Federalism was dirty word”, but for different reasons.

The African National congress was concerned that the advent of democracy in south Africa should not merely included the capture of a formal, nominal kind of power. It believed that the power should be real and substantial, and included the power to transform society by effecting radical changer. Since Federalism entails the division of power and the unacceptable limits on the central government thereby preventing the adoption of measures to erase the legacy of year of apartheid.

The Nationalist Party of F. W. de Klerk, the Inkatah Freedom Party of Mongosuthu Buthelezi and the liberal, Democratic Party lobbied strongly in favor of a form of government.

The final version of the Constitution, due to steadfast ANC opposition, rejects Federalism, but introduces substantial devolution of power, which includes more federal features than the Sri Lankan legal draft on devolution. The Constitution does not either of the labels, Federal or unitary. It does provide, however, for a clear division of power between the center and the provinces, a National council of Provinces, which provides for the provinces to be consulted before constitutional amendments are introduced. The supremacy of the provinces to be consulted before constitutional amendments are introduced. All law and conduct inconsistent is with it is void. The principle of cooperation have been introduced. Provinces have the power to adopt their own Provincial constitutions as well.

Provincial representation at the center is guaranteed by a National Council of Provinces, which provides for the 9 provinces to be represented in the bi-cameral central Parliament, and for the provinces to be consulted before constitutional amendments are introduced. The National Council of Provinces consists of 10 members’ delegations from each of the 9 provinces, led by the provincial Premier (Chief Minister). Each 10 members delegation consist on 6 permanent delegates nominated by the political parties in the relevant provincial legislature and 4 floating delegates who shall be selected by the provincial legislature depending on the subject/legislation under consideration in the National Council of Provinces. Each provincial delegation is entitled to one vote. There for the 10 member delegation will have to reach a consensus on any issues in the Council.

The Myth about Labels

Another myth promoted by the opponents of the provisions of devolution in the Draft Constitution is that a Constitution must bear either the label “unitary” or “federal” and that most countries bear the unitary label. This is completely false. Many countries which have unitary and federal forms of government do not refer to these words in their Constitutions. Sri Lanka did not have either label until 1972.

The following countries do not use either label:

South Africa, the Philippines, Singapore, Thailand, Brunei, the people Republic of China, the Republic of Korea, Japan, France, the United Kingdom, Italy, Norway, Spain, India, Nepal, the United States of America.

The Indonesian Constitution contains a provision that the “state shall be Unitarian”

Australia, Belgium, Germany, Switzerland, Canada, Pakistan, Russia and Malaysia have provisions in their constitutions which refer to the words “federal” or “federation”.

It is clear, therefore, that labels are not necessary. Most countries do not use either label in their constitutions. What is more important is the nature of the State and the extent of the autonomy and powers devolved to the units. In the Sri Lankan context, the deletion of the unitary label does not necessarily mean that the constitution is converted automatically into a federal constitution. The insertion of a federal label does not necessarily mean that the Constitution is *ipso facto* federal. Labels do not matter; division of power does. Whether a country is unitary or federal depends on how power is divided or shared.

The Need for a New Initiative

Sri Lanka's ethnic conflict has evolved and snowballed into a complex political challenge that requires an imaginative and creative solution. A political solution must include fundamental constitutional reform. This, in turn, should include the adoption of a federal constitution. This need not require the insertion of a federal label, but should include the basic features of federalism described above. A federal constitution recognizes unity in diversity, pluralism and autonomy within a framework of a united country. It also avoids a concentration of power in a single political institution, thereby acting as a check on authoritarianism. While it is obviously a more complex system of government, it may, in the Sri Lankan context, if it is not too late, offer the only basis for a political solution to the ethnic conflict; a solution based on justice, peace and dignity.

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