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DEVOLUTION PACKAGES : A ROAD TO SOLUTION? (WITH SPECIAL REFERENCE TO SRI LANKA)

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Abstract:

The nearly three- decades long armed conflict between Sri Lankan forces and LTTE came to an end in may 2009. During the course of the conflict, India supported the right of the government of Sri Lanka to act against terrorist forces. At the same time, it conveyed at the highest level its deep concern at the plight of the mostly Tamil civilian population, emphasizing that their right and welfare should not get enmeshed in hostilities against the LTTE.

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Though the war has ended but the world community is still left to rethink, why the devolution packages announced at regular intervals, sometimes by the third party (Norway)sometimes by the neighboring country (India) and many times by the Sri Lankan government itself could not be workable ?Why these devolution packages could not proved to be a road to solution?

The terms devolution, federalism, power sharing and decentralization are critical words in ethnic conflict resolution. As the available tools there can be two models of ethnic crisis. The integrative model which presupposes an overriding centre, while the consociational model prescribes for fully autonomous federating units. Devolution is the most often used word in Sri Lankan ethnic parlance, “but as far as the model is concerned there is a fierce debate between the protagonists of the consocialtional model, mostly the Tamils and “Colombo liberals”, and those of the integrative model, mostly the Sinhalese and so-called Sinhala Buddhist hardliners”.1

Devolution received immense importance with the emergence of Chandrika Bandaranaike Kumaratunga on the political scene in 1994 with the victory of her coalition People’s Alliance (PA) in the general election, which was soon followed by her own victory at the presidential poll. She made it the central point at her election campaigns the “Historic injustice had been done to the Tamil community in the island and that she would solve the problem permanently through a massive dose of devolved powers to them after working out a federal structure for the country”.2 This is however different point that she failed in her mission. Here we have to analyse how effective federalism is as a remedy to the inter-ethnic problem and in particular how viable it is in the Sri Lanka situation. In Sri Lanka there are two popular concepts; one arguing for federalism as a solution to the ethnic problem thereby securing the state from disintegration, and the other arguing against federalism.

The first argument draws heavily from the current literature on constitutional law, human rights, and minority rights and international conventions dealing with questions of self-determination, group rights etc. The argument is that the territorial basis to Tamil ethnicity, their “homeland” in the northern and eastern provinces, should be recognized as a province in the Sri Lankan federation with some modifications and the basis of granting them power to govern themselves should be conceptually based on the theory of

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self-determination.

While the second argument draws heavily from Sri Lanka's history and comparative federal experience around the world,. Those who support this argument believe that throughout history both the Sinhalese and the Tamils have shared one heritage and the entire island belongs to both and other communities. To make northern and eastern province the homeland of only Tamils, would only be a harbinger of disintegration of the country. Although Sri Lankan Sinhalese elite have failed miserably in their job during last five decades as a result of which the ethnic problem has reached at its culmination. The biggest mistake that President Kumaratunga committed according to this school, was by drawing a new package of devolution, completely ignoring the evolutionary process.

If one compares these two arguments one finds differences between them. The first concept is theoretical in orientation and advocates drastic and innovative changes. In a way it is willing to take the risk. The second one is empirical in its orientation and believes in a slow and evolutionary process to handle the crises. It does not want to take a risk particularly in the context of the LTTE's Elam demand.

Though the term " devolution package" was first used by Chandrika Kumaratunga but the concept of devolution of powers was popularized by G.Parthasarathy, the principal negotiator on India's behalf who introduced the so called 'non-paper' (in late 1983 there occurred a series of talks between India and Sri Lanka indicating devolution of powers at the provincial and district levels). The essential factors of the 'non-paper' were as following -

- 1."The democratic Republic of Sri lanka shall be Union of States. The republic may be demarcated into a number of appropriate states each of which will have a State Assemble and a Council of Ministers."
- 2.The Northern and Eastern provinces which have been recognized in the constitutions the area in which the Tamil language shall also be a language of administration and of the courts shall constitute on State. In order to satisfy the aspirations of the Muslims who form a majority in the Ampara District, the Ampara District may form a separate State"3

The efforts of G. Parthasarathy could not be fruitful as a powerful group within the ruling UNP was opposed to any mediation by the Indian special envoy and they called it a type of "foreign interference" in the internal affairs of Sri Lanka. At the same time Tamils too rejected these proposals as they demanded a larger regional council comprising the two northern and eastern provinces instead of a separate council for each of the two provinces as offered in the package. They were also opposed to the referendum to confirm the wishes of the people for merger of district councils into regional council, since it would only enhance ethnic passions and increase tension.

Another Indian effort concerning devolution of powers was the 1987 Indo-Sri Lanka Agreement. One of the three major components of this Agreement was, "the 'modalities' of settling the ethnic conflicts through devolution of power to Tamil region combining the northern and eastern provinces"4 but this agreement proved to be a big failure as it was full of impracticable and unreasonable provisions, viz finalization of residual devolution of powers to the provincial councils that too within six weeks. Nevertheless, the provision of temporary merger of north-east was a good compromise formula but it could neither please the Tamils nor the Sinhalese. Even the amount of power to be devolved to the provinces was not spelt out in clear terms in the Agreement.

Devolution package, however in real terms was announced by Sri Lankan President Chandrika Kumaratunga on 3 August 1995 which envisaged the establishment of regional councils. As was expected the LTTE officially rejected the package as a plan of betrayal and an attempt to isolate the LTTE from the Tamils.5Actually, the devolution package of Chandrika kumaratunga ignored the specificity of the Tamil case and treated all the provinces at par. The Tamils were asking for the status of nationality and self determination which they did not achieve through the devolution package secondly, the unit of devolution was also in violation of traditional LTTE position, as the latter had consistently demanded a Tamil homeland corresponding to the northern and eastern provinces. While the devolution package tended to excise the Sinhala majority Ampara district from the eastern province and also carved out a separate area for the Muslims from the same province before amalgamating the two provinces as on north-eastern province to which power would be devolved. Besides, the package was so detailed that it left little scope for the LTTE to manipulate its provisions.6Moreover the perceptual gap that was prevailing between both the parties was evident from the fact that was prevailing between both the parties was evident from the fact that while Kumaratunga seemed to be serious the LTTE treated it as her ploy to dilute its national struggle. Its insistence to raise the level of the negotiating team to a political level by including a minister could again be interpreted either way. it appeared that LTTE was either looking for an opportunity to scuttle the talks or it was actually convinced that Kumaratunga was taking it too easy.

On 22 February 2002 Prime Minister Ranil Wickremesinghe, a leader From UNP and Vellupillai Prabhakaran signed a Cease Fire Agreement and agreed to address the vexed political question of

devolution of powers within a federal model. President kumaratunga's concept of 'Union of Regions' was also federal in all respects, but unfortunately it had certain drawbacks. She did not enjoy the two advantages that Wickremesinghe did. One there was no international pressure on the LTTE at that time, and two, there was personal animosity between her and Prabhakaran. As a result Kumaratunga's choice was limited to depending upon the Tamil political parties alone, most notably the TULF, which really did not help.⁷

Ranil wickremesinghe adopted a peace strategy based on extending the greatest possible political autonomy to the tigers within the frame work of a unified Sri Lanka. But giving to bitter power struggle between President chandrika Kumaratunga and Prime Minister Ranil Wickremesinghe, in November 2003 Sri Lankan President declared Emergency in the island and with that Ranil wickremesinghe's all efforts for providing LTTE with unlimited devolution were watered down.

Once again the failure of Norway-brokered all the peace efforts and the re-occurrence of violent confrontations between LTTE and Sri Lankan security forces has put a question mark on all efforts for evolving a peaceful and impartial devolution package. The proposed devolution package of SLFP, the largest party in the governing coalition, the United People's Freedom Alliance (UPFA) is another entry in the long list of devolution packages. The highlights of this devolution package are:

- ❖ Abolition of the executive presidency;
- ❖ Replacing it with the cabinet system of government led by the prime minister subject to consensus;
- ❖ The district as the unit for devolution of powers;
- ❖ The creation of a bi-cameral legislature.

The proposals aim to preserve the sovereignty and territorial integrity of Sri Lanka, the identities of different communities, and peaceful co-existence among the communities, and peaceful co-existence among the communities. So far devolution of power is concerned Mahinda Rajapaksa's devolution package speaks, "power should be divided to three lists reserved, district and local. The intention is to confer substantial devolution to the people, and not necessarily the political authority, so that the people at the grassroots can exercise power and have control over their own affairs". "There should be built in mechanisms to discourage secessionist tendencies and preserve the unity, sovereignty and territorial integrity of the state". "It is advisable to consider giving municipal and urban council status in the Eastern province to areas where there are Muslim and Sinhala Majorities, so that Minority interest will be safeguarded."⁸

Sri Lankan president believed that this package is expected to bring democracy to the people who have been held hostage by terrorist elements in some areas of the north and east. Then Sri Lankan foreign Ministry secretary Dr. Palitha Kohona said, :The government has expressed its readiness for talks, but there has been no positive response from the LTTE. I leave it to the public to decide the value of the truce, which the LTTE has used to regroup militarily"⁹

For the first time in the history of Sri Lankan's ethnic crisis, the LTTE used its air services and triggered three aerial raids since March 26,2007. Besides the 2002 Cease Fire Agreement is also under review as it had been violated for over 4000 times.¹⁰ India being the most powerful neighbour of Sri Lanka assured Sri Lanka of "full assistance" after the air attack by LTTE while stressing that India prefers a negotiated settlement to the conflict. Indian Prime Minister expressed the hope that such a devolution package should come out that can satisfy the legitimate political aspirations of all ethnic groups in Sri Lanka.¹¹ Now two important questions are of Prime concern: why the devolution packages have not been workable? And how to make a devolution package workable?

Three important reasons have been explored to answer the first question i.e.:

- 1.Bitter power politics and political manoeuvring has not allowed any devolution package to be workable IF un agrees on the provisions of the package then SLFP and other parties will create problems and the same be repeated if SLFP agrees on some provision. Chandrika Kumaratunga's 1995 devolution package could not be materialized owing to UNP's opposition. The same episode was repeated when in February 2002,after signing the Cease Fire Pact with LTTE, the Sri Lankan Prime minister and UNP leader Ranil Wickremasinghe tried to make consensus on a just and sincere devolution package, Sri Lankan President Chandrika Kumaratunga, the leader of SLFP declared emergency in the island owing to deteriorating political conditions of the country.
- 2.The fear of extremist Sinhala views and rigid Buddhist clergy has not allowed the ruling party whether UNP or SLFP to reach or Rather to consider any acceptable devolution package.
- 3.If the LTTE were to accept any devolution package and settle the conflict peacefully, the contributions coming from the Tamil Diasporas would dry up and other illegal commercial transactions now in operation would also get jeopardized.

No devolution packages, however could be fruitful and the ethnic crisis of Sri Lanka aggravated and finally ended up with complete breakdown of LTTE. The ruling party UPFA was facing allegation for human rights violation. The ruling party UPFA and then main opposition party UNP could not renounce their extremist Sinhala views at the same time LTTE also could not realize that gradually, it was losing base and even Tamils in Sri Lanka had started hating this organization blaming that the organization was committing violent activates not in the interest of Tamils but for self interested as it had murdered a number of innocent Tamil leaders just because they were not appreciating LTTE's policies, the murder of Lakshman Kadirgamar, the then foreign minister of Sri Lanka was one example.

Therefore renouncing political maneuvering and policies of self-interest and accepting just and sincere constitutional changes are the foremost requirements of devolution packages to be successful. Had this concept been accepted by the Sri Lankan government as well as by the LTTE, innocent civilians of Sri Lanka would not have faced the disaster they are facing today. India however is still concerned for to evolve a meaningful devolution packages for Tamils. Indian minister of External Affairs, S.M KRISHNA visited Colombo and called for a meaningful devolution packages for Tamils and insisted it will help create lasting peace in Sri Lanka.

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