

IS FEDERALISM A SOLUTION TO SRI LANKAN ETHNIC CONFLICT?

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Abstract

The change of power in 2015 and Maithripala Sirisena becoming the President of Sri Lanka is said to have sowed hopes for a political solution to the ethnic conflict. But the President has openly expressed on several occasions his intention in not compromising the unitary nature of the state and the primary status of Buddhism, the prime reasons for the conflict, under any circumstance, in the new Constitution. This assertion by the current president reflects that Sri Lanka, the Germany of South Asia, is yet to learn a lesson from its historical mistakes. This paper analyses the effectiveness of a federal constitution as a political solution to the ethnic conflict of Sri Lanka. The author in this paper has argued that even if Sri Lanka comes with a federal constitution, it is difficult to retain the different ethnic groups united due to the difficulties in creating a common national identity, a mandate for the unity of deeply divided ethnic societies.

Keywords: Identity, Ethnicity, Federalism, Constitution

1. Introduction

South Asian countries are not ‘nation states’ in the classical term but accidents of the British Empire.¹ These states share not only numerous values of history and culture as asserted in the preamble of the SAARC charter² but also share the suicidal ‘*discrimination against minorities*’ feature which threatens their political stability.³ The social diversity in these countries serves the basis for nationalism on the lines of ethnicity, language, religion etc. which antagonizes against the national identity due to the

¹A. Z. Hilali, *Political and Ethnic Waves in South Asia*, 58(3) Pakistan Horizon 55, 59 (2005).

²Preamble of SAARC Charter, December 8, 1985, available at <http://saarc-sec.org/saarc-charter> (Last visited on November 5, 2017).

³K.N.Panikkar, Keynote address delivered to the workshop on the Condition of Minorities in South Asia: Minorities in South Asia (October 8, 2005) available at <http://www.sacw.net/DC/CommunalismCollection/ArticlesArchive/knp15102005.html> (Last visited on December 5, 2017).

ethnocentric attitude of the governments.⁴ The Post-Independent era witnessed a range of secessionist movements⁵ in these countries, some being successful in creating new states like Bangladesh⁶ and some movements were tampered by the national armies brutally resulting in severe human rights violations. These states due to their incapability have failed to resolve these issues democratically.⁷ Among the conflicts encountered in South Asia, the ethnic conflict of Sri Lanka shook the world when its army committed genocide of Tamils on may 2009 at the end of civil war. And it is not an exaggeration in claiming that no other country has witnessed such a bloody long-standing conflict as Sri Lanka did.⁸ In the name of eradicating the 'terrorists' thousands of people including women and children were killed to regain 'peace' in the island.⁹ Lakhs of Tamil civilians were turned into internally displaced persons and refugees, reducing the population burden of the government.¹⁰

It is asserted that for a successful democracy in deeply divided ethnic societies they must incorporate anti-majoritarian measures like *federalism* or *bicameral legislature* to combat the domination of one group over the other.¹¹ Such measures were alien to the Sri Lankan constitution and this questions the legitimacy of democracy in Sri Lanka. *Neil Devotta* accuses Sri Lanka as a '*classic illiberal democracy*'¹² and *Robert N Kearney* says, '*Sri Lanka is an unhappy reminder of the difficulty of maintaining an orderly and peaceful democratic political process in plural society*'.¹³ The trueness of the above statements can be corroborated with the anti-Tamil as

⁴ Baqai Huma, *Role of Ethnicity in the Conflict Spectrum of South Asia*, 57(4) Pakistan Horizon 57 (2004).; Sehar Mushtaq, *Identity Conflict in Sri Lanka: A Case of Tamil Tigers*, 2 IJHSS 202 (2012).

⁵ Thomas, Raju G.C., *Competing Nationalisms: Secessionist Movements and the State* 18(3) Harvard Int'l Rev. 12 (1996).

⁶ *Id.*

⁷ Sumanta Banerjee, *Radical and violent political movements* in Routledge Handbook of South Asian Politics: India, Pakistan, Bangladesh, Sri Lanka and Nepal 382 Paul R. Brass, ed., Routledge (2010).

⁸ Mushtaq, *supra* note 4.

⁹ *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, March 31, 2011, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B6D274E9C8CD3CF6E4FF96FF9%7D/POC%20Rep%20on%20Account%20in%20Sri%20Lanka.pdf> (Last visited on December 5, 2017).

¹⁰ *Id.*

¹¹ Robert Oberst, *Tigers and the Lion-The evolution of Sri Lanka's civil war*, 18(3) Harvard Int'l Rev. 32 (1996).

¹² Neil Devotta, *Politics and governance in post-independence Sri Lanka* in Routledge Handbook of South Asian Politics: India, Pakistan, Bangladesh, Sri Lanka and Nepal 118 Paul R. Brass, ed., Routledge (2010).

¹³ Robert N. Kearney, *Ethnic Conflict and the Tamil Separatist Movement in Sri Lanka*, 25Asian Survey 898, 917 (1985).

well as the dictatorial policies adopted by the Sri Lankan government.¹⁴ The reactionary voices of dissent were tampered by the army brutally. Either the army directly involved in such atrocities or had acquiesced to the violence of Sinhalese against the Tamil civilians which *V.R Krishna Iyer* terms as 'State Terrorism'.¹⁵ The government too favoured the conflict for the purpose of nullifying the class consciousness or Marxist influence.¹⁶ By enacting the citizenship law it separated the Indian Tamils from the Lankan Tamils and by enacting the Sinhala only Act and other majoritarian policies, it antagonized the Sinhalese and Tamils.¹⁷ Hence, federalism was put forward as a solution to the conflict by the Tamil groups. The failure to understand this political solution and the increasing anti-Tamil riots influenced the frustrated youths to advocate separatism through armed struggle. But the Sri Lankan government, irrespective of the party in ruling, was adamant to federalize its political structure predominantly due to the pressure exerted by the Buddhist clergy and Sinhalese extremists as they thought it as a step towards Secessionism.¹⁸ This formed a vicious circle where Tamil separatism caused anti-Tamil riots which in turn strengthened the Separatism.¹⁹

The internalization of the issue after 1983 anti-Tamil riots and particularly the involvement of India, a regional superpower, forced Sri Lanka to adopt a devolutionary mechanism granting autonomy to the Tamil provinces.²⁰ But the devolutionary set up due to its inherent inability failed to satisfy the legitimate aspirations of the Tamils creating a demand for constitutional reforms in the post-war scenario. The change of power in 2015 and Maithripala Srisena becoming the President of Sri Lanka is said to have sowed hopes for a political solution.²¹ Duly certain amendments were made nullifying the dictatorial provisions of the Constitution. But, he has openly expressed on several occasions his intention in not compromising the unitary nature of the state and the status of Buddhism, the prime reasons for

¹⁴ Chitra Sivakumar, *Social Origins of the Sri Lankan Tamils' militant movement*, 38 Sociological Bulletin 119 (1989).

¹⁵ V. R. Krishna Iyer, *Tamil Tragedy in Sri Lanka and Contradictory Strategy by India: I*, 23 Econ. Political Wkly. 1417 (1988).

¹⁶ K. M. De Silva, *A History of Sri Lanka* 492-95, University of California Press (1981).

¹⁷ *Id.*

¹⁸ Neil DeVotta, *Majoritarian Politics in Sri Lanka: The Roots of Pluralism Breakdown*, April 2017, available at www.pluralism.ca/wp-content/uploads/2017/10/Sri_Lanka_NDeVotta_Complete_Case.pdf (Last visited on December 5, 2017).

¹⁹ Kearney, *supra* note 13.

²⁰ Sandra Destradi, *India and Sri Lanka's Civil War the Failure of Regional Conflict Management in South Asia*, 52 Asian Survey, 595 (2012).

²¹ *The fear has gone-Sri Lankans hope for peace and reform under new president*, February 19, 2015, available at www.theguardian.com/world/2015/feb/19/sri-lanka-president-maithripala-sirisena-election-colombo-mahinda-rajapaksa (Last visited on November 5, 2017).

the conflict, under any circumstances, in the new Constitution.²² This assertion by the current President reflects that Sri Lanka has not learnt a lesson from its historical mistakes. Presently, the Sri Lankan government is under the process of drafting a new Constitution and it must not commit the same mistakes of the previous Constitutions.²³ The primary purpose of this paper is to make suggestions to the Sri Lankan government regarding the rights of minorities to be incorporated in the new constitution by analyzing the devolutionary mechanism adopted as a solution to the ethnic conflict.

2. Conflict Of Identities

The conflict of Sri Lanka is a product of identity discrimination of Tamils. Identity is a fundamental human need and it is discrimination based on such identities, an underlying factor in ethnic conflicts.²⁴ According to the 2012 statistics, Sri Lanka consists of 74.9% of Sinhalese, 11.2% of Lankan Tamils, 4.2% of Indian Tamils, 9.2% of Moors (Tamil speaking Muslims), and less than 1% of Burghers, Malays and others.²⁵ The governments of Sri Lanka during different periods have failed to create a 'national identity' common to all the groups, a mandatory requirement for the unity of a state. The lack of an effective nationalist movement during independence might be one of the main reasons for the absence of a common national identity. Unlike other countries, Sri Lanka did not get independence through struggle. The transfer of power was in a peaceful manner. It was granted only a dominion status by the Britishers on 1948 which made some people, at that point of time, to question the legitimacy of independence.²⁶ If Sri Lanka had gained independence like India, Pakistan or Bangladesh through struggle, it would have at least managed to generate a 'fake National identity' through which it could have held the different ethnic groups united up to some extent. The Constitutions, in contrary to creating a common identity, were structured in such a way favouring Sinhalese majoritarianism.²⁷ This might have made the Sinhalese confuse Sri Lankan nationalism with Sinhalese nationalism and also influenced them to categorize the legitimate voices of Tamils as 'anti-national'. Consequently,

²² Available at www.president.gov.lk/responsibilities-on-constitutional-positions-of-unitary-status-buddhism-will-be-upheld-president/ (Last visited on November 5, 2017).

²³ The shortcomings of the earlier Constitutions of Sri Lanka is discussed elsewhere.

²⁴ Mushtaq, *supra* note 4.

²⁵ *Population by ethnic group according to districts, 2012*, available at www.statistics.gov.lk/PopHouSat/CPH2011/Pages/Activities/Reports/cph2011Pub/pop42.pdf (Last visited on November 4, 2017).

²⁶ Nira Wickramasinghe, *Sri Lanka's Independence: Shadows over a Colonial graft' in 'Politics and governance in post-independence Sri Lanka* in Routledge Handbook of South Asian Politics: India, Pakistan, Bangladesh, Sri Lanka and Nepal 41 Paul R. Brass, ed., Routledge (2010).

²⁷ Mushtaq, *supra* note 4.

the Tamils were not considered as a part of their ‘national identity’ and this exclusion catalysed the progress of ‘Tamil Nationalism’. It is also said that if Buddhism had been the common religion of India and Sri Lanka, there would have been fraternal relations between the two countries resulting in peaceful settlement due to a common identity.²⁸ But it is not absolutely true. Though the Sinhalese Buddhist nationalism was one of the main reasons for ethnic conflict, the people never gave prime place to Buddhism. According to them, their first priority was land, second was Sinhala and the last was Buddhism.²⁹ If they would have given Buddhism a primary place then they would not have offered Bloods of the Tamils to the Statues of the Buddha as accused by *V.R. Krishna Iyer*.³⁰

3. The Problem Of Sri Lankan Constitution

Lon L. Fuller says,

*‘... a constitution cannot lift itself unaided into legality; it cannot be law simply because it says it is... efficacy of our work will depend upon general acceptance and that to make this acceptance secure there must be general belief that the constitution itself is necessary, right and good.’*³¹

Going by Fuller’s viewpoint, the non-acceptance by a considerable number of people (Tamils) is the main reason for the constitutional instability in Sri Lanka. Because either they were ignored in the process of drafting or their proposals were rejected by the constituent assembly.³² It started with the Donoughmore Constitution of 1931 which abolished the communal representations introduced in 1923 and committees were set up to run the government entrusting more authority to the natively elected representatives.³³ As a result, the ratio of Sinhalese to the Tamils became 5:1 from 2:1.³⁴ The Soulbury constitution of 1948 which gave dominion status to Sri Lanka established parliamentary democracy without any constitutional safeguards to the minorities except a clause prohibiting enactment of legislation discriminating minorities. It rejected proportional

²⁸ Ahsan Ali Khan, *The Tamil question in historical perspective: Its impact on Indo Sri Lanka relations*, 37(2) Pakistan Horizon 42 (1984).

²⁹ Mohammad Agus Yusoff & ors. *State-Building, Power-Sharing Discourse, and Political Autonomy of Minorities within Ethno-Nationalist Gloom in Sri Lanka*, 9 Journal of Politics and Law 88, 90 (2016).

³⁰ Krishna Iyer, *supra* note 15.

³¹ Lon F. Fuller, *Positivism and Fidelity to Law – A reply to Professor Hart*, 71 Harvard L. Rev. 630, 642 (1958).

³² Ali Khan, *supra* note 28.

³³ Chitra, *supra* note 14, 123.

³⁴ *Id.*

representation popularly known as ‘fifty-fifty’ plan proposed to safeguard the constitutional rights of minorities.³⁵

Dissatisfaction with dominion status and desire for an indigenous constitution encouraged Sri Lanka to enact a new constitution in 1972. The Constitution which declared Sri Lanka a sovereign and independent republic ignored the ‘*Tamil presence of the country*’.³⁶ It repealed the minority clause of the Soulbury constitution, declared Sri Lanka as a unitary state, made Sinhala the official language and attributed prime place to Buddhism. It is because of these reasons the constitution was accused as ‘*Ethno-centric constitution*’.³⁷ The 1972 constitution lacked the legitimacy due to its non-consensual approach and also as a document unilaterally imposed by a party which had a majority in the parliament without active participation of opposition parties and representatives of minorities. Though the Constitution had radical economic reforms like replacing laissez-faire economics with planned economy, safeguards to the rights of the people were limited as the National State Assembly (NSA) retained ultimate power to enact laws circumscribing their rights. The 1972 constitution having features of despotism is also criticized as a ‘*precursor to all the travails that would plague Sri Lanka for next generation*’.³⁸

Later when J.R. Jayewardene became the PM, a Ten member Select Committee without Tamil membership, in spite of Tamils being the opposition party, was appointed to revise the constitution and suggest necessary changes.³⁹ Hence, Sri Lanka witnessed a new constitution in 1978.⁴⁰ Though Tamil was recognized as National and Administrative language, it retained the unitary feature and status of Buddhism while ignoring the devolution of powers issue. No public discussions were made and parties were not allowed to discuss the provisions during the drafting process. Again this constitution was a unilateral imposition by a party which is evident from the composition of the Select Committee. The constitution was accused of not considering the prevailing political situations and its survival was expected only for a short span of time.⁴¹

³⁵ *Id.*; Robert C. Oberst, *Federalism and Ethnic Conflict in Sri Lanka*, 18(3) *Publius* 175, 182 (1988).

³⁶ Donald L. Horowitz, *Incentives and Behaviour in the Ethnic Politics of Sri Lanka and Malaysia*, 11(4) *Third World Q.* 18 (1989).

³⁷ Mushtaq, *supra* note 4.

³⁸ Radhika Coomaraswamy, *The 1972 Republican Constitution in the Postcolonial Constitutional Evolution of Sri Lanka* available at <http://republicat40.org/wp-content/uploads/2013/01/The-1972-Republican-Constitution-in-the-Postcolonial-Constitutional-Evolution-of-Sri-Lanka.pdf> (Last visited on November 7, 2017).

³⁹ W. A. Wiswa Warnapala, *Sri Lanka's New Constitution*, 20(9) *Asian Survey* 914 (1980).

⁴⁰ *The Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978.

⁴¹ Warnapala, *supra* note 39.

4. Devolution Of Powers

The main reason for the perpetuation of the ethnic conflict is the failure of the Sri Lankan Constitutions to acknowledge the legitimate rights of the Tamils.⁴² This continuous absence of constitutional safeguards developed the discontent of Tamils into State antagonism. Though the Tamils demanded a separate state by emphasizing on their right to self-determination which is evident from the Vaddukoddai resolution, 1977 and proposals submitted in the Thimpu Talks, 1985 they were ready for a compromise on the lines of federalism.⁴³ The *Interim Self-Governing Authority* (ISGA) proposals, issued by LTTE in 2003 for a power-sharing mechanism, clearly expressed the kind of political set up they wished to establish.⁴⁴ This proposal was welcomed by the international community as for the first time LTTE stepped down from the agenda of an independent state. But as usual the opposition party SLFP and the Sinhalese Extremists opposed it and alleged the proposal was nothing short of an establishment of a de facto Tamil Eelam.⁴⁵ Therefore, the Tamils groups at one point were ready for a federal solution. All they wanted was substantial level of autonomy to safeguard their rights. But the Sinhalese Extremists' zero-sum approach denied any constitutional solution and further intensified the conflict.

The claim for devolution of powers on the lines of federalism was first put forward by the Federal party (FP) in the 1950s.⁴⁶ Two pacts namely Bandaranaike Chelvanayagam pact, 1957 and Dudley Chelvanayagam pact, 1965 was signed by then Prime Ministers and Chelvanayagam, leader of FP for devolution of powers.⁴⁷ Both the pacts were abrogated due to opposition from the Sinhala-Buddhist clergy. The former pact resulted in the assassination of the PM by Bikkhus due to his '*middle of road policies*'.⁴⁸ The District Council bill, 1968 enacted on the lines of the 1965 pact, also got lapsed due to resistance from the opposition party. Later Indo-Lanka accord was concluded in 1987 which recognized the North-East provinces as traditional homelands of Tamils furthering devolution of powers in the

⁴² Mushtaq, *supra* note 4, 204.

⁴³ M. S. S. Pandian, *Putting Pressure on Tamils*, 20 Econ. Political Wkly.1411, 1985.

⁴⁴ *Full text: Tamil Tiger proposals*, November 1, 2003, available at http://news.bbc.co.uk/2/hi/south_asia/3232913.stm (Last visited on November 7, 2017).

⁴⁵ Crisis Group Asia Report N°124, *Sri Lanka: The Failure of the Peace Process*, November 28, 2006, available at <https://d2071andvip0wj.cloudfront.net/124-sri-lanka-the-failure-of-the-peace-process.pdf> (Last visited on November 7, 2017).

⁴⁶ Kearney, *supra* note 13.

⁴⁷ Crisis Group Asia Report N°239, *Sri Lanka: Tamil Politics and the Quest for a Political Solution*, November 20, 2012, available at www.files.ethz.ch/isn/156092/239-sri-lanka-tamil-politics-and-the-quest-for-a-political-solution.pdf (Last visited on November 7, 2017).

⁴⁸ Chitra, *supra* note 14.

provinces. Though it is said that the accord was forced upon the Sri Lankan government to resolve the conflict through devolution of powers,⁴⁹ it is one of the watershed moments in the Sri Lankan Constitutional history. For the first time, powers were devolved creating provincial Councils (PCs) by passing the thirteenth amendment to the 1978 constitution.

4.1. The Thirteenth Amendment

Provincial Councils (PCs), Constitutional posts were created under the thirteenth amendment and subsequently, certain legislations like Provincial Councils Act, 1987 and Provincial Councils (Consequential Provisions) Act, 1989 were also enacted for the purposes of devolution.⁵⁰ The 13th Amendment was challenged on the ground that it required referendum of the people as it affected the unitary status under article 2 and sovereignty of the people under article 3, the entrenched provisions according to article 83.⁵¹ The court rejected the argument and held that the Amendment did not affect the entrenched provisions and based its decisions on the following grounds⁵², which help us to understand the nature of devolution.

1. No exclusive or independent power was endowed on the PCs; The Parliament and the President retained supreme power.
2. The legislative powers of the PCs are subordinate to the sovereignty of the parliament.
3. The structure of courts was not affected due to absence of devolution of judicial powers.
4. Governor, the executive head of provinces, exercises his power as a delegate of the President.
5. Article 27(4), Directive Principle of State Policy favoured participation of local people in the government which is achieved by this devolution.
6. Parliament has unilateral power to dissolve the PCs without their consent.

These grounds may help one to state that the Thirteenth Amendment has failed to provide a true federal arrangement as it leaves extensive power to the President and the Governor.⁵³ It is also said that the Thirteenth

⁴⁹ G.L. Pieris, *Devolution in Sri Lanka: Step Towards Conflict Resolution at Local Level*, 49(1) Pakistan Horizon 13 (1996).

⁵⁰ Amita Shastri, *Sri Lanka's Provincial Council System: A Solution to the Ethnic Problem?* 32 Asian Survey 723 (1992).

⁵¹ In re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill, (1987) 2 SLR 312 at 325.

⁵² *Id.*

⁵³ Oberst, *supra* note 11.

Amendment mechanism gave power on one hand and took back on the other.⁵⁴

5. Devolution In Practice

Comprehensive research on the devolution set up has been done by the *Centre for Policy Alternatives*, Sri Lanka. It has analyzed through its working papers, the nature of devolution and the effectiveness under the thirteenth amendment.⁵⁵ It also carried out an empirical study involving the Chief Ministers of the provinces and other officials on the mark of twenty years of devolution.⁵⁶ According to them, the devolution failed to meet the legitimate aspirations of the Tamils for the following reasons:

1. The implementation of the devolutionary mechanism within the unitary framework.
2. The Political culture and administrative practices are in favour of centralization defeating the purpose of devolution.
3. The restrictive approach towards the 13th amendment as evident from the decision of the Supreme Court in the *in re thirteenth amendment case*.
4. The Fiscal and financial framework which limits the revenue-raising capacity of the PCs. Non-representation of Provinces in the Financial Commission and the consequent improper distribution of funds.
5. The extraordinary concentration of powers on the part of the Governor, a President delegate.
6. The issues confronted by all the provinces irrespective of regional differences such as⁵⁷,
 - a. Concurrent list with Centre pre-eminence which is considered as the major impediment.
 - b. Circulars of Central Ministers failed to consider the needs of the provinces.
 - c. Usurpation of Powers by Centre often in the matters of Education and in other matters such as hospitals, agrarian services, water resources, mining, minerals and development projects.

⁵⁴ Pieris, *supra* note 49.

⁵⁵ Asanga Welikala, *Devolution under the thirteenth amendment: Extent, limits and avenues for reform* (CPA Working Papers on Constitutional Reform No.10, 2016).; Asanga Welikala, *The Sri Lankan conception of the unitary state: Theory, practice and history* (CPA Working Papers on Constitutional Reform No.1, 2016).

⁵⁶ Centre for Policy Alternatives (CPA), *Strengthening the Provincial Council System* (Report of Workshop Deliberations 2008).

⁵⁷ *Id.*

- d. Difficulty in recruitment of staffs due to lack of financial autonomy and difficulty in retention of staffs due to problems in salary payments.
- e. Lack of adequate research and development capacity in the provinces.

Commenting on the practical aspects, CPA has expressed that there is no political will on the part of the government for regional devolution and ensuring political autonomy on the provinces.⁵⁸ Receiving the Governor's assent is the pre-requisite for enacting a statute and it is reported that there is delay in receiving such approval.⁵⁹ There are instances where bills had been withheld for a longer period of time and the PC's term comes to an end before the completion of legislative process resulting in the invalidation of such bill.⁶⁰ Further, the devolution turned into a mockery after the enactment of 18th Amendment of the Constitution which concentrated powers on the President most importantly the power to appoint all the top officials of the country. The amendment affected the Province Police and Public Service Commission but the PCs were never consulted in the process.⁶¹ Abolition of Central Ministries replicating the functions of PCs, vesting adequate tax powers, ensuring adequate participation of the PC officials are some of the suggestions made by them for effective functioning of the PCs.⁶²

6. Role Of India In The Conflict – A Bird's Eye View

Commenting on the role of India as a regional power, it has failed in its duty to facilitate a political solution to the Sri Lankan ethnic conflict.⁶³ *K.M de Silva* has rightly pointed out that India's involvement in the conflict reflects the exploitation of a situation by a regional power against its neighbour's state to its own advantage.⁶⁴ India's attitude towards the conflict was purely based on its innate ambitious desire as a regional power to exert its influence in South Asia by combating the growing influence of China in the

⁵⁸ *Id.*

⁵⁹ Asanga Welikala, *The Sri Lankan conception of the unitary state: Theory, practice and history* (CPA Working Papers on Constitutional Reform No.1, 2016).

⁶⁰ *Id.*

⁶¹ Gulbin Sultana, *18th Amendment: Making a Mockery of Democracy in Sri Lanka* October 07, 2010, available at https://idsa.in/idsacomments/18thAmendmentMakingaMockeryofDemocracyinSriLanka_gsultana_071010 (Last visited on November 11, 2017).

⁶² Manjula Gajanayake, *Provincial Council Statutes of Sri Lanka: a Comparative Analysis - 2010* available at http://citizenslanka.org/wp-content/uploads/2016/03/Final-Report-of-the-Programme-of-Statute-Formulation30-1_1.pdf (Last visited on November 11, 2017).

⁶³ Destradi, *supra* note 20.

⁶⁴ K.M. de Silva, *The Sri Lankan Imbroglia*, 28(3) IIC Quarterly 149, 160 (2001).

region.⁶⁵ The above-said allegation is evident from the changing stances adopted by the Indian government during the course of the conflict. It emerged as a pro-LTTE at the inception under Indira Gandhi's '*Munroe doctrine*', then tried to play the role of a mediator subsequently turning a combatant under the *ISLA*, then as a suspicious spectator due to '*Gujral doctrine*' and finally as an active ally of Sri Lanka under Manmohan Singh regime in the Civil war. India was also forced, up to some extent, to change its stances due to the pressure exerted by the people and political parties of Tamil Nadu through mass protests and self-immolations⁶⁶ echoing their ethnic bonding with the Sri Lankan Tamils. Therefore, India will be of no use to the Sri Lankan Tamils in the negotiation process for the new constitution because of two reasons. First, it will take a pro-Sri Lanka stand due to its commercial interests and Second, India has no legitimacy to intrude, to lift the Tamils, using her same hands stained with Kashmiri blood.

7. Conclusion And Suggestions

The post-independent state-building process in Sri Lanka is said as the conflict between Sinhalese nationalism and minority ethnic groups and the Sinhalese had never made an attempt to understand the concept of federalism as a political solution.⁶⁷ Neither the UN report on Accountability in Sri Lanka nor the Lessons Learnt and Reconciliation Commission (LLRC) report acknowledged the lack of federal provisions as one of the major causes of discrimination against the Tamils. The SL government is wrong to assume end of LTTE as the end of the ethnic problem and the only solution for the conflict would be drafting a constitution which is acceptable to democratic elements in all the communities.⁶⁸ In the name of appeasing the Sinhalese, they must not sow the seeds for the uprising of the conflict through the new constitution.

Whether Post-conflict federalism is an effective solution to the issue of ethnic conflict? *Sujith Choudhry & Nathan* has contributed an academic literature dealing with this question.⁶⁹ Accordingly, there are primarily two

⁶⁵ *Id.*

⁶⁶ S. D. Muni, *India's Tamil Politics and the Sri Lankan Ethnic Conflict*, 86 ISAS Brief (2008).; Alan Bullion, *India's Regional Role Challenged by Chinese Presence in Sri Lanka*, 22(1/2) Indian Journal of Asian Affairs 47 (2009).

⁶⁷ Mohammad Agus Yusoff & ors. *State-Building, Power-Sharing Discourse, and Political Autonomy of Minorities within Ethno-Nationalist Gloom in Sri Lanka*, 9(1) Journal of Politics and Law 88, 90 (2016).

⁶⁸ *Humanitarian Crisis in Sri Lanka's 'Final Battle'*, 43 Econ. Political Wkly 7 (2008).; Rohini Hensman, *Sri Lanka becomes dictatorship* 45 Econ. Political Wkly 41 (2010).

⁶⁹ Sujith Choudhry & Nathan, *Federalism, devolution and secession* in Comparative Constitutional Law 356, Tom Ginsburg & Rosalind Dixon, eds., Edward Elgar (2011).

conflicting views regarding the question. One view accepts that federalism dampens secessionism and the other view regards federalism as a set up perpetuating secessionism. Both arguments have equal weightage. According to the first view, for a Post-Conflict federalism to be successful it must remedy the disadvantages suffered by the minorities; acknowledge the existence of more than one nation within the state by granting sufficient powers to the regional institutions. Whereas the second view is sounder as it is based on the experiences of the disintegration of Yugoslavia, Czechoslovakia and Russian Federation. All those countries reflect the failure of post-conflict federalism. But it is also asserted that secession depends on the nature of regional parties. In Sri Lanka, regional parties are not so powerful after the defeat of LTTE. Hence, there is no threat in adopting federal constitution.

Sri Lanka is now in a period of Democratic Transition. For the transition to be successful in deeply divided ethnic societies especially in the post-genocide era, *David E. Kiwuwa* has developed an integrative model which rests on four principles namely unity, equality, trust and institutional engineering.⁷⁰ Firstly, unity as a fundamental requisite for transition cannot be achieved without recognizing diversity and cohesion. Secondly, by equality, the author means that there must be an equal access of political resources and mechanisms like minority vetoes, concessions, compromises, reserved domains must be granted to address and manage the differences in the society. Thirdly, according to the author, trust is premised on three things in a post-conflict deeply divided society namely, absence of perfect information, high probability of uncertainty and history of violent confrontation. Fourthly, by Institutional Engineering the author emphasizes that progress in democratisation depends on the effectiveness of the institutions as it is the only tool of communication between disparate groups. If we go by the Integrative model it is very difficult for the Sri Lankan government to create a national identity for unity and even more difficult or nearly impossible to earn trust among the Tamils. 'Will the Tamils really trust a government which had killed its own citizens?' is the question of pertinent importance.⁷¹

It was rightly predicted by *Jayadeva Uyangoda* that defeat of LTTE would make the Tamils including the political parties in a submissive position which will pressurize them to accept any solution 'as a concession and not as a right'.⁷² Post-war, the Government believes that the 'Tamils have no

⁷⁰ David E. Kiwuwa, *Ethnic politics and Democratic transition in Rwanda* 47, Routledge (2012).

⁷¹ *Tragedy in the Vanni*, 44 *Econ. Political Wkly* 5 (2009).

⁷² Jayadeva Uyangoda, *Politics of Sri Lanka: 2007-08* in *South Asia Societies in political and economic transition* 245 Tan Tai Yong, ed., Institute of Southeast Asian Studies (2010).

other choice but to tolerate Sinhalese Buddhist dominance'.⁷³ Presently the Tamils are not in a position to exert their right to external self-determination and are not in an equal position in the negotiation process. The claim of separate state has been smothered by the genocide. All they have is to seek a federal Constitution. But unfortunately, Sri Lanka is not ready to adopt a Federal Constitution. They are ready to preserve their unitary status even after the war without any remorse for the lost lives of the Tamils.

Even if Sri Lanka comes up with a Federal Constitution, it is difficult to create, as said earlier, a common national identity for both Sinhalese and Tamils. Therefore, the future of Sri Lankan unity is a big question and the minorities will be a major threat to Sri Lanka. Either it has to come up with a Confederation set up for a peaceful existence or must continue with its force for unity. Nevertheless, a Federal Constitution will guarantee, to some extent, the legitimate rights of the minority Tamils. As Sri Lanka is in the process of drafting its new Constitution, it shall learn from its neighbour as the problem of minority rights was also a subject of concern while drafting the Indian Constitution. There were oppositions from few Honourable Members regarding the safeguards given to the minorities in the Draft Constitution and it is mandatory for the Sri Lankan government to have a recourse to Dr. Ambedkar's idea of Constitution which is reproduced here,

*'It is wrong for the majority to deny the existence of minorities...minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.'*⁷⁴

⁷³ Devotta, *supra* note 12.

⁷⁴ Ministry of Social Justice & Empowerment, Govt. of India, 13 Dr. Babasaheb Ambedkar Writings and Speeches 62-63, (Vasant Moon ed., 2014).