

# ETHNIC IDENTITY AND SELF-DETERMINATION

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**T**raditionally ethnic identity has been defined in terms of race and descent. In some societies race has remained the most significant factor but in many, with the progressive discrediting of race theories, the emphasis shifted to cultural features. Because the various cultural features may not be correlated, the focus frequently, but not always, settled on language. In a few, the critical feature was religion, history, territory, or citizenship.

Even the non-racial definitions such as language pose problems. For example, many middle-class Sri Lankans and a large proportion of Sri Lankan expatriates speak English, even in their homes; in effect, their mother tongue is English. But does this redefine their ethnicity? Similarly, most Sri Lankan Muslims speak Tamil at home and their children have their schooling in the Tamil medium, but increasing proportions of Muslims speak Sinhala or English at home and their children have their schooling in the Sinhala or English medium. But does this redefine their ethnicity?

All of us have multiple identities, which is healthy. Group identities are as necessary as individual identities; so is pluralism. Without distinctive group and individual features, life would be unbearably bland. On the other hand, few would wish to belong to a society in which there is total correlation of all features of group identity — the ultimate end product of ethnic cleansing.

## Identity and Community

**T**he most pragmatic basis of ethnic identity may be a sense of community. Do all Sri Lankans have the same ethnic identity? Are those categorized as Kandyan Sinhalese and Low-Country Sinhalese of the same or different ethnic identity? Are those categorized as Sri Lankan Tamils, Malayaha Tamils and Muslims of the same or different ethnic identity? Since we all have multiple identities, there can be no definitive answers to these questions. Perhaps it is just as well. But this is not to deny that some identities are felt to be more important than others and, in particular, politically more potent.

Our civil war relates to perceptions of ethnic identity and loyalties, and felt grievances linked to these perceptions. Conflicts cannot be overcome by mere definition or redefinition of ethnicity; nor can ethnic identities be foisted on any community or individual. We all need to decide for ourselves what our ethnic identities are, and which of these is most salient in any particular context. In rational politics one identity may surface as the most salient, in local politics another, in literary matters a third, in religious life a fourth, and so on. Moreover, the weights we attach to these identities may change over time.

For example, up to the mid-20<sup>th</sup> century, the Kandyan Sinhalese sought recognition as a distinctive ethnic community, with special political and administrative structure to secure and sustain their welfare. This was accepted and special provisions were made for the socio-economic development of the Kandyan areas and the Kandyan Sinhalese population. In addition, all revenue divisions were categorized into Kandyan Sinhalese, Low-Country Sinhalese and Tamil, with separate cadres of Divisional Revenue Officers serving these areas. Recruitment to each of these three service cadres was exclusively from the community concerned. Perhaps Kandyan Sinhalese no longer claim a distinctive ethnic identity requiring separate political and administrative structures. It is for them to decide on this matter and not for others to dictate to them. On the other hand, it is possible that Muslims and Malayaha Tamils, earlier subsumed within the Tamil category in respect of the D.R.O. service, may now wish to be recognized as distinctive ethnic communities. Again, it is for them to decide and not for others to dictate to them. If there are conflicting perceptions, the leadership of the communities concerned could seek to resolve them amicably. This may be particularly important in respect of political and administrative institutions. On this issue, as on many others, there are perceived ethnicity correlated differences but also, happily, attempts to resolve them through dialogue. This is of the essence of self-determination.

Self-determination may take many forms including:

- i) External self-determination (secession).
- ii) Internal self-determination extending to autonomy for groups defined territorially, but with boundaries drawn with due consideration paid to ethnic identity.
- iii) Internal self-determination reflected in special rights for minority groups within a larger politically entity, as recognized in Article 27 of the International Covenant on Civil and Political Rights, and in the U.N. General Assembly's 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The original LTTE demand was for (i) above; it now appears that it will settle for (ii) (which was the ITAK/TULF demand through the third quarter of the 20<sup>th</sup> century), falling back on (i) only in the event of a total breakdown in negotiations. The long-standing LTTE commitment to the first option seems to be receding. The SLMC position has not been finally formulated but, clearly, it will be based on the understanding that the Muslims have a distinct ethnic identity; the alternatives appear to be (ii) or (iii) above depending on whether the arrangements worked out between the government and the LTTE adequately meet Muslim concerns. For the Muslims, (ii) could be in the form of a self-governing Muslim majority South

East region; (iii) could be in the form of constitutional safeguards and institutional arrangements protecting the rights and promoting the welfare of Muslims but without the establishment of a self-governing South East region. For the Malayaha Tamils, (i) and (ii) may not be feasible, and their focus is on (iii).

Not every federalism/regional autonomy regime is based on internal self-determination. For example, a regime of regional autonomy based on river basins (as has been proposed) will not meet the objectives of internal self-determination. Perhaps that proposal is designed precisely to frustrate such objectives. Subject to the need for territorial contiguity, a degree of correlation with the ethnic identity of the population resident in it is an essential ingredient. On the other hand a federation of exclusively, mono-ethnic regions will not be viable in a multi-ethnic country. Such a situation will surely provoke ethnicity-based conflict and, inevitably, the center will seek to re-impose its hegemony over the regions exclusively peopled by minority population. A healthy and enduring relationship between the center and the periphery requires, at all levels, both power sharing and openness to pluralism.

### Indian Case

A look at India will be instructive. Firstly, even after more than half a century, the ill effects of separation (partition) continue to foul politics and ethnic harmony, and to generate violence in both India and Pakistan. Second, through adopting a federal (or quasi-federal) constitution, India went some distance towards meeting the aspirations of internal self-determination. But due recognition was not given to linguistic identity, and there were eruptions of linguistic nationalism in many regions, with demands for the redrawing of state boundaries and, in some cases, secession.

The Indian leadership initially opposed it, but was eventually compelled to concede the principle of linguistic reorganization of states, i.e. internal self-determination on the basis of linguistic identity. Contrary to the fears of the Indian leadership, the reforms proved to be unifying and integrative in respect of all-India nationalism. Centre-periphery and inter-state disputes have not disappeared (it would be unrealistic to expect that they ever will), but those generated by linguistic nationalism have largely subsided. In particular, the movement in South India, particularly Tamil Nadu, for secession has disappeared. The realization of an acceptable measure of internal self-determination has undermined the case for external self-determination.

The lesson is that all facets of ethnic identity, viz. language, religion, etc., have the potential to play positive or negative roles in national integration. We may also note that because of the principle of contiguity, even after reorganization, every Indian state retained a degree of pluralism. Since then, the degree of pluralism has increased through free movement of the population across India, further enhancing the unity and integrity of that country. This development has been facilitated, not hindered, by the adoption of linguistic homelands which ensured that:

- (i) No linguistic group felt threatened with loss of identity.
- (ii) Those who wished to live in a territory administered in their mother tongue were free to move into such a territory; and those who wished to move into another, for whatever reasons, were also free to do so.

### Regional Autonomy

Is regional autonomy a half way house to separation? If so, why have those fighting for secession, whether in Sri Lanka or elsewhere, sought to sabotage rather than support the functioning of devolved institutions? In one sense, the various gradations of internal self-determination may be seen as spanning the gap between external self-determination and a unitary regime. This is so in respect of the powers devolved from the center to the periphery. But, in other respects, to move from a unitary regime to internal self-determination is to move in the opposite direction, away from secession — morally (in terms of justification), politically (in terms of the feasibility of that option) and in international law (extending to respect for the territorial integrity of the state).

The transformation from a (failed) unitary to a (new) plural regime is, invariably, the outcome of extended negotiations resulting in both a contract between the leaders of the groups previously in conflict and a fresh constitution. That contract, if honoured by either side, imposes moral and political pressure against unilateral repudiation by the other. Both within the country and beyond, the new constitution, in contrast to the failed one it has replaced, has a compelling legitimacy. Moreover, in international law, the recognition of the right to internal self-determination and the adoption of appropriate agreed constitutional and administrative reforms will serve to delegitimize the right to external self-determination — *vide* extract below from Devanesan Nesiiah, Tamil Nationalism, Mar ga Monograph Series, 2001 (pp. 22-24).

In international law, the right to secede is only one of the options and even that option cannot be exercised unilaterally. In fact this question was posed by the Governor in Council of Canada to the Supreme Court (1998) as follows:

...[Is] there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?

In response, the Supreme Court of Canada (1998) set out its opinion very clearly:

126. The recognized sources of international law established that the right to self-determination of a people is normally fulfilled through internal self-determination a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. A

right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances

127. The international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing states

130. ... There is no necessary incompatibility between the maintenance of the territorial integrity of existing states, including Canada, and the right of a people to achieve a full measure of self-determination. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to the protection under international law of its territorial integrity.

134. A number of commentators have further asserted that the right of self-determination may ground a right to unilateral secession when a people is blocked from the

meaningful exercise of its right to self-determination internally. The Vienna Declaration adds credence to the assertion that such a complete blockage may potentially give rights to a right of secession.

We note that the Canadian Supreme Court and much of the literature on the subject (e.g., Steiner and Alston, 2000) draw a clear distinction between internal and external self-determination. Effective provision for internal self-determination (e.g., federalism combined with non-discrimination), far from paving the way for unilateral secession, delegitimises any recourse to it. On the other hand, the denial of due internal self-determination could legitimise a right of secession.

Finally, is there a widely recognized understanding of the term internal self-determination? Perhaps we may settle on the broad definition offered in the above quoted judgments of the Canadian Supreme Court, viz. a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. ■

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