

VIRTUES OF FEDERALISM

The woeful inadequacies of the Thirteenth Amendment to the Constitution have clearly established that devolution of power cannot take place within a unitary constitution. For example at present the central Parliament can legislate even on subjects in the Provincial List; the central Parliament can abolish Provincial Councils without their consent; the Executive President and the central Parliament can override or assume the executive and legislative powers of Provincial Councils; the real financial powers of the Provincial Councils are exercised by the Governor of the Province; there are insufficient checks and balances on organs of the central Government making it relatively easy to withdraw or undermine devolved powers. Furthermore, it must be emphasised that the implementation of the Thirteenth Amendment has demonstrated that given the hierarchy of power in a unitary constitution disputes between the centre and the provinces are resolved by officials and legal advisors in favour of central Government institutions. For example, whenever the central Government has through legislation or executive action undermined the provisions of the Thirteenth Amendment, the Attorney General's Department and government and parliamentary officials have consistently supported such initiatives. In such a context, it is totally unrealistic to expect ethnic minorities to be satisfied with the Thirteenth Amendment.

A Federal Constitution on the other hand will strengthen democracy and Liberal democracy in the following ways:

- a) There will be a clear cut division of powers between the centre and the provinces,
- b) There will exist co-ordinate sovereignties of the centre and provinces where powers devolved to provinces cannot be exercised by the central Government.
- c) Powers conferred cannot be reduced or withdrawn without the consent of the provinces.
- d) The excessive powers presently vested in the Executive Presidency will be curtailed.
- e) A comprehensive package of checks and balances which include a bi-cameral national legislature, judicial review of legislation and the supremacy of the Constitution will be introduced.

The assertion of the SAS and other Sinhala nationalists that the adoption of federalism is a first step to separation is totally ahistorical as there are no examples of liberal democratic federal states which have broken up into separate states. On the other hand, there are many unitary and centralised multi-racial states which have broken up into separate states because of the unwillingness of rulers of such states to share power with minorities. The assertion by the SAS and even by Mr. H.L. de Silva that the break up of Yugoslavia constitutes proof that federalism is a first step to separation is totally untenable. Yugoslavia and even the Soviet Union were examples of states which were only federal in name but in fact were highly centralised totalitarian one-party states and it would therefore be absurd to assume that the characteristic features of federal states were ever applied in those countries. Liberal democratic federal states such as the United States, Canada, Australia, Switzerland, Germany and even India have not broken up despite the numerous diversities in such countries because federalism has allowed space for those diversities to be more freely expressed than a unitary space would have permitted. Liberals believe that the SAS and other Sinhala chauvinist groups who proudly proclaim their devotion to a united Sri Lanka, are in fact, its most dangerous opponents, and are truly the allies of the LTTE.

The Liberal Party appeals to national political parties and in particular the UNP and the SLFP to accept the adoption of a federal constitution. Contrary to the Srinivasan proposal that the parties represented in the Parliamentary Select Committee on the Resolution of the North-East Conflict should refrain from campaigning in a national referendum on the adoption of a federal constitution, Liberals believe that the UNP, SLFP, and other national parties should actively campaign in favour of a federal constitution at such a referendum. We also appeal to the UNP and the SLFP to publicly and unequivocally commit themselves to campaigning in favour of federalism at such a referendum. It is only if such a commitment is made that it would be reasonable to expect the Tamil parties to accept the North and East as separate provinces.

It has become increasingly clear that there can be no military solution to the ethnic conflict and that the essence of a viable political solution is a package of constitutional reforms which will meet the reasonable aspirations of Tamil-speaking Sri Lankans thereby marginalising the intransigent LTTE. Since the lesson of the Thirteenth Amendment is that substantial devolution cannot be effected within a unitary framework and that the only reasonable alternative to a merger of the Northern and Eastern provinces is the adoption of a federal constitution, Liberals urge the two main national political parties to accept a federal constitution with effective safeguards against secession by any province.

[From **THE LIBERAL APPEAL FOR FEDERALISM**, statement issued by the Liberal Party in December 1992]