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The current devolved system of governance

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This is part of an ongoing series of articles by the author raising critical issues of devolution of power in the peace process. Today's report is relevant in the context of next week's donor conference in Tokyo and current efforts to meet LTTE demands for an interim administration. Sri Lanka is at the crossroads of choosing the most appropriate system of governance. The backdrop leading to this has been `controversial', as the five-and-half decades of post - independence history will reveal a trail of public discontent in the choices made from time to time. The accompanying `civil insurrections' and `ethnic war' have constrained the potentials of the highly literate people of this country. It has even prompted the designation of its people as a `lost generation'. At the other extreme a `de-facto administration' has been claimed to prevail in a part of the country. In such an unorthodox mix of public management and governance, the making of a rational choice in similar institutions will necessarily be an outcome of a process of public debate and consultation to be eventually validated by an instrument having a stamp of legitimacy.

The sustainability of the chosen mode of governance against a background of democracy, transparency, and accountability, can only be assured if the above process takes place. It is not a choice that can be imposed on the people who need to be essentially active participants here. Hence, it is imperative that the `mindset' of the people is totally immersed in the practices of governance. Consequently, the culture of governance must become a `way of life'.

In the current context, a fundamental necessity for every Sri Lankan is therefore to consciously become a part of the process of reform in governance. The starting block here is the perusal of the Constitution of the Republic. The latter has explicitly laid down "the Directive Principles of State Policy which shall guide Parliament, the President, and the Cabinet of Ministers, in the enactment of laws and the governance of Sri Lanka......".

The Constitution has recognised three tiers of governance within a Unitary State. The President who is the Head of the State, the Head of the Executive and of the Government, and the Commander-in-Chief of the Armed Forces shall be responsible to Parliament for the due exercise, performance and discharge of his/her powers, duties, and functions under the Constitution and any written law, including the law relating to public security. The Cabinet of Ministers is charged with the direction and control of the Government of the Republic, and shall be collectively responsible and answerable to Parliament.

The 13th Amendment to the Constitution has established a Provincial Council for every specified Province, subject to the provisions of the Constitution. Similarly it has been empowered with the supervision of the administration of Local Authorities established by law. It will be open to any Provincial Council to confer additional powers on Local Authorities but not to take away their powers.

Delineation

In this system of a three-tier structure of governance, its enablement has been provided by the delineation of subjects between them. Accordingly, the Ninth Schedule of the 13th Amendment to the Constitution, has arranged the matters for which the Centre and the Province shall be responsible, in three Lists as follows: -

List 1: Every Provincial Council may subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter set out therein, (referred to as the Provincial Council List)

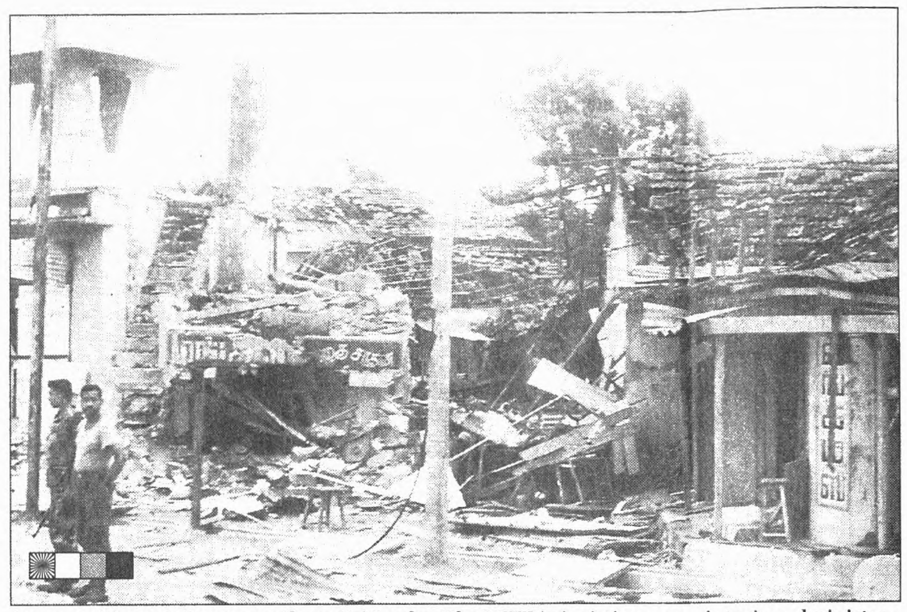
List II: A Provincial Council shall have no power to make statutes on any matter set out herein, (referred to as the Reserved List).

List III: Parliament may make laws with respect to any matter set out herein, (referred to as the Concurrent List), after consultation with all Provincial Councils as Parliament may consider appropriate in the circumstances of each case.

The matters for which Local Authorities have been constituted are independently enshrined in its own laws comprised of the Municipal Councils Ordinance (Chapter 252), Urban Councils Ordinance (Chapter 255), and the Pradeshiya Sabhas Act No. 15 of 1987.

The Executive power of the Government of the Republic is exercised by the President and the Cabinet of Ministers as aforesaid with the enactment of laws by Parliament which are consistent with the provisions of the Constitution.

The Executive power extending to the matters with respect to which a Provincial Council can make statutes shall be exercised by the Governor appointed by the President for the Province for which that Provincial Council has been established, either directly or through the Ministers of its Board of Ministers.



A scene of devastation in northern Sri Lanka. The LTTE is insisting on an interim administration to ensure that they derive the maximum benefit from aid granted by donor agencies for the development and reconstruction of war ravaged areas in the north-east. (Library picture).

The Board of Ministers with the Chief Minister at the Head, and not more than four other Ministers will aid and advise the Governor of the Province in the exercise of his functions. The Board of Ministers shall be collectively responsible and answerable to the Provincial Council.

Meanwhile, each Local Authority shall consist of the Mayor/Chairman and Deputy Mayor/Vice-Chairman, as the case may be, and such number of Councillors as the Minister may prescribe by Order published in the Gazette. The Executive power extending to the matters with respect to which a Local Authority may make, revoke, or amend By - Laws as may appear necessary for the purpose of carrying out the principles and provisions of the law on which it has been established, shall be exercised by the Mayor / Chairman who shall be the Chief Executive Officer of that Local Authority. All executive acts of responsibilities which are by its law or by any other written law directed or empowered to be done or discharged by the Local Authority may, unless the contrary intention appears from the context, be done or discharged by the Mayor / Chairman.

The Mayor / Chairman may by Order in writing delegate to the Deputy Mayor / Vice-Chairman or Commissioner / Secretary or any other Officer of the Local Authority, any of the powers, duties, or functions conferred or imposed upon or vested in the Mayor / Chairman by the law on which the Local Authority has been established, or by any other written law. Such delegation shall, however, be subject to such conditions and restrictions and limited to such purpose or purposes as may be specified in the Order. The latter may at any time be varied or cancelled by Order of the Mayor / Chairman.

Fiscal sharing

The three - tier structure of governance as described above is linked vertically with the Government of the Republic at the apex, and with the Provincial Councils in the second tier, and the Local Authorities in the third tier. Consequently, central control and supervision of the administration of the immediate lower tier is provided by law; especially with regard to the sharing of funds or by fiscal devolution.

The sharing of funds between the Government and the Provincial Councils, is provided for in Section 154R(3) of the Constitution. It stipulates that "the Government shall, on the recommendation of and in consultation with the Finance Commission, allocate from the Annual Budget, such funds as are adequate for the purpose of meeting the needs of the Provinces". Accordingly, the Commission will be required to firstly compute the needs of each of the Provinces and then aggregate the whole to compute the `needs of the provinces'. In this connection, since the Provincial Councils have been permitted revenue sources of their own, including borrowings, the allocation by the Government would not extend to all the needs of the Provinces, but only in respect of such needs which they cannot meet by exercising their fiscal and borrowing powers. The Government guided by the recommendation of the Finance Commission would then have to meet the shortfall.

With regard to making a determination on the `adequacy' of funds, the Finance Commission has been required by the Constitution to " .... formulate such principles in making its recommendation, with the objective of achieving balanced regional development in the country ..... taking into account the need to progressively reduce social and economic disparities, and the need to progressively reduce the difference between the per capita income of each Province and the highest per capita income among the Provinces".

At the third tier of the Local Authority, the Mayor/Chairman of each Local Authority shall after consultation with the several Standing Committees, submit to its Council in each year a Budget containing an estimate of the available income, and details of the proposed expenditure for the ensuing financial year. The fiscal and borrowing powers of the Local Authorities supplemented by the grants as may be made by the Provincial Council, will reflect the income side of the Budget. It shall be the discretion of the Council of the Local Authority to pass, modify or reject all or any of the items of expenditure in the Budget.

In the above context, it is evident that the powers and the amount of funds at the disposal of the Government of Sri Lanka far exceeds those in the other two tiers of governance. The Provincial Councils are yet evolving its capacity to frame statutes and to raise revenue for its role in provincial governance. The regular holding of the Conference of Chief Ministers in recent years is a progressive step in this regard.

Capacity building

In this situation, the institutions entrusted with the task of capacity building measures at all three tiers of governance have compellingly risen in importance to the frontiers of the scale of `critical levels'. The first tier is supported by the Sri Lanka Institute of Development Administration (SLIDA), established by Act No. 9 of 1982. Its mission is:

"To facilitate the development of an efficient, effective, and forward looking public service through the provision of training, consultancy, and research."

The review of the role of SLIDA in the emerging scenario of reforms in public management and governance is already underway within itself, and also in the Administrative Reforms Committee of the Regaining Sri Lanka Policy Initiative. It has just been assigned the Degree Awarding Status under the Universities Act of 1978 for the purpose of developing Post-Graduate Courses in Public Administration, Public Management and Public Financial Management.

On the other hand the focus which is more urgently needed is on the capacity building measures at the second and third tiers of governance. The Sri Lanka Institute of Local Governance (SLILG) established by Act No. 31 of 1999 has been specifically tasked to undertake the capacity building of Provincial Councils and Local Authorities in association with the Provincial Management Development Training Units (MDTUs). Its mission is to provide training to members, officers and servants of these bodies to improve the efficiency and effectiveness in the performance of their duties. The aim of similar institutions with regard to local authorities being to equip them to carry out its mandated functions, are as follows:

"Regulation, control and administration of all matters relating to public health, public utility services, and public thoroughfares, and generally with the protection and promotion of the comfort, convenience, and welfare of the people, and the amenities."

Local authorities also derive powers as designated Planning and Executive Authorities under two Planning Statutes comprised of the Urban Development Authority Law and the Town and Country Planning Ordinance. These empower the Local Authorities to prepare Development Plans to promote and regulate the integrated planning and implementation of economic, social, physical and environmental aspects of land in their respective areas. Each such Plan in its corresponding Local Authorities area is accompanied by Planning and Building Regulations which reflect the promotion of its aforesaid statutory functions. Thus, the Schedule in the respective Planning Statutes specifically includes `public utilities' and `thoroughfares', as matters for which provision may be in the Development Plan and therefore for its regulation. Co-terminously, these are the two sectors undergoing radical reform at the first tier of governance, particularly in respect of water supply, electricity, telecommunications and expressways. These are growth areas from which new revenue too can be derived in significant amounts, provided the Local Authorities develop their capacities to capture the benefits from similar structures. The means for it rely on the coupling of the Regulations in its Development Plan with the corresponding Regulations of the public utilities, at the first-tier of governance.

Natural resources

The Provincial Councils and Pradeshiya Sabhas are also potential beneficiaries in the on-going reform processes at the first-tier with respect to the Natural Resources, and Mining and Minerals Sectors. These bodies of governance could further benefit immensely by crafting links with the planning taking place in the Regional Economic Commissions of the Board of Investment.

In these circumstances, the second and third tiers of devolved governance must now respond by `leapfrogging' in its capacities to benefit from the economic reforms being initiated at the first-tier of governance. What is, however, evident now is that the economic reforms are outpacing the efforts of the SLILG in leaps and bounds. Such a divide is becoming embarrassingly visible due to the country being small and the performance of its tiers of governance exposed to contrasts being in close proximity to each other. The latter is the key lesson of experience in the already devolved system of governance in Sri Lanka. The time is therefore opportune to arrest and remedy this situation. A possible means is to propel upwards the significance of the SLILG by referencing it with the Regaining Sri Lanka Policy Initiative. Its Action Plan will then become compulsory indexed with the National Operations Room (NOR) at the highest level of the first-tier of governance. The motivation derived from the latter may be the paradigm shift envisaged in the process of devolved governance. The above may result in the reinforcement of the perception of a centre-driven model for devolved-governance, in contrast to the demand from the periphery. Some analysts have deduced that the already devolved system of governance is ineffective because it has been constructed by the centre to specifically deal with the threat of the `separatist conflict'. At the same time, it can be argued that the backdrop of social and economic disparities in various parts of the country, (inspite of its smallness), obligates the centre to prompt action for its mitigation. The recent creation of the Regional Economic Commissions of the BOI may be called such a centre-driven response. On the other hand it, like others created before, does not manifest governance, which have attributes far different to what can be expected from the BOI. Consequently, the shortcomings of the already devolved system of governance may be for reasons to be found elsewhere. It firstly points to the urgency for establishing public confidence in the instruments of devolved governance. The latter in return highlights the importance of capacity building measures in the devolved institutions, embracing both public management and governance.

The generation of public confidence in any system of devolved governance, whether in two-tiers or in three-tiers, and whether induced or demand -driven, can only be assured, if it is efficient, effective, and citizen-responsive. This implies the enveloping of the dynamics of change in the right mix to construct the most appropriate system of governance. The organic nature of the same points to the heavy responsibility cast on the SLILG in carrying out its mission. The fortune of the wisdom of Parliament in its establishment in 1999 can well be the centrepiece of the matrix of institutions to emerge from the process of reforms in public management and governance being discussed in the Peace Talks and elsewhere.

The SLILG must complement the institutions emerging from the reform process of the Regaining Sri Lanka Policy Initiative which will create the environment for healthy competitiveness in the devolved units of governance. Its partnership with them in association with the MDTUs can be consolidated with the statutory Physical Development Plans prepared under the guidance of the UDA and the National Physical Planning Department.

This will bond the Provincial Councils and Local Authorities with the national initiatives of the government. It will then glue the missing fuse to activate the dynamism of devolved governance. The outcome here will be the best test of public confidence on the already devolved system of governance in the country.