

அதிகாரப் பகிர்வுக்கான இயக்கம் ලලය ලෙදා හැරීම සදහා වූ වියාපාරය Movement for Devolution of Power

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April
25 January 2023

His Excellency Ranil Wickremasinghe
President of Sri Lanka.

8. 05. 2023

Your Excellency,

Full Implementation of the 13th Amendment to the Constitution

The Indo Sri Lanka Agreement of 27 July 1987, was signed in Colombo after all the representatives of the Tamil people of Sri Lanka comprising the EPRLF, EROS, LTTE, PLOTE, TELO and the TULF, gave their consent the previous night, in New Delhi. The 13th Amendment to the Constitution was the outcome of that Agreement. However, when steps were taken to implement that Amendment, the unanimity that existed within the Tamil side had disappeared. Furthermore, the Sinhala side became apprehensive about an end to the war with the implementation of the 13th Amendment. As a result, the 13th Amendment suffered a complete setback over the past 35 years.

The country is now in the midst of an economic crisis. The Tamil side has come to realize the urgency for the Full Implementation of the 13th Amendment for the moment. The Provincial Council elections have been put off for nearly 10 years. A few more months of delay in holding the elections will not matter very much. But we are of the view that certain preliminaries must be attended to urgently prior to holding the elections.

Over the years, many powers devolved to the Provinces had been intruded upon by a section of the bureaucracy in Colombo. All such issues have to be rectified. For nearly 35 years, the Northern and Eastern Provinces have been discouraged to enact Statutes. Their independent administration had been interfered with. It will therefore be necessary to pass Provincial Statutes to rectify some of these matters. The 13th Amendment itself has provisions to enable the passage of Statutes even when an elected Provincial Council is non-functional. In India, such a situation is described as "a period of President's Rule in a State".

The Governor of a Province has to report to the President that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the provisions of the Constitution (Article 154L). Thereupon, the President by Proclamation assumes to himself all or any of the powers vested in, or exercisable by the Governor or any other body. He also declares that the powers of the Provincial Council shall be exercisable by or under the authority of Parliament. The Parliament is empowered to confer on the President the power of that Provincial Council to make Statutes and to delegate the power so conferred to an authority specified by the President. (Article 154M). That authority would be a Board of Advisors appointed by the President for that Province. In our view, such a Board

must comprise of one representative of each of the recognized political parties active in the Province, and which unequivocally have called for the Full Implementation of the 13th Amendment.


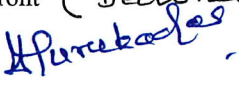





Representatives of recognized political parties nominated for the Board of Advisors shall not be Members of Parliament, Members of Provincial Councils or elected members of any local authority, or any serving officer of the Government or a Provincial Council. The President shall delegate his powers of making Statutes to the Board of Advisors, and other functions that he may deem necessary. The such Board would make Statutes as and when required and submit same to the Governor for his assent.

The Chief Secretary of the Province shall be the Secretary to the Board of Advisors. He shall be an officer who would be able to understand records in the language of records of the Province. Tamil is the language of records of the Northern and Eastern Provinces. The President shall also appoint an Advocate General to the Province, or in the alternative appoint a Legal Advisor to the Governor of the Province. The main functions of this officer will be to provide legal advice on the preparation of Statutes.

In the Annexure to this Memorandum, we give the restructurings that need to be undertaken before any election is contemplated for the Provincial Councils of the North and East. It is our assessment that such restructuring will take a period of around six months. We therefore urge that once the restructurings have been completed, the Elections Commission calls for nominations for the Provincial Councils elections, may be, during the second half of January 2024, and conduct the elections in accordance with the procedures laid down.

Thanking You,

Yours Sincerely,

1. Akhila Ilankai Tamil Mahasabha 
2. Democratic People's Liberation Front (Declined to sign)
3. Eelam People's Democratic Party (In agreement. Not available for signature)
4. Eelam People's Revolutionary Liberation Front (Declined to sign)
5. Eelavar Democratic Front 
6. Ilankai Tamil Arasu Kadchi (Declined to sign)
7. Samaththuwa Kadchi 
8. Social Democratic Party of Tamils 
9. Tamil Eelam Liberation Organisation (Declined to sign)
10. Tamil Makkal Kootani 
11. Tamil Makkal Viduthalai Pulikal 
12. Tamil United Liberation Front. 

ANNEXURE

Preliminaries to be attended to Prior to holding of Elections to the Provincial Councils

This Annexure is presented with particular reference to the Northern and Eastern Provincial Councils. The other Provincial Councils may or may not use it. Article 154S of the Constitution permits any Province, by resolution, to decide not to exercise any powers set out in the Provincial or Concurrent List.

The Board of Advisors and the Governors shall ensure that the following rectifications have been attended to prior to the holding of any elections to the Northern or Eastern Provincial Councils:

1. The District administration, inclusive of all Divisional Secretaries and Grama Niladhari need to be brought under the purview of the relevant Provincial Council. In this regard, if necessary, Act No.58 of 1992 need to be withdrawn. The President may by an Order published in the Gazette, take necessary action (Article 154T).
2. Over the years, the Central Ministry of Education has encroached upon the powers devolved to the Provinces and taken over a large number of provincial schools and declared them to be national schools. All such schools have to be returned immediately to the Provinces. Further, the Central Ministry of Education has to clearly spell out the definition of "national schools" in the country.
3. All public hospitals, rural hospitals, maternity homes, dispensaries, other than teaching hospitals and hospitals established for special purposes within the Provinces shall come under the purview of the respective Provincial Councils. The Central Ministry of Health has violated this provision of the Constitution. Hence all hospitals other than teaching hospitals and hospitals established for special purposes shall be immediately returned to the Provinces.
4. Rest houses which were under the purview of local authorities were taken over by the Centre by an amendment to the Urban Development Ordinance. This is an infringement of the powers of the Provinces. All such rest houses must be returned to the local authorities concerned.
5. Places of tourist interest which were under the purview of local authorities were taken over by the Centre. These places of interest must be returned to the Provincial administration concerned.

6. Agriculture and Agrarian Services are subjects devolved to the Provinces. It was so at the time of the elected North-East Provincial Council. After the dissolution of that Council, the subject was taken over by the Centre. The matter went before the Supreme Court. The Supreme Court ruled that "Agrarian Services" was a subject devolved to the Provinces. Yet, the Centre continues to control that subject by changing the name of the relevant institutions to "Agrarian Development Department". The Centre should hand over the subject to the Provinces. However, it may be necessary for the Provinces to make a Statute for the take-over.
7. At the time of enactment of the 13th Amendment, there was no definition for national highways. To begin with, A, B and AB Class roads were considered as national highways. However, National Thoroughfares Act No. 40 of 2008, defines a national highway as:
"the road or public road (that) crosses at least one provincial boundary and connects two or more provincial centres and is a principal thoroughfare for long distance movement of vehicular traffic."

As a consequence of this definition, all B and AB Class roads and several A Class roads, will come under the Provinces. A comprehensive Statute will have to be enacted by the Provinces.
8. The Provincial Police has not been established despite the lapse of 35 years. Constitutional Amendments 17, 18 and 19 have made inroads into the powers devolved to the Provinces under Law and Order. Despite these inroads, special recruitment of Tamil police officers to the North and East can immediately be undertaken utilizing existing provisions of the Constitution. The new recruitments have to be at the Constable, Sub Inspector and Assistant Superintendents' levels.
9. It is *sine qua non* that the National Land Commission is established without delay. The nominee of a Province shall be selected by its Board of Advisors.

The Board of Advisors and the Governors shall ensure that Statutes have been enacted and the framework for the new institutions are in place prior to the holding of any elections to the Northern or Eastern Provincial Councils:

10. A Provincial Training College for Nurses has to be established by the enactment of a Statute. The subject comes under the Concurrent List.
11. District Colleges for Technical and Vocational Training have to be established in all Districts of the Province by the enactment of a Statute. This is a subject in the Concurrent List.

12. Fisheries other than fishing beyond territorial waters, is a Concurrent subject. The Provinces have to enact Statutes to exercise power.
13. Provincial Housing and Construction is a devolved subject whereas, National Housing and Construction is a Concurrent subject. The two Provinces have already established Provincial Housing Authorities. In addition, the Provinces have to establish an Urban Development Authority as well as a Provincial Engineering Construction Authority, in addition to a Provincial Engineering Consultancy Bureau. Statutes will be required for establishing the last three institutions.
14. Electricity, excluding the generation of hydro power, is a subject in both the Provincial and Concurrent Lists. A Statute will have to be enacted for this purpose.
15. Rural or Minor Industrial Development is a Provincial subject. Major industries are covered under item 21 in List I. Besides setting up a Provincial Industrial Development Board, Economic Zones will be needed to be established in a Province. All these require enactment of Statutes.
16. Protection of the Environment is a subject, both in the Provincial and Concurrent Lists. A Statute has to be enacted.
17. Statutes have to be enacted for Provincial Libraries and for Provincial Museums.
18. Archaeological Sites and Remains, other than those declared by Parliament to be of national importance is a subject in the Concurrent List. A Statute has to be enacted.
19. A Statue on Renaming of Towns and Villages, a subject in the Concurrent List, has to be enacted. This Statute will ensure that unauthorized persons do not rename Towns and Villages in a Province.
20. Acquisition and Requisitioning of Property is a subject in the Concurrent List. A Statute has to be enacted so as to empower the Provinces to control illegal occupation of property belonging to persons, religious places and institutions.
21. The subject of Mines and Minerals Development to the extent permitted by or under law made by Parliament is a subject devolved to the Province. A Provincial Bureau of Mines and Minerals Development has to be established by Statute.
22. Social Forestry is a subject in the Concurrent List. A Statute has to be enacted to exercise power.

23. The subject of Wild Life is in the Concurrent List. A Statute has to be enacted.
24. The Establishment of Pastures is a Concurrent subject. A Statute has to be enacted.
25. The subject of Charities and Charitable Institutions, Charitable and Religious Endowments and Religious Institutions, appears in the Concurrent List. Two Statutes have to be enacted.
26. The subject of Food and Maintenance of Food Stocks is a subject in the Concurrent List. A Statute has to be enacted to exercise power.
27. Possession, Transport, Purchases and Sale of intoxicating liquors is a subject devolved to the Provinces. A Provincial Department for Liquor Licensing has to be established, by Statute.
28. The subject of Resettlement, Rehabilitation and Reconstruction for the Northern and Eastern Province remains an incomplete issue. We advise that an Authority for this subject be established under the Office of the Prime Minister, and to function for a limited period of three years.

(The covering letter has been signed ^{/ agreed to} by the President/ Secretary of each of the ⁸ ~~12~~ recognised political parties)