



Post Conflict Development and Status of Implementation of Thirteenth Amendment to the Constitution of Sri Lanka

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Abstract:

Devolution of power has been an alternative to the demand for separation by the Tamil speaking people in the North, East provinces of Sri Lanka. The Indo-Lanka Accord signed on 29 July 1987 required the Sri Lankan government to devolve powers to the provinces and, in the interim, to merge the Northern and Eastern provinces into one administrative unit. The accord required a referendum to be held by 31 December 1988 in the Eastern Province to decide whether the merger should be permanent. Crucially, the accord allowed the Sri Lankan president to postpone the referendum at his discretion. Unlike any other province, this matter is linked very closely with the political aspirations of the Tamil speaking people. This alternative was accepted by the Tamil speaking people on the guarantee given by the Government of India in late eighties. On 14 November 1987 the Sri Lankan Parliament passed the 13th Amendment to the 1978 Constitution of Sri Lanka and the Provincial Councils Act No 42 of 1987, establishing provincial councils. Nine provincial councils were created by order on 3 February. On September 2 and 8 1988 President Jayewardene issued proclamations enabling the Northern and Eastern provinces to be one administrative unit administered by one elected Council. The North-East Province was born. There are three lists dealing the power sharing mechanism. Author spells out the ways and means of strengthening the power sharing by changing the contents of these three lists based on his research during past couple of years and his experience in the field of development activity.

Keywords: Devolution, Autonomy, North-East Provincial Council

1. Introduction

1.1 History the North Eastern Province

The Indo-Lanka Accord signed on 29 July 1987 required the Sri Lankan government to devolve powers to the provinces and, in the interim, to merge the Northern and Eastern provinces into one administrative unit. The accord required a referendum to be held by 31 December 1988 in the Eastern Province to decide whether the merger should be permanent. Crucially, the accord allowed the Sri Lankan president to postpone the referendum at his discretion.

On 14 November 1987 the Sri Lankan Parliament passed the 13th Amendment to the 1978 Constitution of Sri Lanka and the Provincial Councils Act No 42 of 1987, establishing provincial councils. Nine provincial councils were created by order on 3 February 1988. On 2 and 8 September 1988 President Jayewardene issued proclamations enabling the Northern and Eastern provinces to be one administrative unit administered by one elected Council. The North Eastern Province was born. The proclamations were only meant to be a temporary measure until a referendum was held in the Eastern Province on a permanent merger between the two provinces. However, the referendum was never held and successive Sri Lankan presidents have issued proclamations annually extending the life of the "temporary" entity.

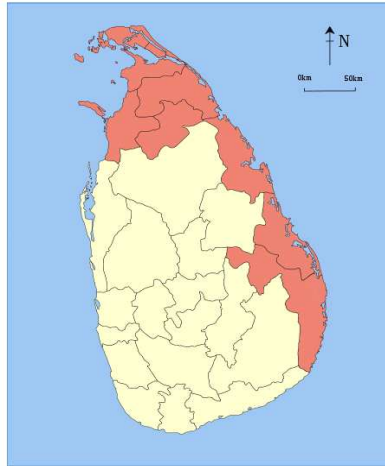


Fig.1.1. North Eastern Province

1.1.1 Provincial Council

The first elections for provincial councils took place on 28 April 1988 in North Central, North Western, Sabaragamuwa, and Uva provinces. Elections in the newly merged North Eastern Province were scheduled for 19 November 1988. However, the Indian Peace Keeping Force (IPKF), which at that time occupied the province, rigged the elections in the north so that the Eelam People's Revolutionary Liberation Front (EPRLF) and Eelam National Democratic Liberation Front (ENDLF), two Indian backed paramilitary groups, won all of the 36 seats in the north uncontested. However, elections did take place for the 35 seats in the east. The Sri Lanka Muslim Congress won 17 seats, EPRLF 12 seats, ENDLF 5 seats and the United National Party 1 seat. On 10 December 1988 Annamalai Varatharajah Perumal, a former lecturer at the Jaffna University Economics Department, of the EPRLF became the first Chief Minister of the North Eastern Provincial Council.

On 1 March 1990, just as the IPKF were preparing to withdraw from Sri Lanka, Perumal moved a motion in the North-East Provincial Council declaring an independent Eelam. President Premadasa reacted to Perumal's UDI by dissolving the provincial council and imposing direct rule on the province.

The province was ruled directly from Colombo until May 2008 when elections were held for the demerged Eastern Provincial Council. As yet, no elections have been held for the Northern Provincial Council.

1.1.2 Governors the North Eastern Province

The governors of the Sri Lankan provinces tend to be mostly retired politicians, judges and military officers. The North Eastern Province had six governors in its 18 years of existence

Table 1.1. Governors of North East Province

No.	Name	From	To
1	Lieutenant General Nalin Seneviratne	30 th November 1988	30 th November 1993
2	Lionel Fernando	30 th November 1993	23 rd August 1994
3	Gamini Fonseka	13 th January 1995	20 th October 1998
4	Major General Ashoka Jayawardene	13 th November 1998	30 th November 2004
5	Tyronne Fernando	6 th December 2004	20 th January 2006
6	Rear Admiral Mohan Wijeyawickrema	21 st January 2006	31 st December 2006

The merger was bitterly opposed by Sri Lankan nationalists. The combined North Eastern Province occupied one fourth of Sri Lanka. The thought of the Tamil Tigers controlling this province, directly or



indirectly, alarmed them greatly. On 14 July 2006, after a long campaign against the merger, the JVP filed three separate petitions with the Supreme Court of Sri Lanka requesting a separate Provincial Council for the East.^[2] On 16 October 2006 the Supreme Court ruled that the proclamations issued by President Jayewardene were null and void and had no legal effect. The North Eastern Province was formally demerged into the Northern and Eastern provinces on 1 January 2007.

1.2 Northern Province

Areas of present day Northern Province were part of the pre-colonial Jaffna kingdom. Other parts were ruled by Vanniar Chieftains who paid tribute to the Jaffna kingdom. The province then came under Portuguese, Dutch and British control. In 1815 the British gained control of the entire island of Ceylon. They divided the island into three ethnic based administrative structures: Low Country Sinhalese, Kandyan Sinhalese and Tamil. The province was part of the Tamil administration. In 1833, in accordance with the recommendations of the Colebrooke-Cameron Commission, the ethnic based administrative structures were unified into a single administration divided into five geographic provinces.

Northern Province consists of Jaffna District, Mannar District and Vanni District is one of the nine provinces of Sri Lanka. The provinces have existed since the 19th century but did not have any legal status until 1987 when the 13th Amendment to the 1978 Constitution of Sri Lanka established provincial councils. Between 1988 and 2006 the province was temporarily merged with the Eastern Province to form the North Eastern Province. The capital of the province is Jaffna. The Sri Lankan Civil War had its roots in this province. It is also known as Sri Lanka's Tamil country. Much of the Northern Province was under the control of rebel Liberation Tigers of Tamil Eelam for many years during the civil war. The entire province was recaptured by the Sri Lankan military in 2009.

1.2.1 Geography

Northern Province is located in the north of Sri Lanka and is just 22 miles (35 km) from India. It is connected with Indian mainland by mythical Adam's Bridge (also known as Sethu Paalam or Rama's Bridge). It has an area of 8,884 square kilometers (3,430 sq mi).

The province is surrounded by the Gulf of Mannar and Palk Bay to the west, Palk Strait to the north, the Bay of Bengal to the east and the Eastern, North Central and North Western provinces to the south.

The province is divided into two distinct geographic areas: Jaffna peninsula and the Vanni. Jaffna peninsula is irrigated by underground aquifers fed by wells whereas the Vanni has irrigation tanks fed by perennial rivers. Major rivers include: Akkarayan Aru, Aruvi Aru, Kanakarayan Aru, Kodalikkallu Aru, Mandekal Aru, Nay Aru, Netheli Aru, Pali Aru, Pallavarayanankaddu Aru, Parangi Aru, Per Aru, Piramenthal Aru, Theravil Aru.

The province has a number of lagoons, the largest being Jaffna Lagoon, Nanthi Kadal, Chundikkulam Lagoon, Vadamarachchi Lagoon, Uppu Aru Lagoon, Kokkilai lagoon, Nai Aru Lagoon and Chalai Lagoon.

Most of the islands around Sri Lanka are to be found to the west of the Northern Province. The largest islands are: Velanaitivu (Kayts), Neduntivu (Delft), Karaitivu, Pungudutivu and Mandativu.

Northern Province is covered in tropical forests, with numerous rivers flowing through them. The north-west coast is part of the deep Cauvery River Basin of south-east India, which has been collecting sediments from the highlands of India and Sri Lanka since the breakup of Gondwanaland.



1.2.2 Climate and weather

Sri Lanka enjoys a typical tropical monsoonal climate. The Northern Province tends to be hot and dry in the dry season (February to September), and moderately cool and wet in the wet season (October to January). The province's climate is of the tropical kind and therefore during monsoons there is always the chance of a deluge. In the lowlands the climate is typically tropical with the average temperature is around 28° to 30° for the year. However, on the whole, January is the coolest month and May is the hottest month. Relative Humidity varies from 70% during the day to 90% at night. The Dry Zone of the Sri Lanka is the north and east of the island, this region is affected by the north east monsoon (December to March) and southwest monsoon (June to October). It is thought to be dry because most of the rains fall during the north-east monsoon.

Annual rainfall is less than 1250 mm in the North West and South East of the Inland. It has two rainy seasons South West Monsoon (May to August), North East Monsoon (November to February).

1.2.3 Administrative Districts

The Northern Province is divided into five administrative districts, 33 Divisional Secretary's (DS) Divisions and 912 Grama Niladhari Divisions (GN Divisions).

The population of Northern Province was 997,754 in 2011. The majority of the population is Sri Lankan Tamil, with a minority Sri Lankan Moor and Sinhalese population.

The population of the province, like that of the Eastern Province, was heavily affected by the civil war. The war killed an estimated 100,000 people. Several hundred thousand Sri Lankan Tamils, possibly as much as one million, emigrated to the West during the war. Many Sri Lankan Tamils also moved to the relative safety of the capital Colombo. Most of the Sri Lankan Moors and Sinhalese who lived in the province fled to other parts of Sri Lanka or were forcibly expelled by the rebel Liberation Tigers of Tamil Eelam, though most of them have returned to the province since the end of the civil war.

Economy

Majority of the people earn their livelihood as farmers, fishers and professionals in the civil and business sectors. Small scale industry such as chemical, light manufacturing and textiles were present before the civil war.

Northern Province being an agricultural dominant province, where agricultural sector is 25.9% and trade sector comes next to it is 19.3%. Most of the people engaged in service sector covering 31.2% of the total.

1.2.4 Transportation

Transportation in the Province is poorly developed and it is still hindrance to the development of the Province. Most of the people still using the traditional Bullock carts for transportation. Major roads in Province are divided into two categories such as:

- **A, B, C Class roads or National Highways** which is maintained and controlled by Central Government.
- **D Class roads or Provincial Highways** which is maintained and controlled by Provincial Government.

There are number of rural roads in the Province, which are under developed.



Sri Lanka Government Railway operates the country's railway network and the lines to Jaffna, Kankesanthurai and Mannar have been destroyed by the LTTE. Most of the railways were developed during the British colonial period.

Airways and airports are under developed in this province. Palaly Airport, once an international airport had regular passenger flight service between Colombo and Trichirapalli, India is under the control of Sri Lankan Navy now. Daily flights between Colombo and Jaffna is available. There are few small airports and airstrips in Vavuniya and Iranamadu.

1.2.5 Politics and government

According to the 13th Amendment to the 1978 Constitution of Sri Lanka, The Governor is the Constitutional head of the province while the Chief Minister is the head of the government and the head of the council of ministers. The Chief Justice of the High Court is the head of the judiciary.

The Parliamentary representatives from the province are elected through Two Electoral District such as Jaffna Electoral District and Vanni Electoral District which elects 15 of the 225 members of the Sri Lankan Parliament.

Provincial council is not functioning in Northern Province at present. It is ruled directly from the Central government. Governors are care taker of province. Major General G.A. Chandrasiri was sworn in as the Governor, Northern Province with effect 12 July 2009. The local political parties are pushing for more autonomy for the provinces, especially the Tamil majority Northern Province. The vast executive powers are held by the governors, who are appointed by the President is the drawback of the provincial council. Peoples are asking for more powers to the elected council. According to the 13th Amendment to the 1978 Constitution of Sri Lanka High courts should be made in each provinces, police and land powers should be given to the provincial councils, but it still that were not given by Sri Lankan central government to the provinces are the biggest problems.

1.3 Eastern Province

Eastern Province is one of the 9 provinces of Sri Lanka. The provinces have existed since the 19th century but they didn't have any legal status until 1987 when the 13th Amendment to the 1978 Constitution of Sri Lanka established provincial councils. Between 1988 and 2006 the province was temporarily merged with the Northern Province to form the North-East Province. The capital of the province is Trincomalee.

1.3.1 Geography

Eastern province has an area of 9,996 square kilometres (3,859 sq mi).^[1]

The province is surrounded by the Northern Province to the north, the Bay of Bengal to the east, the Southern Province to the south, and the Uva, Central and North Central provinces to the west.

The province's coast is dominated by lagoons, the largest being Batticaloa Lagoon, Kokkilai lagoon, Upaar Lagoon and Ullackalie Lagoon.

1.3.2 Administrative Districts

The Eastern Province is divided into 3 administrative districts, 45 Divisional Secretary's (DS) Divisions and 1,085 Grama Niladhari (GN) Divisions (villages).

The Eastern province's population was 1,460,939 in 2007. The province is the most diverse in Sri Lanka, both ethnically and religiously.

The population of the province, like that of the Northern Province, has been heavily affected by the civil war. The war has killed between 80,000 and 100,000 people in Sri Lanka comprising all ethnic



groups. Several hundred thousand Sri Lankan Tamils, possibly as much as 400,000, have emigrated to the West since the start of the war. The large number of internally displaced persons at the conclusion of the conflict had been now settled except for a few hundred thousands who are still living in refugee camps in the East. There are approximately 80,000 Sri Lankan refugees in India. Many Sri Lankan Tamils have also moved to the relative safety of Colombo. The conflict has also caused some of the Tamils, Moors and Sinhalese who lived in the Northern and Eastern provinces to flee to other parts of Sri Lanka.

3. Research Methodology

The following three lists are dealing the power sharing mechanism.

- Reserved List
- Provincial Council list
- Concurrent list

Author spells out the ways and means of strengthening the power sharing by changing the contents of these three lists based on his research during past couple of years

4. Findings and Recommendations

4.1 District Administration

Findings

Though most of the subjects dealt by the Government Agents and the Kachcheries System are devolved, the Government Agents continue to be under the control of the Central Government. The principle of devolution is defeated when the only system of decentralized administration that had existed from British times is retained by the Central Government, resulting in diarchy.

Since several statutory functions, related to subjects which have been devolved and the connected administrative machinery come under the purview of the Government Agents, effective devolution is hampered as a result of the Government Agents continuing to be under Central Government..under Central control.

Recommendations

The entire Kachcheries System, including the eight Government Agents, sixty Assistant Government Agents and Grama Sevakars, numbering over eight hundred, and other ancillary staff should be brought under the control of the Provincial Council. The power to reconstitute administrative Districts and divisions within the Province to be entrusted to the Provincial Councils.

4.2 Public Service

Findings

The National Public Services of Sri Lanka do not reflect the national ethnic ratio. This is particularly so in the Administrative service, Overseas Service, Clerical Services, and several Departmental Services. The position is worst in statutory Boards and Corporations.

There are instances where, while vacancies exist in a service in the Province, the Central Government has filled the cadre and posted the personnel to other Provinces in excess of their requirements. This discriminatory practice has adversely affected the administration of the Province.

Recommendations

- Special arrangements should be introduced to recruit Tamil-speaking personnel in order to reflect the national ethnic ratio in all services of the National Public Service and in Boards and Corporations



- The Central Government to provide adequate funds to fill all vacancies in the Ministries and Departments of the Provincial Councils
- The Provincial Councils Act, No.42 of 1987 to be amended to ensure that appointments, transfers and disciplinary control of officers of the Provincial Public Services are in keeping with the principles followed in Articles 55, 56, 58, 59 of the Constitution of Sri Lanka

4.3 Release of Staff Findings

Though Ministries and Departments of the Provincial Government have been established, release of officers by the Central Government has been tardy. Several obstacles have been placed by way of circular instructions, which have the effect of delaying or preventing the release of personnel.

Recommendations

- The Government of Sri Lanka should issue a directive to the effect that all members of the Public Service of Sri Lanka who are performing duties in the Province related to or in respect of subjects enumerated in the Provincial and Concurrent Lists are deemed to be transferred to the Provincial Public Service with immediate effect. All officers so transferred shall have the option to continue in such service or revert to the Public Service of Sri Lanka, without loss of seniority, such option being exercisable within one month of the transfer
- Officers of the Sri Lanka Public Service, serving outside the Province and who are required -for service in the Province, and who consent to such service, should be released by the Government of Sri Lanka within one week of the request made by the Provincial Government

4.4 Interpretation of Concurrent List Findings

Most Ministries of the Central Government interpret the Concurrent List as another 'Reserved List' that could be devolved in bits and pieces to the Province at their sole discretion. This is a severe handicap for devolution under the Concurrent List.

Recommendations

- Like in India, the Sri Lankan Government should transfer and place under the control of the Provincial council. All staff, all assets, such as buildings, Plants, machinery, equipment and vehicles, related to concurrent subjects
- Projects for implementation to be formulated either by the Provincial Council or the Central Government
- Implementation of all projects, including projects formulated by the Central Government to be the responsibility of the Provincial Council
- Adequate funds to be provided by the Central Government to the Provincial council
- Provincial Councils Act, No. 12 of 1989 to be extended to cover Concurrent List, as well.

4.4 Reserved List Findings

Though subjects such as Banking, Insurance, Shipping, Air Service, Imports and Exports appear in the reserved List, they are, considered by the Central authorities to be exclusively reserved with no role for the Provincial. Council On the contrary, the private sector has been given a place in all these, fields.

Recommendations

Subject to the regulations made by the Central Government, the Provincial Council should be permitted to engage in activities in these and other such sectors as and when needed.



4.5. Finance Findings

Financial devolution to the Province has been far from satisfactory. The functioning of the Finance Commission and the formula on which the disbursements are made are not intimated to the Province.

Foreign aid received by the Central Government specially for projects and schemes in the Province has neither been intimated nor released to the Province as is required in terms of Section 22 of the Provincial Councils Act

Moneys voted by Parliament to the Central Ministries and Departments for capital and recurrent expenditure in the Province on devolved subjects have not been released to the Provincial council in total.

Revenue collected by Central Government Agencies such as the Kachcheries and Inland Revenue Department within the Province and legitimately due to the Province has not been made available to the Province regularly.

Recommendations

The Finance Commission should denunciate a formula similar to the Gadgil formula followed in India The financial grant for the year should be released in a regular manner

All foreign aid meant for the Province should be released to the Provincial Council

All Central Ministries and Departments should be directed to freeze and release all Moneys voted by Parliament for expenditure in the Province, both capital and recurrent, to the relevant Ministries of the Provincial Government;

All revenue collected by the Central Agencies in the Province and meant for the Province should be released to the Provincial Council forthwith.

4.6. Revenues and Fees

Findings

- The revenue collection machinery is under the Government Agents, who are still under the control of the Central Government.
- Revenue collection not possible due to the following reasons
- Necessary staff not released by the central government e.g. Department of Inland revenue
- Provincial Police not established
- Kachcheries, which handle substantial revenue work, yet under the control of the Central Government.

Recommendations

- Adequate experienced staff to be released to the Ministry of finance' of the Province by the Department of inland Revenue of the Central Government;
- Provincial Police to be established;
- Courts to be made functional;
- The Government Agents to be brought under the control of the Provincial Government.

4.7 Land Administration

Findings

Though land is a Provincial subject, no devolution has taken place. As envisaged in entry 18 of Provincial List the power over transfer and alienation of land, land use, land settlement and land improvement has not been devolved to the Province. All staff dealing with the subject of land



continues under the control of the Central Government Funds and assets continue to be under the Central Government.

Recommendations

- All state lands within the Province to be vested to the Provincial Council by Presidential decree
- The Presidential directive on text-books to be withdrawn, and necessary funds provided to the Province for production and distribution of textbooks;

4.8 Higher Education

Findings

All universities and technical colleges in the Province, which have not been declared as institutions of national importance should have been handed over to the Provincial Council. This has not been done.

Recommendations

- The University of Jaffna, the Eastern University, the Hardy Institute of Technical Training in Amparai and the Technical Colleges at Kokuvil and Sammanthurai to be handed over to the respective Provincial Councils
- Adequate funds to develop and manage the above institutions to be made available to the Provincial Councils

4.9 Courts

Findings

The High Court for the Province has not been established. Most of the subordinate courts in the Province, namely, the District Courts, Magistrates Courts and Primary Courts are not performing their duties.

Recommendation

- Setting up of High court of the province in Trincomalee
- Appointing the *High* Court Judges;
- Appointing the judges and staff to subordinate courts
- Making available Tamil-speaking Police Officers for courts duty;
- Reconstruction of damaged court houses and bungalows
- Make available sufficient provision of furniture, equipment, vehicles, etc.

4.10 Statutory Boards and Corporations

Findings

Statutory Boards and Corporations in the Province dealing with even devolved subjects continue to function under the control of the Central Government under the pretext that they are statutory bodies. This cannot be permitted as it would tantamount to ordinary law superseding constitutional law.

Recommendation

All statutory Boards and Corporations functioning in the Province and dealing with devolved subjects should be transferred forthwith to the Province.



4.11 Energy Findings

Though, development, conservation and management of sites and facilities in the Province for the generation and promotion of electrical energy and extension of electrical energy, subject to certain conditions, are the responsibilities of the Province, the Central Government has not, taken any action to release staff, equipment, buildings and other assets and funds to the Province for the purpose of implementing devolution.

Recommendation

- The Sri Lankan Government to hand over all staff, installations and other assets belonging to the Ceylon Electricity Board in the Province to the Department of Electrical Undertaking of the Province;
- The Ceylon Electricity Board should confine itself to providing bulk supplies to the Province through the national grid;
- The Central Government to provide adequate funds for procuring and operating diesel generators and for the establishment of thermal power stations.

4.12 Industries Findings

Though the power to promote, establish and engage in agricultural; industrial, 'commercial and trading enterprises and other income-generating projects within the Province has been devolved, the Central Government continues to control state institutions dealing with these activities: As a result, the Provincial Government is prevented from undertaking any meaningful activities on this subject. The powers devolved on the Province by Constitutional contrivance are being scuttled by ordinary laws and statutes.

Recommendation

All The statutory Boards and Corporations engaged in activities in the Province should be hand over their activities/institutions within the Province to the Provincial Council

5 Conclusion

It is necessary that any assurance given by the thirteen amendment on devolution of powers should be continuously monitored by a joint mechanism which would comprise officials Central Governments and the Provincial Councils. This monitoring committee should continuously review the implementation of the devolution of powers as agreed by the law even out of thirteen amendments to the constitution of Sri Lanka by making necessary amendments to constitution. Apart from political will, neumorologically thirteen will not be the final; we have to go for above thirteen amendments to the Constitution for the post conflict development in Sri Lanka.

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Reference

1. Constitution of Sri Lanka 1977
2. Thirteen Amendment to constitution of Sri Lanka 1987
3. Provincial Council Act no 42 of 1987
4. Indo Sri Lankan Agreement 1986