

The full text of the Chelva memorial speech delivered by TNA national list parliamentarian Mr.M.A.Sumanthiran at Chelva's 34 th death anniversary held at Colombo-Bambalapity New Kathiresan Hall on Tuesday evening follows:-

A LASTING POLITICAL SOLUTION THROUGH POWER-SHARING

M A Sumanthiran

I consider it a great honour to have been asked to deliver the Thanthai Chelva memorial oration this year. Last year too I had the honour of delivering the key-note address at the annual commemoration ceremony held in Jaffna on the 26th of April. Today, I am doubly delighted since Thanthai Chelva's true disciple Mr Sampanthan presides over this event. I am truly humbled by this singular honour bestowed on me.

Some years ago, at a ceremony to unveil the bust of Dr Colvin R de Silva at the Colombo Law Library, Colvin's junior-most junior, Ms Chamantha Weerakoon Unamboowe recounted an anecdote. One day Colvin was greatly worried about a criminal appeal that he was going to argue before the Supreme Court that day. Chamantha had told him, "Sir, why are you so worried; half the criminal law of this country was made by you", to which Colvin is supposed to have replied: "And the other half was made because they did not listen to me"!

I think it would be right to say that the state of our country is what it is today, because they did not listen to Thanthai Chelva. Ironically, it was Colvin who eventually did not listen in the Constituent Assembly in the early 1970s, after having himself prophesied in 1956: "Two languages – one country; one language – two countries".

The first Republican Constitution of 1972 gave the last rites to the slow death for ethnic relations in this country that started when a unitary constitution was handed to us by the departing British. Having earned the distinction of being the first Asian country to enjoy universal suffrage, we buried all the benefits of democracy to this island by ignoring the rich diversity of its Peoples and their different heritages, and treating it like a homogenous society. In my view, fundamentally what really suffered was democracy itself, since the system of government that was enacted in 1948, undermined the very essence of it.

Wikipedia has the following definition for Democracy:

"Democracy is a form of government in which all citizens have an equal say in the decisions that affect their lives. Ideally, this includes equal (and more or less direct) participation in the proposal, development and passage of legislation into law. It can also encompass social, economic and cultural conditions that enable the free and equal practice of political self-determination."

It continues later,

"[M]ajority rule is often listed as a characteristic of democracy. However, it is also possible for a minority to be oppressed by a "tyranny of the majority" in the absence of governmental or constitutional protections of individual and/or group rights... It has also been suggested that a basic feature of democracy is the capacity of individuals to participate freely and fully in the life of their society."

This is perhaps why, Thomas Jefferson, in his inaugural address, on 4th March 1801, stated that,

"Though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; the minority possess their equal right which equal laws must protect, and to violate would be oppression"

This is also the reason why when Britain granted Dominion Status to the island of Ceylon, a prohibition was placed on the legislature on passage of any bill that disadvantaged one community or granted a privilege to one community over the others. According to Section 29(2) of the Ceylon (Constitution) Order in Council, Parliament was not competent to pass laws that,

Prohibit or restrict the free exercise of any religion;
or make provisions of any community or religion; or make provisions of any community or religion liable to disabilities or restrictions to which persons or other communities or religions are not made liable; or
confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions; or
alter the constitution of any religious body except with the consent of the governing authority of that body.

Any law that might be passed which conflicted with these four provisions was expressly declared to be null and void and of no legal effect.

Lord Pearce on behalf of the Privy Council described this prohibition in the case of *The Bribery Commissioner v. Ranasinghe* in this way:

"[Article 29(2)] represents the solemn balance of rights between the citizens of Ceylon, the fundamental conditions on which inter se they accepted the Constitution: and these are therefore unalterable under the Constitution."

Professor Lakshman Marasinghe says that the Privy Council may have had the benefit of a plethora of background materials to have been able to come to the conclusion that Section 29(2) was an unalterable, entrenched feature of the Soulbury Constitution. These may include the following:

During the debate on the Ceylon Independence Bill in the House of Commons in November 1947, the then Secretary of State for the Colonies, Mr. Creech Jones declared:

"I should perhaps also mention that the Government of Ceylon, while able in the future to amend their own Constitution, has felt that the provisions of the existing Constitution safeguarding minorities should be retained.

"(The Government of Ceylon) would obviously not wish to provoke any controversy on these issues in Ceylon. Thus... the provision barring discriminatory legislation will be retained by the Ceylon Government."

This was in reply to the concern raised by Mr Gammans, from the Conservative opposition when he said:

"The Second danger which Ceylon faces is one which the right Hon. Gentleman, the Secretary of State for the Colonies has not mentioned except very shortly today. It is that Ceylon is not a single racial unit. There were two races in Ceylon, the Sinhalese and the Jaffna Tamils, who are in the northern part of the Island, and number 1,500,000, out of a total of 6,500,000. They differ from the Sinhalese race, language, religion, and to a large extent, in background. They are extremely capable and intelligent people. I have had a lot to do with them because they played a very large part in development of Malaya. It was the Jaffna Tamils who came over in large numbers and started the railways and Government services. Where there is a racial minority in the country the danger is that it may become a permanent political minority, Ceylon's evolution on a democratic basis is bound to fail."

Many years later, in 1963, Lord Soulbury, writing the foreword to B H Farmer's *Ceylon: A Divided Nation*, himself regretted that his Commission did not recommend the entrenchment of guarantees of fundamental rights, on the lines enacted in the constitutions of India, Pakistan, Malaya, Nigeria and elsewhere.

Around the same time the founding father of Singapore, and former Prime Minister, Lee Kuan Yew commented as follows:

“When Ceylon gained independence in 1948, it was the classic model of gradual evolution to independence. Alas, it did not work out. One-man-one vote did not solve a basic problem. The majority of some 8 million Sinhalese could always outvote the 2 million Jaffna Tamils who had been disadvantaged by the switch from English to Sinhalese as the official language.”

This then was the real ‘ethnic’ problem that has besieged this country – the problem being that a significant section of the citizenry was excluded from exercising any meaningful democratic choice in respect of all matters in which they rivaled the major community. The problem was that of a permanent minority that could not have a say in respect of their political destiny in this island. This did not only afflict the Tamils; a very important section of the country – the Burghers – left Sri Lanka in great numbers. The safety-valve in the form of Section 29(2) did not work; it was a failed experiment by the British who thought that an entrenched prohibition to safeguard the People who were inferior in number would solve the issue of ensuring full and inclusive citizenship to all the Peoples who inhabited the island. Full and equal access to political power for all citizens could not be achieved within the unitary model constitution that was granted to us.

Instead of such a unitary model, the British Government utilized the model of the linguistic States and other different forms of federations, in countries where different linguistic and ethnic communities live. Those models have largely contributed to neutralizing ethnic tensions and rivalries. Unfortunately, however, in Ceylon the call for a federal structure of governance by the Ceylon Federal Party (ITAK) fell on deaf ears. Within two years of independence, on 18-12-1949, Thanthai Chelva made this call at the inaugural meeting of the ITAK held at the Government Clerical Services Union building in Maradana.

It is pertinent to state here that although the All Ceylon Tamil Congress (ACTC) did not make such a demand prior to independence the Kandyan League and notably S.W.R.D. Bandaranayake mooted the federal idea. Bandaranayake wrote six letters to the Ceylon Morning Leader in 1926 seeking to introduce the idea of federation. In his famous Jaffna lecture on 17th July 1926 he openly advocated a federal system of government for Ceylon and stated that the model of federation obtaining in Switzerland afforded a better example for Ceylon.

The Kandyan League advocated a federal Ceylon with three provinces, one of which to be the Northeast province, in their submissions before the Donoughmore Commission. Thus, it was the Kandyan Sinhalese who first advocated for the merger of the North and the East. Later the Communist Party of Ceylon and other left allies sought a federal constitution before the Soulbury commission.

Although the ACTC did not specifically choose between a federal or a unitary form of government, it nevertheless was stridently opposed to the Soulbury Commission report. The issue was not a choice between two theories, but a practical one where the fruits of democracy eluded the Tamil People and the other minority communities on account of their inferior numbers. G G Ponnambalam travelled to London and argued that in a country like Ceylon where communal divisions were so wide and deep-seated, the major community should not be given an absolute majority. He sought at least 33% representation in the legislature for Ceylon and Indian Tamils who constituted more than 25% of the population.

Once independence was granted under the Soulbury Constitution and after the passage of the Citizenship Act, which the ACTC opposed, Ponnambalam joined the Government in an attempt to try out ‘the consensual model’ of politics. However, five years later saw him disillusioned and resigning his cabinet portfolio on 2nd November 1954, stating,

“... [a]fter five years of co-operation, I yet see unmistakable signs of the desire for the establishment of racial hegemony under the guise of majority rule...I now find myself a more determined advocate of Tamil nationalism...”

Thanthai Chelva though, realised within two years of independence that simple majoritarian rule will not benefit the Peoples who were minorities in Ceylon; not even with the seemingly entrenched provision contained in Section 29(2) of the Soulbury Constitution. That this

constitutional experiment had failed was clear from the passage of the Citizenship Act in 1948, the Indian and Pakistani Citizenship Act in 1949 and finally the Official Language Act in 1956. The structure of governance needed to be radically altered to ensure the full and inclusive citizenship of all the Peoples of this country and for democracy to have any meaning at all, particularly to the permanent minorities on account of their inferior numbers. Within the next ten years two agreements were made with two Prime Ministers representing the two major political parties and both were unilaterally abrogated – even when neither of those Agreements would have converted the country into a ‘federation’ in the classical sense of the word. The defeat of the resolutions proposed by the ITAK to the Constituent Assembly, one by one, by simple majority votes, is a clear demonstration of the malady, but it also then ushered in a Constitution, ironically said to be ‘autochthonous’, leaving out the Tamil People from the very exercise of constitution-making of the ‘Republic’. This then is the central point I would like to make: it is not the descriptive terms one can give to the governance structure of the country [‘unitary’, ‘federal’, etc.] that matters, but the actual realisation of the fruits of democracy and consequently of full and inclusive citizenship to all the Peoples.

A government BY the governed would necessarily entail granting access to political powers to the people. It is axiomatic that the two – the governor and the governed – are one and the same. But if by the composition and size of different Peoples, one People continuously govern the other People that would not only be a negation of democracy, but a clear case of political oppression as well. Such a scenario is antithetic to all forms of democratic rule.

How does one then redress the situation in cases where the country concerned is composed of different Peoples or of different ethnic, religious and linguistic backgrounds? There is no one model that is the panacea for all. But whatever the model, it must ensure that all citizens of the country have full and equal access to the political powers they can exercise as the realisation of the democratic ideal. And in my humble view, one does not have to re-invent the wheel or propound an altogether new theory. There are many tried and tested models of such power-sharing arrangements in many countries around the world today. The important thing is that it must achieve the objectives of democracy – and all the Peoples of the country will have full and inclusive access to their citizenship. There are many theories that are very attractive, but if they are not useful or practical, they don’t mean anything. We will do well to learn from ancient Chinese wisdom that “a knife must cut; if not it is not a knife”. Mr Sampanthan has recounted to us many times his reply to the late Lakshman Kadirgamar on protecting the sovereignty of Sri Lanka. He says that sovereignty is not a brittle object to be contained in a glass box and protected. It is something that is vibrant and useful. Thus it is not just enough to state in the constitution that sovereignty vests in the people, but it must be ensured that all citizens share in that sovereignty fully and inclusively.

One of the ways in which political power can be shared among the different Peoples of a country is by devolving those powers to smaller units at provincial or regional levels. This model is particularly effective if the permanent minority in a country is actually a majority in certain provinces or regions. There are many examples of this, but the best is nearest to us in India where the lines of division between States are on linguistic or ethnic lines.

In Sri Lanka, the Tamil speaking people have historically inhabited the North and East provinces, while the Sinhalese have lived in the other parts. As we all know, this is not exclusive occupation of different regions, but predominantly that is how they have shared this island. Therefore, any meaningful power-sharing arrangement between the Tamils and Sinhalese must necessarily take advantage of this historic geographic fact.

It is true that people can have emotional attachment to land. But it must be remembered that land cannot ever be more important than the people who inhabit it. This truth was brought home to me about five years ago when I attended a peace seminar in India, at which conflicts in different parts of the world were examined. At the session on Kashmir, a peace-activist from there asked the audience whether Kashmir belonged to India or Pakistan. The participants, almost all of them young Indians, in unison cried out “India”. Then he asked them this tricky question: “When you say Kashmir belongs to India, do you mean the people of Kashmir or that valley - that land?” Eager to give a politically correct answer those young people said that they

meant the people of Kashmir. Then that peace-activist accusingly told them, "No, you did not mean the people; you meant that land only, because the Kashmiris are saying, "Well if you say we belong to you, where were you when our sons were killed on the streets? Where were you when our sisters were raped? Where were you when our fathers were abducted and taken away? If you thought we belonged to you, you would have spoken up for us at those times. You are only interested in the land, not in us, the people!"

We are yet to recover from the dreadful war that was fought on our soil two years ago, said to be a humanitarian operation to liberate the Tamil people. The question that must be answered honestly is whether it was to liberate the people or to re-take the land. If it is the people, then certainly the rights of those people will take precedence over all apparent attraction towards the lands. This is not a novel attraction. Systematic state-sponsored colonization was carried out since Independence in 1948 with a view to changing the demographic pattern of the North and East. According to a religious census of 1827, the Sinhalese population in the Eastern province was around ½ %; according to the official census of 1881 and 1921 the Sinhala population in the Eastern province was around 4 %, when the country attained independence in 1947 the Sinhala population in the Eastern province was around 9 %, at the time of the B.C pact the Sinhala population in the Eastern province was around 13 %, at the time of the D.C pact the Sinhala population in the Eastern province was around 19 %, as per the 1981 census the Sinhala population in the Eastern province was around 25 %. Between 1947 the year of independence and 1981, the last available census for the North and East, the increase in the Sinhala population island wide was 238 %, approximately two and a half times; while the increase in the Sinhala population in the Eastern province in the same period, 1947 – 1981, was 888 %, approximately nine times.

These facts were placed before the Supreme Court and acknowledged in the judgment which declared that the manner in which the merger of the North and East was brought about in 1987 was ultra vires.

The problem with a People whose political aspirations are not met and whose intrinsic dignity is offended is that they can make a huge nuisance of themselves! As a distinguished visitor from Rwanda a couple of years ago said: if we do not let our minorities live in peace, their brethren who have fled the country will make sure that we cannot live in peace! The outworking of this nuisance value can either be cyclic or mutations in form over time or both. That is why short fixes like the offer of development will not work in the long-term. The basic problem is one of access to powers of governance and not one of improvement in the quality of life. Therefore, for any solution to be a lasting one, it must directly address the root cause, which is full and equal access to powers of governance as an embodiment of their full and inclusive citizenship of the country.

In order to achieve a model of effective power-sharing we can perhaps look at various models that have been successful in many countries that grapple with the issues of plural societies. The following are some examples:

Basque

Basque Country is an autonomous community of Spain located on the Spanish and French boarder along the coast of the Bay of Biscay. In 1979, Basque became Spain's first autonomous region with the passing of the Guernica Statute, which granted the Basque region autonomy over finances and local police forces, and provided that Basque language would be the official language of the region. The Basque government is the only regional government in Spain to have authority over all taxes. It also retains authority over internal security, industry, economic planning, banking, transport, energy resources, rural and urban development, agriculture and fisheries, social services, culture and public works. The Spanish central government has authority over the Basque judicial system and services such as water ports, airports and immigration.

Belgium

Belgium is an independent, sovereign state divided into two three Cultural Communities and three territorial Regions. The three Communities and Regions are organized according to the three official language communities in Belgium: the French, Dutch, and German-speaking

communities. Belgium first initiated the concept of separate Communities in 1970 with the establishment of two Cultural Communities and territorial Regions for the French and Dutch-speaking populations. A German Community was established in 1973. The Community/Region structure is enshrined in the 1993 Coordinated Constitution of Belgium.

Chittagong Hill Tracts

The Chittagong Hill Tracts making up an autonomous region in eastern Bangladesh are comprised of hill districts home to 13 distinct tribes collectively referred to as the Jumma people. Of Sino-Tibetan descent and predominantly Buddhist, the tribes differ greatly from the rest of the Bangladeshi population, who are Bengali and Muslim. In the 19th century, when the region was under British rule, the British gave the Hill Tracts a degree of self-rule. In 1955 the Hill Tracts were under the absolute control of Pakistan as part of East Pakistan. They then came under control of the newly established Bangladesh government, following independence from Pakistan in 1971. In 1997, a Peace Accord established the Chittagong Hill Tracts Regional Council (CHTRC) with responsibility over issues including vocational training, primary education and secondary education, land and land management, local police, tribal law and social justice, youth welfare, environmental preservation and management, local tourism, improvement trust and other local government organizations, licensing for local trade and business, water resources, money lending and trade, and taxation.

Jammu and Kashmir

Jammu and Kashmir is an autonomous entity within India. India's claim of sovereignty over Jammu and Kashmir is contested by Pakistan, and the region has been at the center of conflict between India and Pakistan since 1947. Of the region's inhabitants 64% are Muslim and 32% are Hindu. Autonomy status for Jammu and Kashmir is enshrined in the Indian Constitution of 1957 and the Kashmir Constitution of the same year. The Indian Constitution identifies Jammu and Kashmir as a unique state within India. The local government has exclusive authority over police, gas, education, hospitals, unemployment, land tenure and the running of local government. The government of Jammu and Kashmir also has the power to regulate movement of peoples to and from Jammu and Kashmir.

Northern Ireland

Northern Ireland is part of the United Kingdom of Great Britain and Northern Ireland. Northern Ireland was the only region in Ireland that did not gain independence following the 1916 Easter Uprising and the establishment of an Irish Free State in 1921. Violence between separatist Catholics and unionist Protestants has plagued the region. Attempts at reconciliation and accommodation intensified in the mid-1980s and continued with little result until 1996. The negotiations culminated in the 1998 Good Friday Agreement, which established a complex governance system whereby different matters affecting the region are dealt with by different governing institutions.

Palestine

Present-day Palestine is comprised of the Gaza Strip, on the east coast of the Mediterranean Sea, and the West Bank, west of the Jordan River. The joint Declaration of Principles on Interim Self-government Arrangements was announced in Oslo, Norway in 1993. The Palestinians-Israeli Interim Agreement on the West Bank and the Gaza Strip was announced in 1995. The 1993 Declaration provided for a Palestinian interim government comprised of a Palestinian Council and Executive Authority, which would handle governmental affairs for the Palestinians for five years, at which time the two parties would meet to negotiate the establishment of a separate Palestinian state. The 1995 Agreement transferred governing powers to the Palestinian Council and the Executive Authority. It also established a Palestinian police force and other organs for public security.

Quebec

Quebec is a province of Canada. It is located between the Canadian province Ontario to the west and the Canadian Maritime provinces to the east. Originally a French colony founded in 1534, Quebec has a culture rooted in French language and tradition. There is a significant percentage of the population who believe that Quebec can only preserve its unique culture through independence from Canada. Two referenda on Quebec's political status were held, first in 1980

and again in 1995. Neither received the required majority to trigger secession from Canada. In 1987, the Canadian government amended the Canadian constitution to give greater powers to the Quebec provincial government. No concessions were made to Quebec following the 1995 referendum, though it was narrowly defeated by a vote of 50.6% against to 49.4% in favor of independence.

Scotland

Scotland is a distinct state within the United Kingdom of Great Britain and Northern Ireland. Scotland has been united with England and Wales in the United Kingdom since the 1707 Act of Union. The Act of the Union provided that Scotland would retain a separate legal system, church, national bank, currency and flag. Additionally, Scotland was reserved a fixed percentage of representation in the British Parliament and home rule in local government, education and social functions. Following a 1997 Scottish referendum, the Scotland Act was passed in 1998, establishing a separate Scottish Parliament, the first since 1707. Under the Act, the United Kingdom retained responsibility over foreign policy with Europe, defense and national security, economic stability, common markets for goods, employment legislation, social security and transport safety regulations. Scotland has authority in all other areas.

For a power-sharing arrangement to be successful, people in their provinces and regions must have a say in their own political destiny. But their participation and exercise of the powers of governance must be real and not fanciful.

So far no real attempt has been made to change that flawed structure of government and make it real and accessible to the Tamil People. The present Constitution with all its amendments needs to undergo a radical change if it is to provide the Tamil People full and equal access to government as an expression of their citizenship. The pseudo devolution of powers one finds in the present Constitution is not real and not entrenched and does more to exacerbate the conflict than address its causes.

Thus, we will do well to re-visit the vision of Thanthai Chelva, of a country in which every citizen has the space to exercise his or her full and equal right to citizenship and by that contribute to the lasting advancement and flourishing of all her Peoples.