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Devolution Revisited (Towards A More Effective Devolutionary Polity)



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Executive Summary

The devolution of responsibility and authority within Sri Lanka's polity has been an issue of widespread discussion in the country during the latter decades of its post-Independence history – more especially during the past quarter century. As a result of this discourse, there was considerable expectation from the introduction of a system of governance based on the introduction of a new tier in the form of Provincial Councils.

The reality, however, is that the expectations were not fulfilled. This discussion, therefore, seeks to assess the experience of the functioning of the Provincial council system since its introduction in 1987 and, based on this analysis, to offer a more relevant approach to policies, structures and processes that would contribute to the achievement of an effective devolutionary system. The discussion also proceeds to suggest how such an approach could be realistically introduced and implemented in the Sri Lankan context.

The analysis of the past experience is placed in the context of the history and culture of governance in Sri Lanka. It discusses the post-1987 experience in regard to the sharing of governance responsibilities within the polity, the reality of fiscal devolution, the management of public human resources, issues of accountability and transparency as well as the setting of intra-provincial structures.

In offering its suggestions for strengthening of the future devolved polity, the discussion focuses on issues related to the sharing of governance responsibilities, the introduction of a relevant electoral system, the setting of political and administrative structures, the introduction of an equitable system of fiscal devolution and the changes required to policies and practices of human resources management.

The discussion also deals with issues related to the introduction of the reform agenda – both in the immediate and long term – and highlights the steps to be taken to cope with the inevitable obstacles to the introduction of reforms.

1. Introduction

Discussions on the devolution of responsibility and authority within the country's polity have been at the forefront of the Sri Lankan political discourse over the past quarter-century. Devolution had increasingly been perceived as a response to the continuing dysfunctional situation in the country that had its origin in ethno-based dissatisfactions. These discussions, thus, contributed to a plenitude of expectations amongst the citizenry. These expectations culminated in the enactment of the Thirteenth Amendment to the Constitution in 1987. This amendment was expected to yield an effectively functioning devolutionary polity that would both bring decision making in governance closer to the people as well as enable individual communities, in their local context, to self-administer the delivery of public goods and services that are of direct relevance to them.

These expectations have, however, not been fulfilled - eighteen years down the line. The current perception of the citizenry is that an expensive tier of governance, in the form of Provincial Councils, has been added to the structure of the country's polity without commensurate benefits to the citizens.

This discussion, therefore, has a twofold objective.

The first objective is to assess the experience of the functioning of the Provincial Council system since its establishment in 1987. The purpose of this assessment is to attempt to understand the reasons that have contributed to their inadequacy of effectiveness in bringing decision making in governance closer to the people and in enabling the citizens to self-administer the delivery of public goods and services as required by them.

The second objective is to offer, based on an understanding of these reasons, a more relevant approach to policies, structures and processes that would contribute to the achievement of an effective devolutionary system as well as to suggest how such an approach could be realistically introduced and implemented in the Sri Lankan context.

This discussion on the post-1987 experience in regard to Provincial Councils will assess several issues.

The first issue is the negative impact that the pre-1987 history and culture of Sri Lankan governance has had on the successful introduction of an effective devolutionary polity.

The second issue is the repetitive failures experienced in regard to the appropriate sharing of governance responsibilities as between the Centre, the Provinces and the Local Communities in such manner that it would contribute effectively to bringing governance closer to the citizens.

The third issue is the ineffectiveness of structures and processes of fiscal devolution. This has contributed to a continuing gap as between the financial resources required by the Provincial Councils and the Local

Government Institutions for the due delivery of public goods and services that are expected by the citizens and the availability of such resources to them.

A fourth issue is the inappropriateness of the systems and processes of human resources management that have continued after 1987 in terms of the effective management of the delivery of public goods and services that are expected by the citizenry in each Provincial and local Community levels.

The inadequacy of the prevalent levels of accountability and transparency in governance as well as the ineffectiveness of the role played by the civil society in ensuring optimal accountability and transparency would be a fifth issue.

A sixth issue to be addressed is the appropriateness of the structures of the Provincial Councils themselves as well as their relationship with other institutions of governance within the respective Provinces.

2. The History and Culture of Governance in Sri Lanka

The discussion in this Section would attempt to draw inferences from the evolution of governance in Sri Lanka during the past fifty-eight years subsequent to the country receiving its independence from British colonial rule that had lasted for a period of almost one and a half centuries.

The politico-administrative management system that was inherited at the time of Independence, in 1947, was, essentially, a centrally controlled system. It is correct that central control was tempered with a measure of bureaucratic de-concentration at the level of Administrative Districts. Further, during the last decade and a half of the colonial regime there had also been a participation of elected representatives of the people in the process of centralized decision-making through a system of Executive Committees of the Central Legislature¹ that were headed by individual Ministers - who, together, constituted a Board of Ministers.

After 1947, the institution of Ministers continued without the Executive Committees thus leading to a Cabinet of Ministers, which exercised the function of central control. Over the post-1947 period, these ministries at the Centre have been viewed favourably by the country's political and bureaucratic elites as helpful instruments for several objectives.

The ministries at the Centre were seen as a means of consolidating the influence base of the individual holders of ministerial portfolios in such a manner that it would serve as an instrument for the future advancement of their individual and group political prospects.

At the same time, the ministries at the Centre were also seen by different political groups that held them at different points of time as convenient instruments for attempts at launching dedicated exercises to introduce and to consolidate their ideology-based economic and social agendas.

¹ The Legislature, known as the State Council, was constituted through elections that were based on the exercise of universal franchise.

A third perception concerning the ministries at the Centre was as useful aids for furthering the group influence of specific ethnic, religious and social groups over the economy, the polity and the society.

The repeated increase of the size of the central legislature during the post-1947 period brought an increased number of political cadres to the Centre. These expanding cadres aspired for a share of the political, social and economic access opportunities that would be integral to the holding of ministerial office at the Centre, with the implicit all-country visibility and influence. Thus, over time, there was a propensity of successive governments to expand the number of portfolios in the Cabinet of Ministers.²

It is in the context of these developments in the Sri Lankan polity that the introduction of the Thirteenth Amendment occurred in 1987.

The Thirteenth Amendment has to be seen not as an outcome of a detailed process of analytical search for a devolutionary restructuring of the country's governance. It was a knee-jerk response to a perceived need to find an instrument that would bring to an end the negative consequences of the militancy of an aggrieved ethno-linguistic group. As the initiative that triggered this step came from India, it is not a surprise that the institutional and process model that was used was the Indian model as prevalent at that time and as interpreted by the Centre in India. The copying of models was not accompanied by any serious and transparent assessment as to their appropriateness for the specific political, social and economic environment that prevailed in Sri Lanka.

Nor was any serious attempt made to apprise the citizens of Sri Lanka as to the why, what and how of the changes of the political processes and institutional structures that would result as the outcome of the proposed constitutional amendment. The citizens, naturally, made their own assumptions - according to their pre-conceived ideas. So did the political actors who sought positions in the new set of political institutions at the level of the Provinces as well as those ensconced in the pre-existing institutions at the Centre. The same applied to the cadres in the bureaucracy. The political and bureaucratic culture remained firmly ensconced in the old mindset - as inherited from the colonial period and as conditioned by the 1972 and 1978 Constitutions.

The political and bureaucratic cadres at the Centre, from the very inception of the 13th Amendment, saw in the Provincial Councils a threat to their exercise of political power and bureaucratic control that had been built up since Independence in 1947. This exercise of political power and bureaucratic control carried with it the ability to influence and manipulate economic and social decisions and to impose ideological agendas across the country.

However, a frontal counter-action to the new constitutional development carried risks - considering that its proponents had envisaged the Thirteenth Amendment as a solution to the inter-ethnic issues that had

² For example, the Cabinet of Ministers in office in mid-2005 comprised 36 Cabinet Ministers, 4 non-Cabinet Ministers and 35 Deputy Ministers.

led to continued political, social and economic instability as well as considerable loss of human life. This encouraged the political and bureaucratic cadres at the Centre to adopt the strategy of continuing to maintain the façade of a devolutionary system whilst denying its substance. This discussion identifies three approaches that have, over the past decade and a half, been used as instruments for this purpose.

- The first approach was to continuously manipulate the practical aspects of the process of sharing of the responsibilities of governance as between the central and provincial tiers of the polity.
- The second approach was for the Centre to attempt to exercise - both overtly and covertly - the control over the processes of fiscal devolution.
- The third approach was for the Centre to continue to exercise effective control over the management of the public sector human resources - irrespective of whichever level of government utilised such human resources.

The ensuing discussion would attempt to deal with these three approaches in greater specificity. Whilst, for purposes of discussion, the three approaches would be treated separately, it is necessary to recognise that there are considerable inter-relationships as amongst the three approaches as they have been used.

3. Sharing of Governance Responsibilities

The sharing of governance responsibilities has been a subject of continuing debate in the post-Independence Sri Lankan polity – a debate that has gathered in intensity in the decades after 1987 when the Thirteenth Amendment to the country's Constitution sought to introduce a measure of devolution to the polity. The debate yet remains without any conclusion - contributing to confusion in governance, to wasteful expenditure of public funds and to delays in the transaction of public business. The current confusion has, as can be expected, led to a growing public dissatisfaction and disillusionment with the state of governance in Sri Lanka.

It is increasingly agreed that the situation needs to be resolved and that the country should move towards a consensus on the issue of the allocation of governance responsibilities as amongst the three tiers of the polity - the Centre, the Province/Region and the Local Community. The ensuing discussion seeks to contribute towards such a consensus through the clarification of the issues involved and underlining some of the approaches that should be explored.

It is axiomatic that a transparent and widely comprehended system of sharing of governance responsibilities is fundamental to an effective devolutionary polity. There is, in the view of this discussion, a direct relationship between the manner in which governance responsibilities are shared and the degree of transparency as well as the level of accountability that prevails in the polity. Transparency and accountability are basic to the effective functioning of a democracy. They would determine the level of confidence that the citizens have in the functioning of governance. The higher the level of confidence, the lower would be the incidence of dysfunctional trends in the polity and the society. Such a carefully designed and transpar-

ent system of sharing of governance responsibilities is the foundation on which a devolutionary polity should be constructed.

Transparency in the discharge of governance responsibilities is at its optimal when they are exercised in the closest proximity to where the citizens live and work. The greater the degree of transparency the higher would be the level of accountability on the part of public institutions and their personnel. Transparency and accountability are, thus, strengthened by the conscious devolution of governance responsibilities to the levels of the polity that are closest to the citizens.

It is appropriate, at this point of the discussion, to set out the main characteristics of a system of sharing of governance responsibilities that would be appropriate in the Sri Lankan context.

This discussion subscribes to the view that public functions and responsibilities should flow from an aggregation of activities and tasks that arise in different societies from time to time in the process of satisfaction of citizens' needs - whether such needs be individual or collective. They cannot be assumed as being mandated by specific political dogmas.³ Neither are they uniform across national boundaries. They do not remain constant over time. They change as public needs and demands, within a specific polity, change.

Thus, a system of sharing of governance responsibilities that would be acceptable to the citizenry as a whole would be one that is clearly constructed in accordance with the perceived and articulated aspirations of the different groups of Sri Lankan citizens in relation to the management of different governance responsibilities. *This requires that considerable interaction with different groups of citizens should precede the designing of the system.*⁴ Whilst such a process of interaction would, naturally, be time consuming, it is an essential precursor to any durable and relevant system of sharing of governance responsibilities.

The system that is set in place should match the levels of management capacity as developed, over time, by the citizens and are available at the levels of the local community and of the aggregates of such communities to which the responsibilities are to be devolved. A comprehensive assessment of capacity levels would require detailed studies being carried out - without depending on pre-conceived assumptions.⁵

The system of sharing of governance responsibilities that prevails should also be appropriate for the achievement of the objective of effectiveness in achieving expected results - in terms, for example, of the speed, the quality, and the cost-effectiveness of the delivery of the relevant public goods and services.

³ The prevalent political culture in a specific polity would, naturally, influence the relative roles of the government, of the private sector and of the civil society in the performance of the different task components of the delivery of specific public goods and services. However, it does not follow that such roles could be regarded as immutable over time. The current experiences of the People's Republic of China provides, in the view of this discussion, interesting examples in this regard.

⁴ In retrospect it is clear that this did not happen in the formulation of the Thirteenth Amendment to the Constitution. Instead, it was thrust down on the citizenry who were unaware of the details. The outcome has been that the prevalent system of sharing of government responsibilities has not found favour with any of the groups of citizens who constitute the polity.

⁵ Such assessments of capacity at the sub-national levels become critical in the context of the varying degrees of capacity enhancement for political management that have, almost imperceptibly, occurred in the country over the post-Independence decades. Imposing a system of sharing of governance responsibilities which runs counter to the self-perceptions of capacity levels could only lead to its rejection.

It is equally critical that the system of sharing of governance responsibilities be such that it facilitates and empowers the direct participation of the citizens in the governance processes at all levels of the polity - local, regional, national. This is an aspect that has received minimal attention in the post-Independence exercises of governance reforms. In such reforms, the emphasis has tended to be on the political and bureaucratic structures and processes rather than on the level and quality of participation of the citizens in the processes.

The designing of new approaches and systems of sharing of governance responsibilities presents added complications when it has to be undertaken in a context of the separation of roles, responsibilities and functions that had historically been centralized. Such centralised structures and processes have, over the years, had a pervasive influence on the formation of the mindsets of the political and bureaucratic role actors in the system. This has been the case of Sri Lanka wherein the centralized exercise of roles, responsibilities and functions had been the norm both during the colonial regime and for the first four decades after Independence. It is around this centralized role that the post-Independence political and bureaucratic institutions had evolved. Over time, the individual and group privileges of the political and bureaucratic cadres who staffed these institutions had also evolved based on this trend towards centralization.

The situation was made more complex by the reality that the essay in devolution was attempted as a response to disaffection - coupled with civil strife - on the part of an ethno-linguistic community that was concentrated in the North and East of the country. In the balance of the country, it would be correct to assume that there was no strong, overt demand for devolution of governance responsibilities. The strong centrally directed colonial administrations that had governed the maritime areas of the country at the initial period and the whole country for over 130 years thereafter had erased memories of whatever levels of shared governance that had existed in the pre-colonial periods.

Thus, the attempt at distribution of governance responsibilities that was undertaken in 1987 was beset with difficulties.

The overwhelming role played by the Government of India in seeking to find a solution to the issues of ethnic conflict meant that the system of sharing of governance responsibilities that was introduced, through the Thirteenth Amendment, followed what was perceived as being the Indian model up to then. This resulted in the adoption, in the Thirteenth Amendment, of a schedule of governance functions and responsibilities that comprised a central list of functions, a provincial list of functions as well as a concurrent list of functions. *There was no serious attempt made, in the setting out of these lists of functions, to precisely define the responsibilities of each of the different levels of the polity in regard to each function.* The outcome has been a severe degree of confusion in regard to the management of the specific functions - with each level of governance seeking either to grab management roles for itself or to evade such roles where politically or bureaucratically convenient.

The Centre was able to take advantage of the prevalent confusion and, from the commencement of what was purported to be a switchover to a fresh system of governance based on devolution, to impose its own

will in regard to the assignment of the different responsibilities of governance. In this the Centre had multiple advantages.

- For a start, it had the benefit of experience over several decades -extending from the colonial period to the post-colonial decades - in the exercise of authority and control.
- This was supported by the reality that it had the real control over the distribution of financial resources.
- The effective control that it exercised over the key segments of the bureaucracy - organized in what were designated as the 'All-Island Services' - served to reinforce its control over the finances.
- The structures and processes of the different political parties that enjoyed political office were Centre-focussed. This permitted the political officeholders in the governance institutions at the Centre to assume supervisory direction over those at the other two levels.
- All these were underpinned by the assumed role of the Presidency⁶ – created through the Constitution of 1978 - as the focal point for the exercise of powers of oversight of decision making on the ground that the holder of the office was elected by the country as a whole.

The Centre, thus, was able to ensure that what was intended, and publicly articulated, as a devolutionary system became, in the reality of implementation, an arrangement of a partial de-concentration of governance functions to the Provincial Councils.

Examples of this strategy are found in

- The categorization of some primary and secondary schools as a set of National Schools;⁷
- The designation of some of the public sector health care facilities as 'National Hospitals' or as 'Teaching Hospitals'. There was not even a pretence at placing the management of the latter in the hands of the relevant Universities;
- The designation of most Public Health Campaigns as 'National Campaigns' and managing them directly via the Ministry of Health at the Centre;
- The setting up of administrative structures that are directly controlled by the centre - such as the Road Development Authority and the Urban Development Authority - and vesting in them responsibilities that had been with Local Government Institutions;
- The launching of Island-wide and uniform Programmes of Poverty Reduction; and
- The constant use of the rubric of 'setting of national policy' that was provided for in the Thirteenth Amendment to justify the progressive re-centralization of governance functions.

⁶ Commonly referred to in Sri Lanka as the 'Executive Presidency'.

⁷ There has been no specific definition of what these 'National Schools' are except that they are under the administrative control of the Ministry at the Centre. The same is the case with the institutions that are designated as 'National Hospitals'.

In all these attempts, the fullest backing has been received from public sector trade unions - which, in effect, have provided a strong supportive vested interest for re-centralization.

It is the view of this discussion that the post-Thirteenth Amendment delineation of the allocation of functions should have been based on an in-depth investigation and a clear definition of the specific governance functions that really needed to be performed by the Centre - in the context of capacity that had been and could be developed at the two sub-national levels - Provincial and Local. Such an objective investigation would have led to the Centre being entrusted with responsibilities related to such core issues as the defence and the security of the country and the conduct of its external relations; the developing of cohesive macro economic and social policies, to matters related to inter-provincial law, order and security. *Such comprehensive and detailed investigations failed to be carried out.*

The allocation of functional responsibilities under the Thirteenth Amendment also totally ignored the needs as well as the possibilities at the level of the Local Government Institutions.⁸ This was counter-productive in that such a comprehensive approach could have resulted in a more realistic and cost-effective allocation of functional responsibilities.

There has been repetitive advancement of the view - by sectors of the polity, of the bureaucracy and even of the academia - that the emergence of the Provincial Councils as a tier of governance results in a duplication of public expenditure. *What is conveniently ignored is that, in Sri Lanka, there never has been a planned programme to contract the political and administrative structures at the Centre based on an objective rationalization of the responsibilities, functions and tasks at the Centre.* There has been no questioning of or control over the number and size of structures of political institutions - as, for example, the Cabinet or the Parliament - or of the multiple and overlapping administrative institutions at the Centre. The non-rationalization of the Centre has burdened the country with irrelevant political and bureaucratic institutional structures, expenditure on unnecessary political and bureaucratic cadres as well as on institutions and processes that serve no logical purpose.⁹

4. A Pretence at Fiscal Devolution

The confusion that obtains in regard to the sharing of governance responsibilities within the polity is paralleled by the situation that prevails as concerning the access to public financial resources by the three levels of governance - the Centre, the Province or Region and the Local Community. These two aspects of the Sri Lankan polity, acting in tandem, have been the two critical contributors to the decline in the effectiveness of governance in the country and the resultant breakdown in the efficiency of the delivery of public goods and services. Hence, this discussion finds it important to appraise the situation as concerning fiscal devolution in the Sri Lankan polity.

⁸ These are the Municipal Councils, the Urban Councils and the Pradeshiya Sabhas.

⁹ It is interesting that the Sunset Principle, which was recommended by the Administrative Reforms Committee in 1987, has never been applied to these political and administrative institutions!

What passes for a system of fiscal devolution in Sri Lanka, consequent on the enactment of the Thirteenth Amendment, is an ad hoc set of practices that has evolved over the post-1987 years. The evolution of these ad hoc practices has not been the outcome of any comprehensive and systematic study and analysis. Several negative features of the current situation that has come about, as a result, can be identified.

The relationship that has evolved, during the post-1987 years, in the fiscal equation as between the Centre and the Provinces has been an unequal one. This unequal relationship is heavily conditioned by the current reality of the Provinces being highly dependent on the Centre for the expenditure resources required for the responsibilities handed over to them under the Thirteenth Amendment to the Constitution.

There still are three issues that concern finance and taxation that, in the view of this discussion, remain unresolved in the discourse on devolution in Sri Lanka.

- The first of these is that of the specific allocation of revenue sources as amongst the three levels of governance.
- The second is that of the sharing of the proceeds of revenue sources that would remain specifically unallocated to any of the three levels.
- The third is the issue of responsibility and accountability for the management of public expenditure.

The discourse in Sri Lanka since 1987 has tended to veer towards an approach in which the Centre is viewed as the 'proprietor' of all revenues of the country and, in its generosity, assigns shares thereof to the other two levels to meet their expenditure needs. This has been a flawed approach and one that runs counter to the essence of the principle of 'subsidiarity' which this discussion holds as being the appropriate base on which a devolutionary polity can be built in a sustainable manner.

The most appropriate arrangement concerning the issue of assignment of the specific sources of revenue in a manner that would optimally satisfy the demands of an effective devolutionary polity would have been to assign them on the basis of the origin of the specific spatial sources of the revenue. Such an approach, however, runs into difficulties arising from the nature of the structure of sources of revenue in Sri Lanka. The structure of the revenue base in Sri Lanka has, historically, been heavily weighed towards sources that transcend identifiable local origins.¹⁰

Seventeen years after the Thirteenth Amendment was enacted, there continues to be a lack of precision and clarity in regard to the assignment of revenue responsibilities to the Provincial Councils. The few revenue sources that have been assigned to them are neither high yielding nor elastic. Hence, considering the attitude of the Government at the Centre in regard to the allocation of revenue sources, it is difficult to escape the conclusion that there has been a preference to create and manage a situation of continued dependence of the Provincial Councils on the Centre in regard to their financial needs.

¹⁰ The main contributors to public revenue are customs levies (both import and export), excise levies, taxes on income (both individual and corporate) and taxes on goods and services (in the form of a Goods and Services Tax or a Value Added Tax).

The preceding discussion concerning the allocation of governance responsibilities has also stressed the role that should be played by the Local Government Institutions. There should be as direct an access as is feasible by this level of governance to sources of public revenue. This is an issue that failed to be addressed in the formulation of the Thirteenth Amendment to the Constitution.

Where, in the interim, such direct access is not practical, mechanisms need to be devised and put in place to ensure that the total proceeds from different sources of revenue that accrue to the Centre are equitably shared by the Local Government Institutions, the Provincial Councils and the Centre according to pre-determined expenditure needs at each level. The emphasis in this approach would be on 'sharing' rather than on 'allocation'. The accruals of revenue should be regarded as 'a national fund to be shared' rather than as 'income of the Centre to be allocated to the other two levels as the Centre sees fit'.

Even in a situation wherein the Centre provides the Provincial Councils with financial resources for specific sectoral activities, there has been a failure to establish a system of agreed 'unit costs' of service delivery.¹¹ This would have been the most logical system on which the allocation of the necessary resources could have been based.¹²

Experience has shown that the institutional arrangement that was set up by the Thirteenth amendment to the Constitution to oversee and to manage fiscal devolution - the Finance Commission - also suffers from several inadequacies.

- To begin with, its task is, in practice, limited to being a recommendatory body rather than one whose decisions become mandatory.
- The Provincial Councils have no representation in the composition of the Finance Commission.¹³ Instead, with its composition providing for the Governor of the Central Bank and the Secretary to the Ministry of Finance to be ex officio members, its composition is highly dependent on the Executive at the Centre.
- There is no mandatory binding of the decisions of the Finance Commission in regard to resource allocation on the process of decision-making on the formulation of the annual national budget.

The cumulative conclusion to be drawn from the issues raised in this discussion is that, in effect, there, currently, is no system of fiscal devolution that would support the effective functioning of a devolved polity. What, instead, it has contributed to is to the perpetuation of an administrative malaise and to an avoidable wasteful use of public financial resources.

¹¹ The delivery of primary and secondary education and of health care services provides examples.

¹² Such 'unit costs of service delivery' should, obviously, be based on differences of expenditure needs as amongst different spatial areas of the country.

¹³ Instead there is provision for ethnicity to be the basis of the appointment of the three non-official members – a requirement that runs counter to logic, given the task responsibilities of the Finance Commission.

5. Human Resources and Their Management

Human resources in the different delivery institutions constitute the most critical underpinning for the effective delivery of the relevant public goods and services. It is axiomatic that the quality of response of human resources to task demands would be closely related to the level of responsibility and authority that the organisations that utilise their services exercise in regard to them.

An effective system of devolution must, thus, place the authority and responsibility for human resource management discretely on each of the several levels of governance that carry the responsibility for the delivery of different public services and goods.

This, first of all, implies that the Provincial Councils should, independently, recruit and manage the human resources that are required for the delivery of the public goods and services that are their responsibility as well as for the planning and management of such delivery. This responsibility would include the determination of the numbers and quality of the required cadres, their selection and recruitment, their deployment and oversight, as well as their career development.

A similar responsibility would rest on the Local Government Institutions in regard to the cadres of employees utilised by them for the delivery of public goods and services that fall within their responsibility - even though the Thirteenth Amendment to the Constitution failed to take this level of governance into account in the sharing of governance responsibilities.

The required changes in regard to the management of human resources did not take place in Sri Lanka in the post-Thirteenth Amendment period. Nor is there any likely change to be seen on the horizon. The key staffs of the Provincial Councils continue to be provided through the All-Island Services that are controlled by the Centre. This has meant that the Provincial Councils are, at best, temporary users of such staff that are provided to them on loan. They hardly have any say in the assignment of staff for their use. They have no influence on the career paths of such staff or in their capacity development to suit the specific needs of each Provincial Council.

Given that the capacity development of personnel in any specific organisational entity must, necessarily, be geared to the organisational goals and objectives of such entity, it follows that the activities that are designed and implemented for the capacity enhancement of the different cadre groups within each Province and Local Government Institution must be specifically designed in the context of the needs of each Province or Local Community. It is also equally necessary that the personnel concerned must continue to serve the concerned Provincial Council or Local Government Institution so that the benefits of such training accrue to the enhancement of the performance of the governance of such Province or the Local Community. Given the realities that are entailed in the use of the All-Island Combined Services to provide the personnel requirements of the Provinces, this does not occur.

The net outcome is that neither the Provincial Councils nor the Local Government Institutions have a real role in what is a critical element in management - the management of the human resources that are used in the discharge of their governance responsibilities. The Provincial Councils are dependent on the Centre

for the supply of the required human resources - specially the critical groups therein. The Institutions of Local Government are mostly dependent on the transferable Local Government Service that is managed by the Local Government Service Commission at the Centre. This situation further weakens the Provincial Councils and the Institutions of Local Government as well as exacerbates the negative impacts of the defects of fiscal devolution.

An interesting example is that of the Chief Executive Officers of the Provincial administrations - the Chief Secretaries. They are appointed by the President at the Centre. Experience has indicated that the respective Provincial Councils have had no real influence on the selection of such Chief Secretaries. Owing their selection and appointment and future career advancement to the Executive at the Centre, the persons so appointed to occupy the position of the Chief Executive Officer would, naturally, be guided, in the discharge of their responsibilities, by the perceptions of the Centre in regard to such critical issues such as the sharing of governance responsibilities, sharing and management of financial resources and the management of human resources. The reality that the appointments as Chief Secretaries occur in the upper mid career streams of these personnel who belong to the All-Island Combined Services and that their subsequent career advancement lies at the Centre has a pervasive influence on the degree of their commitment to the specific aspirations of the relevant Province.

6. Accountability and Transparency

A pre-condition for ensuring the efficient and effective delivery of the required public goods and services within a Province and for the good governance of such a Province would be the existence of effective accountability of the Provincial Councils - inclusive of their members and their staff - to the citizens in their respective Provinces.

The existence of effective accountability requires that the conduct of the activities of the Provincial Councils are subjected to the optimum level of transparency that would enable all citizens to monitor and to question the members and the staff of each such Provincial Council on their performance. The post-1987 experience indicates that such transparency does not exist.

Monitoring by the citizens must, necessarily, cover effectiveness of delivery in terms of time, of costs and of quality. Effective monitoring also pre-supposes that institutional arrangements and clearly defined processes are available both for the citizens to carry out the task of monitoring as well as for the enforcement of appropriate penalties where the monitoring reveals failures in relation to the observance of the required time schedules, of norms of costs and standards of quality.¹⁴

Such institutional arrangements and processes do not exist even eighteen years after the Thirteenth Amendment was enacted. The operations of the Provincial Councils have continued to be conducted within curtains of secrecy. This was the norm of governance in Sri Lanka at the time the Provincial Councils came into being. The centralized government had inherited this as the culture of Sri Lankan governance from the colonial regime. As could be expected, this, in turn, became the culture of the Provincial Councils after their creation.

¹⁴ These would include the enforcement of recall in the case of elected members and disciplinary actions in the case of staff.

It is no surprise, therefore, that there is a lack of institutional mechanisms and processes that would enable the citizens to periodically question the members of the Councils and their staff on such aspects as the timeliness of delivery, the quality of performance or the costs of delivery.

The Provincial Councils do not publish periodic reports on their performance in regard to the different areas of work of the Councils. Nor do they publish periodic revenue and expenditure statements. The citizens have no opportunity or fora to question such data, even if they were published.

Neither does the existing electoral system, based on a system of proportional representation that has been adopted for the Provincial Councils enable the citizens to hold current office holders, individually, to account for their performance.

The weaknesses in the current system, thus, include

- The absence of individual accountability of the elected members;
- The absence of a direct relationship between the individual representative and the voters in each sub-spatial territorial entity;
- The absence of specific forums wherein the performance of the Provincial Councils, in terms of financial and physical performance can be discussed in detail by the citizens; and
- The absence of a functional nexus between the Provincial Councils and the related Local Government Institutions.

This situation is worsened by the fact that, normally, the party affiliations of the Sri Lankan electorate are based mainly on emotive concerns than on the rational analysis of the policy options and the programmes of work that are placed before it.

It must be stressed that the observations in this Section of the discussion in regard to accountability and transparency apply equally to the Local Government Institutions. Hence, any effort at enhancing the effectiveness of Sri Lanka's devolutionary polity would need to address the issues of accountability and transparency as they affect the Local Government Institutions. This aspect would be dealt with in the later stages of the discussion.

7. Intra Provincial Institutional Structure

The political and administrative institutional structures within the Province have also had an influence on the viability of the devolutionary polity. Some aspects of these institutional structures, thus, require to be reviewed.

One aspect that bears review is the size of the different Provincial Councils.¹⁵ When the Councils were set up the single criterion that appears to have been applied is that of the population of each provincial area.

¹⁵ The total membership of all eight Provincial Councils comprises of 104 in the Western Provincial Council, 55 in the Southern Provincial Council, 34 in the Uva Provincial Council, 52 in the North-Western Provincial Council, 33 in the North-Central Provincial Council, 58 in the Central Provincial Council, 75 in the North-Eastern Provincial Council and 44 in the Sabaragamuwa Provincial Council.

The nature of the tasks, functions and responsibilities that should realistically rest with the Provincial Councils did not enter the process of decision making on the size of the Councils. A contributor to this omission was the failure of the arrangements under the Thirteenth Amendment to assign an appropriate task role to the Institutions of Local Government. By the time the devolutionary polity came to be planned, the citizens at the level of the local communities had acquired credible levels of micro management capability. The ongoing developments in communication technology and in transport also should have been taken into account in placing responsibilities on the Institutions of Local Government in regard to the delivery of public goods and services. The failure of the planners of the devolutionary institutional structures and their responsibilities to take cognisance of this development and to have applied it to the assignment of responsibilities in regard to the delivery of public goods and services led to three negative consequences.

- One was that a set of governance institutions that could have made a major contribution to the delivery of public goods and services was left out in the cold.
- A second was that a set of institutions of governance the delivery of public goods and services by which could have been best monitored by the citizens failed to be used.
- A third was that the size of the membership and the staffing of the Provincial Councils were set unnecessarily high.

If an approach that was based on detailed study had been adopted, the major responsibility as regards the micro management of the delivery of public goods and services could have been assigned to the Local Government Institutions. *This would have changed the role of the Provincial Councils to one of formulation of regional development strategies, the monitoring of performance of the delivery of public goods and services and the provision of support to the Local Government Institutions in their tasks of micro managing of delivery.*

The failure to establish a clear functional accountability or representational nexus as between the Provincial Councils and the Local Government Institutions within the respective Provinces was another negative aspect of the resultant institutional arrangements. As a consequence, the two sets of institutional structures have continued to proceed on parallel paths - with overlapping and duplication of expenditure and with resources that should be spent on the actual delivery of public goods and services being wasted on superfluous supervisory personnel.¹⁶

Another outcome of the above situation is the preoccupation of the Provincial Councils with the micro management of the delivery of public goods and services.¹⁷ The resultant confusion as to responsibilities has also led to conflicts as between the Provincial Councils and the Local Government Institutions.

¹⁶ Such conflicts have been exacerbated in instances wherein the political control of the different Provincial Councils and the relevant Institutions of Local Government has vested in different political parties.

¹⁷ Such as the provision of school education, of primary and secondary health care, of public transport and communication, of water supply etc.

The Provincial Councils have also lacked an effective structure of Executive Committees.¹⁸ The outcome has been a lack of focus of attention of the different members of the Councils on specific areas of development issues and an absence of their professional specialization on the policy and strategy issues in such areas. The discourse and debates at meetings of Provincial Councils has, as a result, tended to be on generalities with a trend of the Councils evolving into mere debating forums.

The provision in Section 154B in the Thirteenth Amendment for the appointment of a Governor for each Province by the President of the country is, in the view of this discussion, one that has operated against the progress of the devolutionary polity.¹⁹ Neither the Provincial Council nor its Board of Ministers nor the Chief Minister plays any role in the process of selection and inductions of the person to be appointed as the Governor. He/she holds office at the pleasure of the President. The only recourse to his/her removal by the Provincial Council is the passing, by a majority of no less than two-thirds of its membership, of a resolution to the President for such removal. The powers of the Governor are further strengthened by the provision - in Section 154 F (2) - that the decision by the Governor in his discretion as to the exercise of his functions lies on the advice of the Board of Ministers. This situation is further complicated by the provision in the same Section for the exercise of the Governor's discretion being on the directions of the President.

Adding to the negative aspects of the functioning of the Provincial Councils is the failure to build transparency into their processes. The citizens of the relevant Provinces do not have a clear insight into the decisions that are made by the Councils and their staff, the reasons for the specific decisions being made, the outcome of the relevant decisions or any contributory reasons for the specific outcomes. They, thus, have no yardstick with which to evaluate the members or employees of the Councils. This absence of transparency has been a major contributory factor to the low performance of the Provincial Councils.

8. Strengthening the Future Devolved Polity

8.1 Towards the Future

The discussion thus far has underlined the disappointments experienced during the past decade and a half in regard to the poor levels of effectiveness of the devolved polity that was purported to have been launched in Sri Lanka through the Thirteenth Amendment to the Constitution. Nevertheless, it is, in the view of this discussion, still possible to reverse its negative features and to forge towards a more effective system of devolution.

It is correct that the genesis of a devolutionary polity in Sri Lanka - consequent to the Thirteenth Amendment to the Constitution - was seen and continues to be seen by many merely as a response to the dissatisfaction arising from issues related to ethnicity. Whilst this is so in regard to the origin of the process of devolution, it is clear that - even with the snags that have been encountered - devolution does offer Sri

¹⁸ Sri Lanka had an example of Executive Committees within the State Council – the Central Legislature of the country from 1931 to 1947 – from which valuable lessons could have been drawn.

¹⁹ It is clear that the institution of the office of the Governor in this format was the result of the uncritical acceptance of the then prevalent Indian model.

Lanka a road towards securing a structure of governance that is firmly grounded on **subsidiarity**. It is the view of this discussion that such a process offers Sri Lanka the optimum possibility of moving towards a system of governance that is democratic in its operation and can involve the fullest participation of the citizens in its processes.

It is, however, realistic to recognise that two critical pre-conditions would require being satisfied if any such effort towards achieving a more effective devolutionary polity is to succeed.

The first pre-condition is that there should be an unreserved commitment on the part of the lead role actors in the political system to the transformation of the Sri Lankan political system and its structures and processes to a devolved system - in radical contrast to the centralised political system that had been the norm during the colonial period and the half century thereafter. Analysing the experience of the past decade and a half, it is clear that there has not been such a commitment. Even where lip service has been paid to the idea of devolution, it has, more often than not, been accompanied by reservations and caveats. *The prospects - as a result of a devolutionary polity becoming a reality - of the loss of individual and group privileges within the polity and the bureaucracy as well as of the difficulty of the unilateral imposition of group ideological agendas have tended to be a deterrent to the emergence of a positive consensus within the political system in favour of devolution.*

Thus, the obstacles to be overcome in developing an adequate commitment to a devolutionary polity on the part of the wide range of political groups found in Sri Lanka are daunting.

A first possible approach would be to promote and facilitate inter-political group discussions amongst all political groups aimed at providing an understanding of devolution. Such discussions would be more productive if they also had inputs from members of the organisations of civil society. At the same time, organisations of the civil society could further contribute to the process by providing - through the use of the print and electronic media - analytical information on the positive aspects of devolution.

The second pre-condition is that there should be an integrated approach in planning the road to the future. The different elements that would be involved in such a plan would, necessarily, be inter-related - with each having an effect on the others. Hence, in the view of this discussion, such different issues as the sharing of governance responsibilities, the formulation of appropriate electoral systems, the setting of political and administrative structures, developing a system of fiscal devolution and the adoption of practices of human resources management have, all, to be addressed within a common framework.

For purposes of clarity, however, the succeeding discussion would deal with each of these issue areas separately - whilst keeping in prospect the urgency of launching the reform process. It is the view of this discussion that avoiding of the necessary reforms during the post-1987 period has contributed to increasing ineffectiveness of governance, with consequential negative outcomes in regard to the implementation of government programmes and projects, the delivery of public goods and services, proliferation of public sector expenditure, unplanned proliferation of public sector cadres, cumulating in increasing dissatisfaction on the part of the citizens.

The reform process, therefore, cannot be delayed or postponed.

The discussion that follows would, therefore, deal with the several elements in the reform agenda that are considered critical. These would include the issues related to

- The sharing of governance responsibilities,
- The future role of local governance,
- The new role of the Provincial Governments,
- The sequential role of the Centre,
- The setting of political and administrative structures,
- Changes in the electoral system,
- The strengthening of the system of fiscal devolution, and
- The designing of appropriate systems of human resources management.

8.2 The Sharing of Governance Responsibilities

The foundation for the future reform process has, obviously, to be the redefinition of the allocation of responsibilities, functions and tasks of governance as amongst the three levels of the polity - the Local Government Institutions at the level of the local community; the Provincial - or Regional - Councils as a collective of Local Government Institutions; and the Centre. This is an aspect of the designing of the devolutionary polity that received inadequate attention on the part of the framers of the Thirteenth Amendment. This, in turn, led to a situation wherein attempts were made to build a superstructure of a devolutionary polity without a well-defined and appropriate base. The outcome has been an unstable structure.

A major constraint in arriving at rational decisions concerning the sharing of governance responsibilities within the Sri Lankan polity has been the fact that all such exercises have been ad hoc and not, necessarily, based on any agreed set of principles. An acceptance of a set of principles would, therefore, be a necessary pre-requisite to agreeing on the sharing of specific governance responsibilities.

This discussion considers that such a set of principles is contained in the principle of 'subsidiarity'.²⁰ This requires that the allocation of public functions, tasks, responsibilities and accountability is effected in such manner that only functions, tasks and responsibilities that cannot, by their intrinsic nature, be effectively shouldered by the local community should be assigned to levels higher than the level of the local community.²¹ The application of the principle of 'subsidiarity' has several implications for the process of allocation of public functions, tasks and responsibilities.

- The first implication is that each function and task that arises in the polity should be evaluated, in detail, to determine the level to which its performance should be assigned. This should not only apply

²⁰ The best example of the application of the principle of 'subsidiarity' in the sharing of governance functions, tasks and responsibilities is, in the view of this discussion, to be found in Switzerland.

²¹ In the Sri Lankan case these would be the Provincial Councils and the Centre.

to new tasks. In a process of re-structuring, each function and task - irrespective of their historical origins and antecedents - should be subjected to such evaluations.

- Such evaluations should be based on the contextual situation that has currently evolved in Sri Lanka and is likely to evolve in the short and medium term. In assessing the contextual situation due regard should be paid to such aspects as the growth of political and social awareness amongst the citizens; the enhancement of the levels of management capability at the local community levels; the advances of the economic levels of citizens in the different areas of the country; and the expansion of communication and transport infrastructure.
- The growing desire of the Sri Lankan citizenry to have a direct say in the management of the affairs that concern them, including the supply of public goods and services, should be a basic point of reference in these evaluations. The adverse fallouts in terms of citizen dissatisfaction when such citizen expectations remain unfulfilled in the organisation of the polity should be clearly recognised in making such evaluations.
- The allocation of functions and tasks should not be regarded as a once and for all exercise. There would be continuing evolution in the contextual environment of such allocation. The capacity of the local communities would continue to expand. The expectations of the communities of citizens would continue to heighten. The technological underpinnings of the delivery of public goods and services would change over time. **Hence, the allocation of functions and tasks of governance should be subject to continuing re-evaluations.**
- The assignment of public functions and tasks that would flow from these evaluations should give primacy to the principle that the first consideration in such assignments should be to locate the responsibility for the function or task at the level of the local community. Only after the potential of the local community and its organisations has been completely exhausted should the search move to levels of the Province or the Centre.
- This discussion considers it to be appropriate, in such an exercise, to focus on the Provincial level in terms of its potential and capacity for the provision of technical support to the local communities in the discharge of the responsibilities assigned to them.

Several issues should receive detailed consideration in reviewing the assignment of governance responsibilities to the different levels of the polity.

- A principal guiding factor is the convenience that would accrue to the public as regards the delivery of public goods and services.
- Equally important would be the degree to which the direct involvement of the citizens at the community level in the planning of the delivery of public goods and services and in the monitoring of such delivery is facilitated.
- An equally relevant aspect that should be considered in such decision making would be the contribution that would be made through the reallocation that is decided upon in ensuring and strengthening of the enforcement of public accountability and of transparency.

- Another important aspect that should receive consideration is the contribution that would accrue to the reduction in costs of the delivery of public goods and services - through the removal of the current multiple levels of supervision and their replacement by oversight through Community-based management.
- The future delivery of public goods and services should also be so designed as to foster the recognition by the citizens at the level of the Community, of their own responsibility for the costs, efficiency, effectiveness and quality of the delivery of public goods and services.

8.3 The Future Role of Local Governance

In the view of this discussion, such a re-examination of the allocation of responsibilities and functions would lead to the Local Government Institutions assuming responsibility for the delivery of all public goods and services that are specific to their own spatial areas. Examples of such would be found in the delivery of primary and secondary education; of primary curative and preventive health care services;²² of local road infrastructure; of the retail supply of electricity; and of the local water supply and drainage systems. It would also extend to the regulation of public transport and, as appropriate, the participation in the management of such local transport services.

The responsibility of the Institutions of Local Governance would include the planning and management of all stages of development and delivery of such goods and services. It would, naturally, include the autonomous management of the related financial and human resources. The assignment of this responsibility should be accompanied by providing for personal and group accountability on the part of the members of the Institutions of Local Governance - accountability that is based on optimal transparency.

It is inevitable that the efficient and effective delivery of the envisaged public goods and services would necessitate the formation of institutional structures in order to manage the delivery of higher orders of goods and services with a multi-community-area spread.²³ These institutions should function as autonomous entities with the relevant Institutions of Local Governance to whom they provide services having a stake on the Boards of Management.

8.4 The Role of the Provincial Governments

The sequential role of the Provincial Governments would, as a result of the enhancement of the governance responsibilities of the Institutions of Local Governance, be radically different from their current role. Hitherto, the Provincial Councils have sought, within the leeway that was reluctantly provided by the Centre, to play the role of micro management of the delivery of public goods and services. They copied their role from the role played by the Executive and Legislature at the Centre.

²² Obviously, the definition of 'primary health care' would need revision to take account of the more sophisticated demands for health care that now arise from the Community.

²³ Examples would include inter-local area roads, highways and water supply and drainage systems; tertiary education facilities other than the autonomous universities; and tertiary health care facilities other than university-managed teaching hospitals.

The new role that is envisaged for the Provincial Governments would, basically, be one of

- providing support to the Institutions of Local Governance,
- ensuring the overall co-ordination of the governance responsibilities that lie within the Province, and
- providing the necessary interface as between the Institutions of Local Governance and the Government at the Centre.

The Provincial Governments would, thus, be the leader in the task of short and medium term development planning for the Province as a whole. This would be an activity that would be based on the integration and co-ordination of the local plans that are prepared by the Institutions of Local Governance. This would, necessarily, be a participatory exercise with all Institutions of Local Governance that are located within the relevant Province. This would include the planning of financial resources and would particularly focus on the provision of expenditure support to each Institution of Local Governance as well as the reaching of agreements on the mobilization of financial resources - both from the Centre as well as from within the Province.

The Provincial development and resource management plan that is agreed upon as stated above would require to be monitored in terms of its performance. This is a second task that would be the responsibility of the Provincial Governments. There should be, in the view of this discussion, maximum transparency in regard to the outcomes of the monitoring - with such outcomes being subject to public discussion in the meetings of the Council.

A major task for the Provincial Governments would be the conduct of negotiations with the Centre - through the Finance Commission - in regard to the sharing of financial resources as between the Centre and the several Provinces. This entails that each Provincial Council would need to equip itself with the required data and the competences required for the task.

The Provincial Government of each Province should also be engaged in the conduct of negotiations - on behalf of the Province as a whole - with the Centre concerning the formulation of macro policies. These negotiations should be an integral element in the process of the analysis of policy options prior to their adoption as the macro policies of the country. The objective that underlies such a process is to ensure that the macro policies that are formulated for the country reflect the priority needs of the different Provinces and respond to them. Obviously, institutional structures and processes - both at the Centre and in each Province - would require to be evolved to ensure that this becomes an operational reality.

In order to strengthen the autonomous exercise of the roles and authority of the Provincial Governments, it is necessary that the procedure of appointment and the role of the Governor be subjected to change. The office of the Governor should be filled through a process that brings the members of the concerned Provincial Council as well as the members of the relevant Institutions of Local Governance into the act of selection. The individual thus selected should be presented to the President for approval and appointment. The term of appointment should be limited to a single term of five years. The individual so selected should

be a person who has permanent residence in the concerned Province. Any use of discretion by the Governor should be tabled and explained to the Provincial Council.

8.5 The Role of the Centre

As a result of the changes suggested above, the role of the Centre would radically change. It would be restricted to a limited set of critical national responsibilities and functions. Though such responsibilities and functions would be few in number as compared to those exercised by the central institutions of governance of the Colonial and immediate post-Colonial periods, they would, obviously, be responsibilities and functions that would be critical to the political, economic and social stability and national security as well as the progress of the country as a whole.

One primary responsibility that should be exercised by the Centre would be the conduct of the external relations of the country -comprising both the political as well as the economic relations.

A second responsibility would be the formulation of the macro economic, fiscal and social policies of the country and their management. The monitoring of the progress and impact of the management of the individual policies and strategies as well as of the package of such policies would be an integral element of this responsibility.

A third responsibility that flows from the above would be the periodic formulation and re-formulation of the strategies that should guide the delivery of essential public goods and services. The objective of the Centre in this regard would be to ensure that citizens - wherever they live - would enjoy equity of access to such goods and services. This would require

- special attention being paid to issues of eligibility of groups of citizens for free or subsidized access to such goods and services; and
- would also entail the provision of policy guidance to the Provincial Councils in regard to the ensuring of minimum levels of social security for the citizens of the respective provinces.

Co-ordination of disaster management and the ensuring of the provision of relief in the event of disasters would be another responsibility that would vest with the Centre. This responsibility would also include disaster preparedness - including the anticipatory provision of minimal financial resources that would be required to cope with initial responses to disaster. Whilst the actual mounting of relief, rehabilitation and reconstruction responses to disasters would involve the harnessing of the participation of the relevant Provincial Councils and the Institutions of Local Governance, the overall policy and strategy formulation would, inevitably, rest with the Centre.

The defence and security of the country would, obviously, be a responsibility that would rest with the Centre. Similarly, whilst the maintenance of law and order within each Province would rest with the different Provincial Governments, trans-provincial aspects²⁴ of the maintenance of law and order would rest with the Centre.

²⁴ This would include international aspects of the maintenance of law and order.

In the area of administration of justice, the institutions and cadres that relate to the appellate judiciary would rest with the Centre.

8.6 The Setting of Political and Administrative Structures

The conclusions that have emerged from the discussion of the future sharing of governance responsibilities should be the guiding framework for the setting of political and administrative structures. The primary focus of these structures should be to ensure that the responsibilities at each level are effectively discharged. Hence, the political and administrative structures at each of the three levels must be purpose-designed so that they serve the functions and roles at each level and in the local context.

At the Centre the political structures as well as the administrative structures that support them should be so designed that they would be effective as instruments of macro policy management - both in terms of the analysis of policy options, the oversight of the implementation of the selected policy options and the continuous monitoring of the impact of such implementation. In addition to the sector-based structures for this purpose, there would need to be structures that would monitor the inter-sectoral implications of such policy options as well as the manner in which they impact on specific national priorities.²⁵

It is essential that the responsibilities of the sector-based structures should not overlap - as multiplication of institutional structures with overlapping mandates can only lead to confusion and ineffective governance. The functions of inter-sectoral co-ordination should be vested in structures that are placed at hierarchically super-ordinate positions in the political executive.

The preceding discussion points to a Cabinet of Ministers that is small in size with clearly defined responsibilities of each of the several ministries and of the concerned ministers. The focus of the ministries at the Centre would be on the analysis of policy options, the defining of the specific policies as emerging from such analysis and the formulation of strategies for the achievement of the selected policy objectives²⁶ and the monitoring of the impact of such policies and strategies. *Hence, it is obvious that the size of the Cabinet of Ministers would have to be kept small.*²⁷

The task responsibilities at the Centre have inevitable implications for the structure of the Legislature at that level. The indications of the post-Independence experience are that the objective of effective macro policy management would be better served by a Legislature of a smaller size. It is preferable that such a Legislature be bi-cameral - with the Second Chamber providing for direct participation of the sub-national units of governance in the policy management process.

In the view of this discussion, the total membership of the Legislature at the Centre should be kept at no more than 125. The Second Chamber should comprise of 45 members (on the basis of 5 members for each

²⁵ One instance of such a national priority would be the objective of poverty reduction to which sectoral policy areas such as education, health, infrastructure, social security etc. would contribute.

²⁶ Issues related to policy management have been discussed in detail in Wanasinghe, Shelton: "Enhancing the Effectiveness of Public Policy Management - The Challenge Facing Sri Lanka" (Institute of Policy Studies, Colombo, October 1996).

²⁷ It is the clearly held view of this discussion that the ad hoc expansion of the size of the Cabinet of Ministers in order to serve the objective of harnessing numerical support in the Legislature has been a major impediment to good governance.

Province) whilst the First Chamber should comprise of 80 members - with 70 members being elected from individual constituencies and 10 seats being assigned to registered political parties based on the total quantum of votes polled by each such party.

The contribution of the Legislature to the macro policy management process would be enhanced if its work were organized around Standing Committees that are set up in such manner that they could deal with specific sector-related as well as trans-sectoral policy areas. Such Standing Committees should have membership from both Chambers.

As already discussed, the task responsibilities at the level of the Institutions of Local Governance would focus on the micro management of the delivery of public goods and services - including the maintenance of law and order - in such manner that there would be maximum transparency and direct accountability to the citizens of the relevant community.

Such Institutions of Local Governance should be based on a system of elections that enable citizens of the communities in the different constituent wards to directly elect their representatives to the Council. Such Councils should also organise themselves on the basis of Standing Committees that relate to the different economic and social sectors - with the Chairs of the Committees constituting themselves as an Executive Board led by the Head of the Council.

As the preceding discussions have underscored, the task responsibilities of the Provincial Councils should be the provision of support to the Institutions of Local Governance - through the supply of technical services and financial resources - as well as being the spokesperson on behalf of the relevant Institutions of Local Governance with the Centre.

In this case also the efficiency of the discharge of its responsibilities would be enhanced if the work of the Provincial Councils were organised on the basis of Standing Committees. Such Standing Committees should be sector focussed as well as cross-sectoral. The latter would include objectives such as poverty reduction as well as issues such as finance. As in the case of the Institutions of Local Governance, the Chairs of these Standing Committees should constitute a Board of Ministers with one amongst them being designated as the Chief Minister for pre-set periods of one year each.

8.7 A Relevant Electoral System

In seeking to enhance the effectiveness of the devolutionary system, a major issue that needs to be addressed is the appropriateness of the current electoral system used to constitute the Provincial Councils and the Institutions of Local Governance. It is desirable to design specific electoral systems for the institutions at each level - the Parliament, the Provincial Councils and the Institutions of Local Governance. The post-1988 period has underlined the inter-institutional conflicts that can arise where the institutions at the different levels of the polity claim legitimacy from the same electoral base.²⁸

²⁸ This is also a factor that has led to conflicts of perception as between the Executive and the Legislature at the Centre and the Provincial Councils.

The PR-based electoral system - currently used in Sri Lanka for elections to all political institutions - has had an inhibiting influence on the evolution of Provincial Councils and of the Institutions of Local Governance as autonomous institutions within the polity. The 'list system' of nominations has, in effect, led to a situation wherein the 'first rung' of political cadres in each geographical area is nominated to the Parliament at the Centre with the 'second rung' being foisted on the Provincial Councils and on the Institutions of Local Governance. The outcome of this hierarchical approach is that the members of Provincial Councils are expected to be 'subservient' to their seniors at the Centre - particularly to the members of the Cabinet at the Centre.²⁹ This unwritten culture has become the dominant mindset of the Sri Lankan polity.

As has been discussed, the focus of the institutional structures at the meso level is on

- The coordination and the provision of support for the activities of the Institutions of Local Governance at the micro community level in the effective delivery of public goods and services;
- The provision of the financial, technical and human resources support that is required by the Institutions of Local Governance for this task; and
- The monitoring and evaluating the progress, the effectiveness and the efficiency of such delivery.

Given this role, it is the view of this discussion that these roles could be more effectively performed if the Provincial Councils were more directly representative of the Institutions of Local Governance within each Province. *An issue, therefore, that requires serious consideration is the constitution of the Provincial Councils with the Heads of the Local Government Institutions as members - with designated representatives who would conduct the day-to-day work.*

The preceding discussion has already recommended that the election of members of the Local Government Institutions should be based on territorial wards into which the total area of the Council would be divided.³⁰ Concurrently there would be a ballot for the election of the Head (Chairman or Mayor) in which all the voters in the Council area would participate and cast their preferences. The Head as well as the members would hold office for a period of five years subject, in each case, to a maximum of two terms.

The system of election to the Legislature at the Centre, which, as already referred to, would be bi-cameral, also requires review. In the view of this discussion, the changes should be based on

- A dual system of elections to the First Chamber based on single-member territorial electorates as well as assignment of a limited number seats to registered political parties based on the total quantum of votes polled by each of them in the polling in the territorial electorates; and

²⁹ In effect, the members of Provincial Councils and of the Local Government Institutions wait subserviently to being promoted as candidates to the Central Parliament.

³⁰ Such division should be based on the spread of population as well as natural affinities within each spatial area.

- The constitution of the Second Chamber on the basis of an equal number of representatives to be elected by each of the nine Provinces - through nomination and voting by the members of the Local Government Institutions in each such Province, who would constitute the electorate for this purpose.

8.8 An Equitable System of Fiscal Devolution

There has been no serious attempt since the enactment of the Thirteenth Amendment to work towards ensuring that the financial resources that are available to the three levels of governance match the requirements of the due discharge of the responsibilities that are expected of each such level. Hence, if, as a consequence of the suggestions that have been made earlier in this discussion, higher degrees of functional responsibilities are assigned to the Local Government and Provincial Government levels, there needs to be a radical change in the current approaches to the sharing of financial resources.

Such a change should be based on a move away from the current situation of passive dependency of the Provincial Councils and the Institutions of Local Governance on handouts from the Centre to a situation wherein the process of fiscal devolution is based on a pre-set formula for the equitable sharing of the total revenue resources of the country by the Centre, the Provincial Councils and the Institutions of Local Governance.

There is, thus, an urgent need to comprehensively review the ongoing basis of revenue mobilization in the country. The current heavy emphasis on centrally administered customs and excise levies and on VAT as well as the assumptions on which the taxes on income are based needs re-appraisal.

The changes that are required revolve around the assignment of a greater role of revenue mobilization to the Institutions of Local Governance and to the Provincial Councils. This should be explored through a carefully planned reassignment of sources of revenue both to the Institutions of Local Governance as well to the Provincial Councils. The resultant enhanced revenue that is earned by the Provincial Councils should be shared amongst the Institutions of Local Governance within the Province and also be utilised to meet its own limited needs of carrying out its tasks as set out earlier in the discussion.

The reassignment of sources of revenue should be preceded by a detailed study of the different options to identify possible sources. For example, taxes that are based on profits generated by enterprises - whether industrial, agricultural or commercial - would be one such source. Taxes based on consumption would be another such source that could be considered for reassignment. Direct charges for services that are provided by governance authorities - particularly by the Institutions of Local Governance - should be collectible by such governance institutions. Land and maritime-based taxes provide further examples. It is essential also that the provider institutions of governance recover charges for the delivery of all public goods and services.³¹

³¹ Where charges are recovered for the delivery of such public goods and services, arrangements should be introduced for Social Security Funds to pay the charges on behalf of citizens whose incomes fall below pre-set levels.

In the interim, the following measures should be put in place.

- The current assignment of revenue sources to the Provinces should be enhanced by the assignment of taxes and levies on goods and services to the Provinces - but with the proviso that they be collected by as well as be utilized by the Institutions of Local Governance.
- The proceeds of the revenue sources of customs levies, excise levies and of taxes on corporate and personal income should be treated as a 'national pool' to be shared as between the three levels of governance. The formulae that are adopted should apply to the 'national pool' as a whole and not separately to specific sources of revenue and should be based on the 'development indicators' of each area, the population statistics and demographic profiles as well as the agreed national priorities on investments in development. Precise and transparent rules and procedures should be adopted for the sharing of this 'national pool'.
- The decisions on sharing should be taken by a revamped Finance Commission - which should be representative of the nominees of Provincial Councils and of Institutions of Local Governance as well as of the Centre.³²
- The budgets at the respective levels should be sanctioned by the Parliament at the Centre, the Provincial Councils at the level of the Provinces and the Institutions of Local Governance at the local community level.

8.9 Policies and Practices of Human Resources Management

A major constituent of the reform process would relate to the changes that should be introduced to the policies and practices that relate to human resources management in the public sector as a whole. This is an area of reform that, given the impact that it would have on privileges that are enjoyed by existing cadres, would be the hardest to implement due to resistance that would be offered by groups that currently benefit from such privileges. Nevertheless, this is an inevitable and essential set of reforms that are required if devolution of governance is to be effective in Sri Lanka.

The future changes should be based on a set of principles that would ensure that

- The positions at each level of governance are specifically identified in terms of the tasks that are involved in each such position;³³
- The qualifications for each such position is clearly spelt out; and
- The tenure of each such position is clearly pre-determined.

Such an approach would call for several radical changes in the existing public personnel systems.

To begin with, the groups of posts that are designated as 'All-Island Services' should be terminated. These, in the view of this discussion, are no longer relevant to the task demands at the several levels of gover-

³² Such representatives to a new Finance Commission of seven members should be independent individuals and not officials.

³³ It needs to be recognized that the contents of jobs would vary as between levels as well as between locations - even though the job titles may be the same.

nance. *Future recruitments should be to specific positions - based on medium-term, renewable contracts. All such posts would be filled by individuals who are not transferable.*³⁴

The responsibility for human resources management should vest individually at the institutions at each level of governance with appropriate institutional arrangements being provided at each such level to assist the line management of the different user-organisations in ensuring fairness and transparency in the processes of human resources management. At the Centre would be the Central Public Services Commission. Each Province would have its own Provincial Public Services Commission. This latter could also be used by the different Local Government Institutions for human resources management related tasks that fall within their own purview.

In the transition, current personnel should be allowed to apply for the new positions that would be created through the reform and to be considered for such jobs. Where they fail to be selected, they should be offered Voluntary Retirement Schemes to seek their careers elsewhere.

*The future super-annuation systems for all public sector employees at all levels should be contributory schemes. Existing superannuation systems should, where necessary, be modified to fit into contributory systems.*³⁵

9. Towards the Future

The discussion that follows focuses on the future of devolution as Sri Lanka moves forward in its process of restructuring its polity to provide a stable base for achieving a functioning participatory democracy. The discussion, for convenience, is arranged in two segments.

The first segment deals with the effecting of modifications to the ongoing situation in order to make the system optimally functional. The second segment would deal with the changes in constitutional arrangements that would - in the medium and long term - be required to institutionalise a participatory democracy that would provide lasting solutions for the societal instability that, currently, inhibits the country's political, economic and social development.

9.1 The Immediate Reforms

The preceding discussion has served to indicate the changes that should be addressed immediately to remove the existing constraints that have contributed to Sri Lanka's devolutionary polity being dysfunctional. The areas for changes thus identified include

- Re-defining the assignment of governance responsibilities as amongst the three levels of the polity - on the basis of *subsidiarity* - in such manner that there is a clear demarcation of the authority, responsibilities, functions and accountability at each level;

³⁴ In such a context, any jobholder who wishes to change his/her job should be free to do so through applying for vacancies that are announced and by being selected.

³⁵ A scheme through which the privileges of current participants in the non-contributory system could be 'bought back' by the Government should also be put into effect in order to gain acceptance of the contributory system.

- Effecting changes to the political and administrative structures at each of the three levels of the polity to be effective instruments of the discharge of governance responsibilities as redefined;
- Effecting reforms to the electoral systems that are used at each level of the polity to constitute the relevant political institutions;
- Effecting changes and reforms to the system of sharing of public financial resources in such manner that the political and administrative institutions at each level of the polity equitably command the resources that are required for the due discharge of the governance responsibilities that are assigned to them; and
- Reform of the systems, policies and practices of public sector human resources management in such manner that the institutions at each level of the polity would have discrete authority over and responsibility for the cadres that serve them.

It is the view of this discussion that the introduction and implementation of these major reforms is essential from two objectives.

- One objective is to effect corrections to the current deficiencies in the devolutionary polity that inhibits its effective functioning.
- The second and, perhaps, even more important objective is to lay a sound foundation for the further progress of the evolution of the Sri Lankan polity to a genuinely Federal Polity that would allow the citizens, in their local communities, to assume responsibility for their self-governance as well as to share in the task of governance of the country as a whole.

Both these objectives are equally important and, therefore, have to be kept in focus in designing and implementing the set of immediate reforms. Therefore the immediate reforms have, individually and collectively, to be measured against both the objectives.

9.2 Towards the Longer Term Reforms

As the devolutionary polity gains stability and effectiveness through the implementation of the short-term agenda of reforms, it would be appropriate to consider the longer-term enhancements to the system that would lead to a federal polity that would, as already indicated, enable the citizens - in their local communities - to exercise self-governance as well as to equitably share in the decision making on the macro issues of governance.

It needs to be emphasised that the successful implementation of the short-term reform agenda as outlined earlier is a necessary pre-condition for the effective launching of the longer-term exercise.

There are, in the view of this discussion, several reasons for this approach.

- The experience of the post-1987 period has not contributed to a high level of confidence in the citizens that the devolutionary polity as it has functioned has contributed to a positive change in their

lives. Hence, an enhancement of the confidence of the citizens in an effectively functioning devolutionary polity must become the context within which further movement towards devolution and the sharing of authority and responsibility is undertaken.

- The government bureaucracy of today constitutes a major obstacle to the effectiveness of the current devolutionary polity. The members of the historically centralised bureaucracy - whose privileges and perquisites have been closely linked to their centralised status - have been active collaborators with the political cadres in a process of rendering the post-1987 devolutionary polity ineffective.
- The reforms that have been suggested earlier in this discussion would, whilst correcting the inefficiencies in the current structures and processes of devolution, overcome the above two critical obstacles to the progress of the polity towards a federal structure that is grounded in 'subsidiarity'.

Thus, in the view of this discussion, the effective planning and implementation of the package of immediate reforms that was set out earlier is an essential pre-requisite to the long-term process of constitutional development.

This discussion recognises the imperatives of arriving at solutions for the ethno division based issues that, currently, hold back Sri Lanka's progress. These solutions, obviously, require to be addressed through long-term constitutional reforms that would lead to a federal constitution that is based on the principles of '*subsidiarity*'.

However, whilst the need is urgent, it is the view of this discussion that proceeding to implement such long-term constitutional reforms without completing the short-term agenda of reforms, would lead to such constitutional reforms failing to yield the expected results. Hence, whilst the longer-term reforms should receive attention in regard to study and formulation, what would be currently urgent would be to implement the short-term reforms to the ongoing devolutionary polity so that the future constitutional progress is based on a firm foundation.

The process that needs, in the view of this discussion, to be followed is one of linear progression that would lead - in the short-term - to a polity that would be based on the optimal devolution of the responsibility, authority and accountability of governance to its local and intermediate levels. This linear progression should, then, continue until the devolutionary polity evolves into a federal structure that would also satisfy the aspirations of the several ethno-social groups that constitute Sri Lanka's population.

This discussion will not attempt to provide a detailed iteration of the specifics of the long-term constitutional arrangements. Instead it would set out some of the desirable key features of such arrangements as a guide to the formulation of the specifics. These would include

- As repeatedly iterated in this discussion, the principle of '*subsidiarity*' should be the basis on which the constitutional arrangements should be formulated. It should apply to the constitutional responsibilities and authority at each of the three levels as well as the sharing and allocation of the country's sources of public revenue.

- The delineation of functions of governance as amongst the three levels of the federal polity should be done in such manner that no room whatsoever is left for ambiguity and sequential debate, argument and controversy.
- The same principle of absence of ambiguity should apply to the allocation of revenue sources and to the sharing of the national revenue pool.
- There should be a Constitutional Court to which all the three levels of governance, without distinction, could refer issues that arise for resolution

9.3 Coping With Obstacles to Reforms

The post-Independence history of Sri Lanka points to several episodes of suggestions for reforms of policies and strategies being accepted but not with the degree of consistency that would ensure their successful implementation.³⁶ Given this record of inconsistency in regard to implementation, it would be unrealistic not to recognize, at the outset itself, that there would be considerable impediments to the implementation of the road map that has been outlined earlier in this discussion. A clear recognition of such impediments, the likely resistance and their sources is, therefore, essential for the effective planning and implementation of the changes that constitute the proposed road map.

One group from which such resistance should be expected would be the vested interests that exist in the current political cadres that have, both individually and as groups, benefited from the existing centralised polity. These cadres cut across political parties and groups as well as the three levels of the polity.

A second equally important group would be the vested interests that have grown, around the existent system, in the bureaucracy.

It is to be expected that such groups of vested interests in the political cadres and in the bureaucracy would form coalitions of resistance. *Hence, in the planning of reforms steps should be taken to develop and to implement strategies to counter such resistance.*

There would, naturally, be a measure of reluctance - in the society at large - to change systems, structures and processes of governance that have been historically inherited. Such apathy would arise from a low awareness of citizens of the issues that are involved and their ramifications. It is important, in this connection, to also recognize the emotive nature of the behaviour of the citizenry - responsive to long cherished romantic views of the past and to the oratory of political cadres. *Thus, an essential ingredient of a future reform agenda is a well-planned and carefully implemented exercise in creating and sustaining public awareness on the reform agenda.*

³⁶ The recommendations of the Presidential Administrative Reforms Committee, the Presidential Taxation Commission and the Presidential Commission on Local Government provide interesting recent examples of this phenomenon.

There is, thus, an obvious need for a dedicated consortium comprising the key elements of the polity, of the bureaucracy, of the civil society and of the private sector that should be concerned with the planning of the reform agenda, with the creation of public awareness, with the removal of the impediments - as they are anticipated and as they arise. Such a consortium should also be concerned with the implementation of each of the reforms.

It follows that the consortium should also assume responsibility for the monitoring and impact assessment of such implementation. Such monitoring should be accompanied by effecting changes as necessary to the reform agenda as well as by the clear conveyance of the successes and the reversals of the outcomes to the monitoring to the citizens. The public should be clear as to the intervals of the monitoring as well as the results of each such monitoring.

This discussion recognizes that the journey that lies ahead would be difficult and that the problems that would need to be overcome would be considerable. Even so, it is the firm view of this discussion that there is, really, no alternative. If the reform agenda is not pursued, Sri Lanka runs the grave risk of a collapse of governance.

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