

INDO - SRI LANKAN PACT OF 1964 AND THE PROBLEM OF STATELESSNESS - A CRITIQUE

RANI S. PILLAI

Research Scholar, Dept. of History, Sree Sankaracharya University of Sanskrit, Kalady, Kerala, India

Abstract

As regards the bilateral relations between India and Sri Lanka, the major irritant has been the case of the stateless Tamils of Indian Origin. This vexed problem has eluded solution for a long time. The breakthrough in this field was achieved with the conclusion of the Sirimavo-Shastri Pact of 1964. This Pact is a landmark in India-Sri Lanka relations as it symbolized the beginning of the end of a problem. The notable feature of the Sirimavo-Shastri Pact was the large scale division of population between India and Ceylon, totally ignoring the feelings and aspirations of the people concerned, according to which, out of the 975,000 Stateless persons 525,000 were to be repatriated to India and 300,000 to Sri Lanka citizenship over a period of 15 years. The status of the remaining 150000 persons and their natural increase was agreed to be decided by both Governments at a later date. Now the period specified in the Pact is over. But the achievement so far at the expiry of the stipulated 15 years has been only 55 per cent. Even the persons already repatriated have not been resettled with contentment. Social disabilities, physical hardship and mental agony have been undergone by them for no fault of their own. A meticulous scrutiny of the Pact will reveal the fact that, the unfairness and injustice meted out to the Indian workers from Sri Lanka is a bye product

India and Sri Lanka¹, the two very close neighbours, are separated by a narrow stretch of water called Palk Strait. The history and mythology of the two countries are inter-related and the social ties between the two are old.² Soon after independence, the major problems

bedevilling the relationship of both the countries were the issue of citizenship of the persons of Indian Origin resident in Sri Lanka, most of whom had migrated to the Island during the British Period to the Coffee and subsequently tea plantations.³ The problem is popularly known as the Indo- Ceylon Problem. It is essentially a human problem concerning poor toilers whose forefathers left India long ago and who after getting acclimatized with the environmental rigors of hilly tracts of Sri Lanka, got settled there on high slopes contributing every mite to the growth of tea, rubber and coffee plantations which fetch the major portion of foreign exchange of Sri Lanka.⁴

The history of the emigration of labourers from India to Ceylon is almost as old as the beginning of Ceylonese plantations. They lived near plantations for generations and were known as "Indian Tamils". The need for these labourers arose because the Sinhalese labourers were neither habituated nor inclined to work on plantations on the high hill slopes under rough weather. The influx of Indian Tamil labourers to Sri Lanka continued for about a Century. By 1891, there were 235,000 'resident' workers in the Sri Lankan plantations. Gradually many of them became permanent settlers. During the British administration they were British subjects and enjoyed almost equal political and civil rights with other people of Sri Lanka.⁵ The post- colonial rulers of Ceylon felt that the Upcountry Tamils were not Sri Lankans because they had Indian ancestry. The Government passed the Ceylon Citizenship Act of 1948, and the Indian and Pakistani Resident Act, which deprived the great majority of the Indian Tamil residents in Sri Lanka of their citizenship rights and franchise.⁶ Their position worsened, when Sinhala was made the official language. The plantation workers were thus forgotten from 1948- 1964. Their lives were in ruins. They did not profit by any progressive legislation of the independent Sri Lanka. The housing, health and education of the Plantation workers were in total neglect. It became the dying community of Sri Lanka.⁷

As regarding the bilateral relations between India and Sri Lanka, the major irritant has been the case of these stateless Tamils of Indian Origin. This vexed problem has eluded solution for a long time. The breakthrough in this field was achieved with the conclusion of the Sirimavo- Shastri Pact of 1964. This Pact is a landmark in India- Sri Lanka relations as it symbolized the beginning of the end of a problem. Now the period specified in the Pact is over.⁸ But the achievement so far at the expiry of the stipulated 15 years has been only 55 per cent. Even the persons already repatriated have not been resettled with contentment. Social

disabilities, physical hardship and mental agony have been undertaken by them for no fault of their own. A meticulous scrutiny of the Pact will reveal the fact that, the unfairness and injustice meted out to the Indian workers from Sri Lanka is a by-product of the Pact itself. The present seminar paper is an attempt to unveil the loopholes in the Pact, which resulted in the plight of the Indian Tamils in India as well as Sri Lanka.

The Pact at a Glance

The long term policy of the Ceylon Government was to repatriate as many Indian Tamils as possible to India. Protracted negotiations were held between the two governments before 1964 to solve the “Indian Question” in Ceylon. In all these conferences and meetings not much headway was made to find a permanent solution to end the “statelessness” in Sri Lanka.⁹ By 1964, there was a sea change in the attitude and approach of Indian government. Taking in to consideration the political climate of the Sub- Continent, the Indian government felt the necessity to settle the problem of “stateless” persons in Sri Lanka.

After the death of Nehru, Lal Bahadur Shastri became the Prime Minister in June 1964. His attitude played a key role. He was very anxious to find out a solution to the problem and his posture was mild, conciliatory and accommodating. At the invitation of the Shastri, the prime minister of Ceylon, Mrs. Sirimavo Bandaranaike, visited Delhi from the 22nd to the 29th October, 1964.¹⁰ The talk were frank and friendly and were held in an atmosphere of mutual understanding. The discussions were characterized by a sincere desire on the part of both Prime ministers, to arrive at a mutually satisfactory equitable and honourable settlement of the problem, without prejudice to their respective earlier positions.¹¹ At last to solve the destitute state of the Indian Tamils, on Oct. 30, 1964 Sri Lanka and India signed the Sirimavo- Shastri Pact (Amended in 1974 by the Sirimavo- Indira Gandhi Pact).¹² According to the Agreement , a total number of estimated stateless population 9, 75, 000 was shared by both the Countries. India agreed to give Citizenship and to accept 5, 25, 000 persons with their natural increase, while Sri Lanka agreed to grant citizenship to 3, 00, 000 persons and their natural increase, and the status of 75, 000 remaining people would be subject to further negotiation between the two governments.¹³ Nearly half a million of them would eventually be integrated into the Sri Lanka polity and Sri Lanka citizenship would be confer on them the political legitimacy which, as an ethnic group, they have not had since 1948.¹⁴

The Pact¹⁵ consisted of an exchange of letters between the two Prime Ministers, which consists of 10 Clause. Any one of these letters gives the Agreement in full. The salient features of the Pact are listed below.

1. The Government of India would accept repatriation of the persons of Indian origin to be repatriated within a period of 15 years, from the date of the Agreement.
2. Similarly, the granting of Sri Lankan citizenship shall be phased over a period of 15 years and shall as far as possible keep pace citizenship and repatriation.
3. The Government of Ceylon agreed to grant to the persons to be repatriated to India, the same facilities enjoyed by the other citizens.
4. The Ceylon Government agreed to permit the repatriates to carry their assets including provident fund and gratuity amounts
5. There will be two registers, one consisting the name of persons who will be granted Sri Lankan citizenship and the other containing the names of persons to be repatriated to India.

The Controversy on Separate Electoral Register

After a quarter century of protracted negotiations between Sri Lanka and India, Sirimavo-Shastri Pact had come in to being. A number of factors facilitated the outcome of a satisfactory agreement. The eviction of Indians from Burma, the growing hospitality of China towards India leading to a full-fledged bloody war, Pakistan's benevolence posture and last but not the least, the advent of Lal Bahadur Shastri on the Indian political scene were some of the factors responsible for the spurt of mutual give and take between India and Sri Lanka.¹⁶

However, the ink on the signature had not even dried up, when the issue of Separate Electorate began to arouse. On Nov. 1964 Mrs. Bandaranaike announced that those granted Ceylon citizenship would be placed on a separate electoral register. She justified that when they were put on a separate register, it would be possible for them to select their representatives to safeguard the political interests of the persons of Indian origin in Ceylon. This announcement was a plain discriminatory measure against the very persons to whom the Ceylonese Premier had undertaken to confer citizenship and, might make assimilation process difficult and intensify separatist tendencies giving rise to disunity and conflict. The spirit underlying the Sirimavo-Shastri Agreement was that these people would not be

subjected to any kind of discrimination in the island. Mrs. Sirimavo Bandaranaike's statement implied that the Indian settlers to be granted Ceylonese citizenship would be constituted into a separate class of voters unable to participate in that country's general elections on an equal footing with the rest of the population.¹⁷

But separate electorate could not withstand with the defeat of the Sirimavo Government and the consequent dissolution of Parliament. However this was an unfortunate start of the Pact whose future became all the more uncertain and darker with the announcement of separate electorate.

Public Responses on the Agreement

The Pact was received with jubilation and contempt at the same time. *The Hindustan Times* described it as an "achievement for which both are entitled to high praise". *The Patriot* described it as "an example of what two friendly countries can achieve with goodwill and understanding". 'Stateman' (Oct.30, 1964) appreciated the practical approach of the agreement which brought both the parties nearer to a final solution. 'The Times of India' in its editorial of 31 Oct 1964 hoped that the agreement would remove the tremendous anxiety of about a million people of Indian Origin who had been uncertain about their future for so long.¹⁸ The notable feature of the Sirimavo- Shastri Pact was the large scale division of population between India and Ceylon totally ignoring the feelings and aspirations of the people concerned.

Soon after the agreement was signed different interpretations aroused. The pertinent question was as to which part of population should be repatriated and how? How to phase the process of repatriation? If the requisite number of Indians were not repatriated within time limit what Ceylon would do? Would it indulge in forced repatriation? These questions remained unanswered.¹⁹ Mrs. Bandaranaike's statement regarding separate electoral register and compulsory repatriation came under heavy criticism in India as well as in Sri Lanka. When the Indo- Ceylon agreement was debated by the *Lok Sabha*, it was criticized by a number of members and parties. Acharaya Kriplani characterized the agreement as absolutely against India and unjust to the people of Indian origin without whose consent the agreement had been reached.²⁰ K.M. Manoharan of DMK advised the Government to scrap the agreement. A separate electoral role for Indians would mean a policy of segregation. Swaran Singh, India's

External Minister had faced a rough weather in the *Lok Sabha* while defending the agreement. In his reply to the debate, he described it as the best solution to help the people of Indian origin in Sri Lanka and also to maintain friendly relations with that country. He also assured that every effort would be made to persuade the Sri Lanka Government not to give effect to the proposal of separate register.²¹

The resentment against the pact was natural in Tamil Nadu as most of 0.525 million people were Tamilians and the burden of rehabilitation would fall mainly on the Government of Tamil Nadu. V.R. Nedunchezian, leader of the Dravida Munetra Kazhagam opposition in Tamil Nadu Legislative Assembly said on 31 Oct. that the agreement on the future of persons of Indian origin in Sri Lanka “has brought us all only disappointment and dissatisfaction”. He said; “if only Government of India had tried to solve the problem with care and interest many years ago, we need only have been now put to this situation of bearing the great burden”. M.P. Sivagnana Gramani, leader of the Tamil Arasu Kazhagam, said that the Government of India was paying too heavy price for the sake of wooing Sri Lanka and described it as “shocking and painful”. He regretted that those who had been affected had not been consulted by the Government of India to this transaction.²²

Major Criticisms Levelled Against the Pact

Firstly, it would really be a tough task for the officials of the two Governments to determine that what criteria should be adopted, who among the “stateless” should be granted Indian or Sri Lankan citizenship.

Secondly, the agreement was a compromise in the sense that India had agreed to absorb 0.525 million persons; fairly a big number. The influx of such a large number 35,000 a year would involve a considerable burden on India Government.

Thirdly, it was a main weakness of the agreement that it did not decide the fate of quite a large proportion of the stateless as many as 1,500,000.

Fourthly, the agreement was possible not because some principles, arguments or legalities were involved but against the background of the political pressures operating in Sri Lanka at that time and the limited job opportunities in the island and the Government of India’s ultimate moral obligation towards the people who had never broken their links with the

country of their origin.²³

Fifthly, while the pact secures continued employment for those employed on the date of the Agreement it does not naturally extend to persons who were not employed on that date. This really caused great miseries to the persons of Indian origin in the face of the policy of Ceylonisation as much as in the context of increasing unemployment on the estate.

Sixthly, another snag of the agreement was that thousands of persons would have to suffer the grave handicap of being stateless for many years to come. If the processes were to keep pace with each other, it meant that 100 persons would be granted Indian citizenship and to 60 Sri Lankan citizenship every day. The process would continue over the next 15 years.

Seventhly, no satisfactory machinery was provided in implementing the agreement which was to take fairly a long time and differences were bound to arrive. In the case of differences in the interpretation of any provision of the Agreement, it was not specified anywhere in the agreement or in the joint communiqué that to whom the issue would be referred?

eighthly, it would have really been good if both the Governments had taken the representatives or the organizations of the stateless people in conference before reaching an agreement because it were they to whom the agreement was to hit directly or indirectly.

Lastly, the agreement had uprooted more than half a million people who spent most of the part of their life in Sri Lanka.

Findings

Now that period specified in the Sirimavo-Shastri Agreement is over. All the 0.6 million persons have not been repatriated to India. One of the reasons for the failure of the agreement is the inherent defect in deciding the number of the stateless who are involved. The estimate of this number was not based on any enumeration. In the clause 2 of the agreement the numbers of persons of Indian origin have been stated as “approximately 975,000”. What would happen to the 975,001 person if he does not fall under the category of natural increase? Would he be considered for the citizenship of India or Sri Lanka? This means that the persons in excess of this number would be deemed illicit immigrants. Person in excess of this number would continue to be stateless even after the fulfilment of the agreement. It is said that the

number of persons of Indian origin actually is more than the 975000 would remain stateless even mentioned in the agreement.

Clause three of the agreement is the vital point. Sri Lanka would get citizenship of 300000 persons together with their natural increase. Government of India would accept repatriation to India of 525,000. "The iniquitous nature of the agreement is clearly demonstrated by fact that A becoming a citizen of Sri Lanka is conditional on B leaving Sri Lanka. Both A and B may be of identical status of B may have better claims for Sri Lanka citizenship than A or what is still worse A and B may be members of the same family, but B must go for A to become a citizen of Sri Lanka".²⁴ The citizen get citizenship in Sri Lanka for repatriation has not been clearly mentioned in the Agreement. How such vague clause affecting the mass people could be hailed an agreement?

When applications were called for from the plantation workers under the terms of the Agreement, over 700,000 opted for Sri Lanka citizenship. But Sri Lanka Government could grant citizenship to 0.3 million only. The rejected applications had to opt for repatriation but forced repatriation. This Implementation of the Agreement has been expatriation or expulsion rather than repatriation. This is a great violation of the Universal Declaration of Human Rights. According to Article 15 "everyone has a right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. Thus Sirimavo- Shastri Agreement of 1964 violates human rights and International law has been reached between India and Sri Lanka."²⁵

As soon as the government of India recognize a person as an Indian he is liable to be repatriated under the Agreement. He has to apply to the commissioner for registration for a residential permit failing which he is liable for deportation to India. The Government can order the arrest, detention and removal forcibly to India. It is said that repatriation as per the Agreement would be voluntary and peaceful. But these sections of the Indo-Ceylon agreement demonstrate that people have no option. Once citizenship is refused to them, they have no option except going in for repatriation. India citizenship is forced on them. Otherwise they are likely to be arrested and deported to India.²⁶

Another important feature is that there is no mention about the period of 15 years stipulated in the Agreement. So the repatriation process can be carried on for an indefinite period till all

the Indians who are not wanted are deported. “Forced repatriation to India of people born and bred in Sri Lanka would be repugnant of respect for human rights”. The repatriation we are witnessing is definitely a compulsory repatriation.²⁷

The repatriation of the people from Sri Lanka was the result of the agreements between the prime ministers of India and Sri Lanka. The agreements were made without any reference to the persons concerned who cannot be held responsible both for the tardy progress of repatriation and for the defective rehabilitation. Both the Governments had worked out the repatriation programme. But the achievement so far at the expiry of the stipulated 15 years has been only about 57 per cent. Even the persons already repatriated and rehabilitated have not been resettled with contentment.

The sudden and large-scale relocation of people from countries of their subsistence for generations causes untold miseries in relation to finding new means of subsistence, secondary uprooting and socio-cultural re-assimilation. The people who were deprived of their citizenship and voting rights, which kept them as stateless people or inferior citizens without any rights, turned to India with little hope. Repatriation began as a slow process often by fits and starts, in 1968 and 1970s. The High Commissioner of India sought to mobilize the Indian Tamils through extensive campaigns with colourful booklets in English and Tamil, promising a safe and comfortable life in India.²⁸ One of the two most important offers was employment in Government tea/ rubber/ cinchona Plantations or farming corporations or sugar/ spinning mills/ transport corporations. Another significant attraction in them was the promise of settlement with allotment of agricultural land. The publicity literature also contained offers of liberal loans for the purchase of productive land, starting self-employment, housing and education of children.²⁹

Many were attracted by the promise and obtained the Indian passport with a lot of enthusiasm. The high commission provided them with the family card which containing details of the family, the assigned type of occupation, the place of occupation in India, the entitled loans and subsidies and so on.³⁰ The ill- exposed people had nobody to advise about the actual conditions, problems and prospects in India as well as their entitlements. Naturally those poor people who left the Sri Lankan harbour under great hopes were shocked by the condition of the motherland. It was a cruel and inhuman exercise with no scruples and just a

play of statistical values and the official accounts were so ridiculous that they sometimes divided the members of the same family into citizens of the two nations. Thus the transactions not only exchanged the people of India and Sri Lanka but also divided and shattered families in the process of repatriation. The pain of the people to leave their family can be seen in some of the poems written by the repatriate poets.³¹

The experiences of refugees are traumatic illustrations of social change. They are uprooted from one social setting and thrown into another. In that process they undergo untold sufferings and irreparable tragedies³²The implementation of the poets has brought about a paradoxical situation of calling the repatriated as Sri Lankan Tamils, clearly implying that they are unwanted in India too. However, compared to Sri Lanka, India was quite liberal in granting citizenship to this doubly Diaspora³³. They are doubly Diaspora because, first they were Indian Tamils and then their identity became migrant Indian Tamil in Ceylon and then they began to identified as Sri Lankan Tamils in India. The social disability, physical hardship and mental agony have been undergone by them for not the fault of their own. The two governments have greater responsibility in solving the problem of repatriation peacefully and satisfactorily. It may not be too late now to reconsider the stipulations of the agreements as it has almost failed to bear fruit.

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APPENDIX 1

Sirimavo- Shastri Pact of 1964

The Pact consisted of an exchange of letters between the two Prime Ministers. Any one of these letters gives the Agreement in full. The Indian Prime Minister's letter is below to give a correct picture of the whole agreement:

Prime Minister of India

No.446/PMO/64

New Delhi

30th Oct. 1964

Your Excellency.

I have the honour to acknowledge receipt of your letter No. CIT/ICP/62 of date, which read as follows:

"I have the honour to refer to the discussions which we have had from the 24th to the 30th October 1964 regarding the status and future of the persons of Indian Origin in Ceylon and to refer to the main heads of agreement between us which are as follows:

- (1) The declared objective of this agreement is that all persons of Indian Origin in Ceylon who have not been recognized either as citizens of Ceylon or as citizens of India should become citizens either of India or of Ceylon.
- (2) The number of such persons is approximately 975,000 as of date. This figure does not include illicit immigrants and Indian passport holders.
- (3) 300,000 of these persons together with the natural increase in that number will be granted Ceylon citizenship by the Government of Ceylon. The Government of India will accept repatriation to India of 525,000 of those persons together with the natural increase in that number. The Government of India will Confer citizenship of these persons.
- (4) The status and future of the remaining 150,000 of these persons will be the subject matter of a separate agreement between two Governments.
- (5) The Government of India will accept repatriation of the persons to be repatriated within a period of 15 years from the date of this agreement according to a programme as evenly phased as possible.
- (6) The grant of citizenship under paragraph 3 and the process of repatriation under paragraph 5 shall both be phased over the period of 15 years and shall as far as possible, keep pace with each other in proportion to the relative number to be granted citizenship and to be repatriated respectively.
- (7) The Government of Ceylon will grant to these persons to be repatriated to India during the period of their residence in Ceylon the same facilities as enjoyed by the citizens of other states (except facilities for remittances) and normal facilities for their continued residence, including free visas.

The Government of Ceylon agrees that such of these persons as are gainfully employed on the date of this agreement shall continue in their employment until the date of their repatriations in accordance with the requirements of the phased programmes or until they attain the age of 55 years, whichever is earlier.

- (8) Subject to the Exchange control regulations for the time being in force which will not be discriminatory against the persons to be repatriated to India, the Government of Ceylon agrees to permit these persons to repatriate, at the time of the final departure to India all their assets including their provident fund and gratuity amounts. The Government of Ceylon agrees that the maximum amount of the assets which any family shall be permitted to repatriate shall not be reduced to less than Rs. 4000/-
- (9) Two registers will be prepared as early as possible, one containing the names of persons who will be granted Ceylon citizenship, the other containing the names of the persons to be registered in India. The completion of these registers however, is not a condition precedent to the commencement of the grant of Ceylon citizenship and the process of repatriation.
- (10) This agreement shall come into force with effect from the date hereof and that the two Governments shall proceed with all dispatch to implement this Agreement and, to that end, the officials of the two Governments shall meet as soon as possible to establish joint machinery and to formulate the approximate procedure for the implementation of this agreement.

I have the honour to propose that the above sets out correctly the Agreement reached between us. My letter and Your reply thereto shall constitute an Agreement between the Government of India and the Government of Ceylon.

Accept your Excellency, the assurance of my highest consideration.

Her Excellency,
Sirimavo R.D.Bandaranaike,
Prime Minister of Ceylon, New Delhi.

Yours sincerely,
(LAL BAHADUR)
Prime Minister of India