

An Introduction
to the Local Authorities (Special
Provisions) Act No.21 of 2012
and
Local Authorities Elections
(Amendment) Act No. 22 of 2012

Sriyanie Wijesundara
Manjula Gajanayake

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Address : 24/2, 28th Lane,
off Flower Road,
Colombo - 03
Tel : 94 11- 2565304-6
Fax : 94 11-4714461
Web : www. cpalanka.org
Email : sriyanie@cpalanka.org

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An introduction to the Local Authorities (Special Provisions) Act, No. 21 of 2012

Sriyanie Wijesundara

The laws of a country, which are the basis for the establishment of order in society, cannot by their nature remain static but need to be adapted to the changing needs of society. Amendment of legislation is therefore needed for several reasons:

- To ensure the rule of law and equality for all citizens before the law.
- To address limitations and shortcomings in existing laws.
- To safeguard peoples' representation in decision making and administrative planning processes.

As such, amendments are made to regularize laws and render them relevant and responsive to changing circumstances.

Legislation related to Pradeshiya Sabhas, namely the Pradeshiya Sabha Act, No.15 of 1987 has also undergone a number of amendments to-date. Namely Amendment No 34 1993 to section 133¹ of the original Act and Amendment No 14 in 1999, which amended Sections 9A and 9B² of the original Act and Amendment No 24 of 2012 which amended sections 4, 133 (Replacement) and 169 of the original Act.

¹ Amendment No. 34 of the 1993 Act relates to Expenses related to the installations and maintenance of official telephone facilities at the Chairpersons and Vice Chairperson's residences .(See Annexure 1)

² Amendment No 14 of 1999 relates among other points, to boundary demarcations of Pradeshiya Sabhas

(See Annexure 2)

Of these numerous Pradeshiya Sabha amendments, Act No. 21 of 2012 (Special Provisions) highlights topics related to fiscal and administrative issues. The Special Provisions which have been approved by the relevant Minister and gazetted, are currently being implemented.

The above-mentioned amendments have paved the way for a broad discourse within society, and also fuelled discussion and debate among local government leaders, representatives and officials. It is apparent that the need of the hour is to provide them with a comprehensive understanding of the Special Provisions.

Although Act No. 21 of 2012 (Special Provisions) discusses all three tiers of power - Municipal Councils, Urban Councils and Pradeshiya Sabhas, more focus is placed on the Pradeshiya Sabhas.

Amendment of section 04 of the original Act

The first section of the Pradeshiya Sabha Act No. 15 of 1987 explains the procedures for establishing Pradeshiya Sabhas. This section has been amended in Act No. 21 of 2012 (Special Provisions) under section 4 (1) a, 4 (1) b and 4 (2) (1).

When comparing the sections related to the establishment of Pradeshiya Sabha Act No. 15 of 1987 and Act No. 21 of 2012 (Special Provisions) it is apparent that the amendments have been made to increase peoples' participation in the decision making process of Pradeshiya Sabhas, thereby ensuring that the needs of the public are met. It can be understood that these amendments aim to foster democratic participation in issues related to the administration and development at the lower levels of government.

Replacement of Section 133 of the original Act.

This amendment revises the sections related to payments made out of the Pradeshiya Sabha Fund through cheques and orders. According to Article 133 in the original Act, cheques can only be signed by two persons who have to be authorized by the Assistant Commissioner of the Local Government (ACLG).

However the Act, No. 21 of 2012 (Special Provisions) introduces a substitution of Article 133 of the original act, as follows:

“All cheques and orders for the payment of monies out of the Pradeshiya Sabha Fund shall subject to the approval of the Commissioner and be signed by two officers authorised by the Council other than the Chairman of the Council and the Bank in which the Pradeshiya Sabha Fund is established may pay all cheques or orders out of which are so signed of the said Fund.”

It is critical to analyze why these amendments have been made. Before this amendment, the Chairman of the Pradeshiya Sabha, who holds the highest executive office, acted as the main official who signed cheques. According to the provisions stipulated by the amendment, two officials, other than the Chairman, can sign cheques. The amendments have been made because a majority of the Local Government bodies have engaged in irregular practices in payments and fiscal management and because some Local Government bodies have shown a surcharge when audited.

The aforementioned amendments play a critical role in establishing transparency within the Pradeshiya Sabha payment procedure, related financial management, and financial discipline. In addition, by transferring the authority of signing

cheques to other officials apart from the chairman, the chairman of the Pradeshiya Sabha cannot audit queries and surcharges. Special attention is drawn to³section 4 and 5 of Pradeshiya Sabha (Financial and Administrative) Rules. This enables the Chairman to promote good governance within the Pradeshiya Sabha.

Amendment of section 169 of the original Act

Chapter four explains the process of governing and monitoring the Pradeshiya Sabha. Section 169 which belongs to section four, details the powers of the Chairman in relation to the budget. According to the main act:

“If the Pradeshiya Sabha modifies or rejects all or any of the items in any budget or supplementary budget or adds any item thereto, and the Chairman does not agree with any such decision of the Pradeshiya Sabha, he shall re-submit the budget or supplementary budget to the Pradeshiya Sabha for further consideration. Where a budget or supplementary budget is not passed by the Pradeshiya Sabha within two weeks after it is resubmitted, such budget or supplementary budget shall, notwithstanding that it has not been passed by the Pradeshiya Sabha, be deemed to be the duly adopted budget or supplementary budget of that Pradeshiya Sabha.”

Pradeshiya Sabha (Financial and Administrative) Rules.

³⁴..The Chairman shall be the Accounting Officer of a Pradeshiya Sabha and subject to these rules and to such instructions as may be issued by the Minister of Local Government the financial and accounting operations of a Pradeshiya Sabha shall be under his general management and supervision.

5.It shall be duty of the Chairman to ensure –

- (i) that an adequate system of financial control is established in the Pradeshiya Sabha and its Sub Offices,
- (ii) that the financial activities of the Sabha are properly planned through classification of expenditure in terms of programmes and financial transactions are taking place according to the financial regulations.
- (iii) that an adequate system of internal check is being maintained in respect of expenditure and collection of revenue,
- (iv) that there is a system of management which would ensure supply of up-to-date information,
- (v) that is the programmes contained in the development plan and the budget are satisfactorily implemented and that the benefits accrued there form and commensurate with the expenditure,
- (vi) that the relevant officers collect revenue and other dues to the Pradeshiya Sabha at the correct time and that they are brought into account,
- (vii) that there is an adequate internal audit system in relation to the financial and stores transactions,
- (viii) that necessary action has been taken with regard to the security of cash and fixed assets of the Pradeshiya Sabha,
- (ix) that a statement of revenue and expenditure as classified according to the programme is submitted to the Sabha every month,
- (x) that bank reconciliation is prepared monthly,
- (xi) that proper insurance coverage has been obtained in relation to the cash in transit, and other valuable articles,
- (xii) that adequate security has been obtained from Officers who are responsible for dealing with cash and stores, etc,
- (Xiii) that an annual budget and a development plan is submitted at the general meeting of the Sabha.

ACT, No. 21 of 2012 (Special Provisions) has amended Article 169 in the following manner.

“If the council according to sections 168 and 169 of this Act modifies or rejects all or any items in any budget or supplementary budget, or adds any item thereto which was submitted to the council at any time by the Chairman after two years since the commencement of the term of office of the Council, and if the Chairman does not agree to such decision of the Council, he shall resubmit the said budget to the Council for further consideration. Where a budget or supplementary budget is not passed by the Council within two weeks, after, it is resubmitted for the second time, the Chairman shall be deemed to have resigned from the office of Chairman at the end of the said period of two weeks”

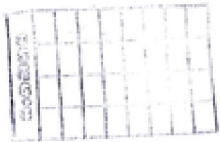

The Act No. 21 of 2012 (Special Provisions) makes a significant alteration to Article 169; it challenges the time span of four years that is due to the elected chairman.

In reality the above-mentioned amendment is a challenge to the local authority leader only if s/he does not adopt transparent and inclusive processes, as detailed in Article 168, when submitting the annual budget to the Council. Gaining the approval of the general assembly is not impossible if annual funds are disbursed over the entire region according to the developmental needs of the people. Further, overcoming political

biases and working for the community as a whole, safeguards support for the council.

The amendments that have been introduced limit the powers of the Chairman regarding the annual budget. In addition the amendments reinforce the use of the budget as a tool for suitable financial planning. The amendments also ensure that the annual financial planning reflects public opinion. In addition if local authority leaders adhere to the laws and regulations outlined in the Act, No. 21 of 2012 (Special Provisions) when preparing the annual budget, they will realize that the amendments are not a challenge to their office but rather that the amendments protect and strengthen their position.

Annexure 01: Act No.34 of 1993

 <p>Annual subscription of English Bills and Acts of the Parliament Rs. 855 (Local), Rs. 1,180 (Foreign). Payable to the Superintendent, Government Publications Bureau, No. 37, Theroonawa House, Lotus Road, Colombo 01 before 15th December each year in respect of the year following.</p>	 <p>PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA</p> <p>_____</p> <p>PRADESHIYA SABHAS (AMENDMENT) ACT, No. 14 OF 1999</p> <p>_____</p> <p>(Certified on 15th June, 1999)</p> <p>Printed on the Order of Government</p> <p>_____</p> <p>Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of June 18, 1999.</p> <p>PRINTED AT THE GOVERNMENT OF GOVERNMENT PRINTING, SRI LANKA TO BE PURCHASED AT THE GOVERNMENT PUBLICATION BUREAU, COLOMBO 1</p> <p>Price: Rs. 4.50 Postage: Rs. 3.00</p>
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Annexure 02: Act No.14 of 1999

Pradeshiya Sabhas (Amendment)
Act, No. 14 of 1999

[Certified on 15 th June, 1999]

L.D.— O. 24/95.

AN ACT TO AMEND THE PRADESHIYA SABHAS ACT,
No. 15 OF 1987.

BE it enacted by the Parliament of the Democratic
Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Pradeshiya Sabhas Short title.
(Amendment) Act, No. 14 of 1999.

2. The following new sections are hereby inserted Insertion of new
immediately after section 9, and shall have effect as sections 9A and 9B
sections 9A and 9B respectively, of the Pradeshiya Sabhas in Act No. 15 of
Act, No. 15 of 1987 :- 1987.

“ Power of
Minister to
vary limits of
Pradeshiya
Sabha area
and number,
of members
and to
dissolve and
replace
Pradeshiya
Sabha.

9A. The Minister may at any time by
Order published in the Gazette—

(a) vary the limits of any Pradeshiya Sabha
area, in a manner consistent with the
provisions of section 2 ;

(b) vary the number of members
determined under section 4 for any
Pradeshiya Sabha, in accordance with
the principles set out in that section ;

(c) dissolve any existing Pradeshiya
Sabha and direct that it shall be
replaced by new Pradeshiya Sabha to
be constituted in lieu of such existing
Sabha, whenever it appears to him to
be expedient so to do upon any
variation of the limits of the Pradeshiya
Sabha area for which the existing
Sabha was constituted ;

2-D 38706—8550 (95/12)

<p style="text-align: center;">Pradeshīya Sabhas (Amendment) <i>Act, No. 14 of 1999</i></p> <p>3</p> <p>(d) dissolve any Pradeshīya Sabha for the purpose of constituting in its place a Municipal Council or an Urban Council. In constituting a Municipal Council, the Minister shall comply with the provisions of section 2 of the Municipal Councils Ordinance and shall also have regard to the development or amenities of the area for which such Municipal Council is to be constituted, and in constituting an Urban Council, the Minister shall comply with the provisions of section 2 of the Urban Councils Ordinance :</p> <p>Provided that no Order made by the Minister under this section shall come into force until after the expiration of the term of office of the members of any existing Pradeshīya Sabha referred to in the Order.</p> <p>9a. Where any new Pradeshīya Sabha is constituted under section 5a, in lieu of any Pradeshīya Sabha which is dissolved —</p> <p>(6) the new Sabha shall, from the date of the constitution thereof, be the successor of the dissolved Sabha for all purposes relating to the Pradeshīya Sabha area or any part thereof for which the dissolved Sabha was constituted, in so far as such area or part thereof is included within the administrative limits of the Pradeshīya Sabha area for which the new Sabha is constituted ;</p> <p>(9) all the property of such dissolved Sabha situated within the administrative limits of the new Sabha and all the rights, powers,</p>	<p style="text-align: center;">Pradeshīya Sabhas (Amendment) <i>Act, No. 14 of 1999</i></p> <p>3</p> <p>debt, debts, liabilities, and obligations of such dissolved Sabha in so far as the same relate to any area within the administrative limits of the new Sabha shall as from the date of the constitution of the new Sabha be deemed to be transferred to the new Sabha :</p> <p>(e) all references in any enactment, or in any Order, rule, regulation, or by-law made thereunder or any document or instrument executed or issued in pursuance thereof, to such dissolved Sabha shall, for the purpose of any area within the administrative limits of such dissolved Sabha, which shall be included within the administrative limits of the new Sabha, be construed as though they were references to the new Sabha "</p> <p>3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.</p> <p style="text-align: right;">Sabhas nee prevail in case of inconsistency.</p>
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An introduction to the Local Authorities elections (Amendment) Act, No. 22 of 2012

Manjula Gajanayake

Significant movement has occurred in the recent past regarding amends the electoral process in Sri Lanka.

Accordingly the Local Authorities elections (Amendment) Act, No. 22 of 2010 proposes a number of significant changes to the laws relating to the elections required to be held in the three types of local Authorities, namely municipal councils, urban councils, and Pradeshiya Sabhas.

Prior to this, two Presidential Commissions appointed in special cases had also suggested amendments to this Act. These were the Presidential Commission on Youth and the Commission of Inquiry on Local Government Reforms 1999.

The former commission, appointed in 1990, examined in depth the problems faced by the youth, and made a number of recommendations about the political rights of youth. A prominent place was given to the requirement for a quota, when making nominations for local government elections, the aim being to ensure the political participation of youth.

Apart from this, the Commission of Inquiry on Local Government Reforms also conducted an in-depth analysis of the current system and concluded with a number of findings and recommendations that the current electoral system should be changed. On the subject of amendment of electoral processes, the commission stated:

Amending the Election Law: “If the above recommendations are to be implemented it will be necessary to make major changes to the local Authorities Elections Ordinance. It will be preferable to re-introduce with necessary amendment, the Local Government Elections Ordinance which was in operation when the Village Councils were in existence. We also propose that such amendments be introduced with a view to implementing the recommendations made in this chapter” (16.4.13 –page no. 324). These findings become more significant and important because of their focus on the local government sector

Parliamentary Select Committee on Electoral Reforms

Considering the election laws that existed at this time, a Committee of Parliament presented an interim report on 23rd January 2004 proposing a number of electoral reforms. On the basis of this interim report, the Parliamentary Select Committee on Electoral Reforms was posted by Parliament on April 4th 2006. This comprised 32 members. In June 2007 this Select Committee presented their recommendations. Whilst there were a number of important recommendations made, the ones below are of crucial significance.

Further, this particular report has made some important observations regarding Local Government Elections. An extract from said report:

Election Systems:

- It was proposed to reintroduce the ward system based on the first-past the post system with the possibility of electing 30% of representatives under the proportional representation

system based on the same principle involved in Parliamentary and Provincial Council elections.

- The present boundaries of the local government authorities should be re-demarcated to form an electoral unit, which is territorially and demographically smaller than the present unit, to increase the participation of the community and community organisations and to facilitate management and diversification of development and economic needs of the area and ensure a democratic representation of minorities and communities.

The first amendment to the Act was brought in October 2012, based on these recommendations by the Parliamentary Select Committee.

The main objective of this introductory note is to list the highlights of the Local Authorities elections (Amendment) Act, No. 22 of 2012.

As a consequence of the points mentioned above, and as noted in the Dinesh Gunerawardena Committee Report, these recommendations were given an unprecedented amount of attention. The Local Authorities (special provisions) Act, No. 21 of 2012 was approved by parliament on the same day, and is described in the note above by Sriyanie Wijesudera .

This Act attracted broad public attention. The Centre for Policy Alternatives (CPA) released a critique of it which contained a brief outline of the contents of the Amendment as follows:

A principal change proposed in the Bill is the introduction of a mixed system of First Past the Post (FPP) and Proportional Representation (PR). The Bill reintroduces the ward system, whereby a LA is divided into a number of electoral units. Each ward elects one member, unless in the case of a multi-member ward. The number elected under the PR system is not fixed. A

maximum of 30% of the number of members elected under FPP of a LA will be appointed under PR.

The Bill has several salient features including strengthening the processes for counting and polling in order to ensure the integrity of an election. Although positive measures are noted, there are serious concerns with several provisions introduced in the Bill including the following:

- While laying out specific procedures in terms of vacancies of seats and of candidates, it provides significant powers to the secretaries of political parties and the leaders of independent groups to make the appointments to fill vacancies, instead of the voters making a choice through a by-election.
- The Bill delineates a delimitation process for the purpose of demarcating wards in local authorities, with far-reaching powers granted to the Minister over the process.
- In the event of a vacancy created by the resignation of a Mayor, and if the latter occurs on consecutive occasions, the LA will be dissolved and replaced by a Commissioner appointed by the Minister.

The Bill has significant repercussions for representative democracy, including the increase in challenges for minor parties and independent groups to secure seats, thereby reinforcing the two-party system. There are no specific guarantees for minority representation, either through the electoral process or through delimitation mechanisms. In addition, there are no guarantees for female and youth in the nomination process. Given that LAs are the unit of government closest to the people, there is a need to ensure that elected officials are representative and

accountable to their constituencies. Although the Bill introduces new measures for LAs, it broadens the powers of the Central Government rather than empowering LAs, and ultimately falls short of strengthening representative democracy³

A number of organisations, institutions, activists and interested individuals had also submitted opinions on the proposed amendment. This document does not aim to present a critical analysis of the Amendment. However it can be said that the Amendment did not take into account the said critique.

In the parliamentary debate on this subject on the 10th October 2012, 3 out of the 5 recommendations proposed by the opposition, during the third reading, were included⁴.

Objectives

The main objective of this amendment was to address the issues brought up by the current electoral system. Examples are election relation violence, the lack of accountability towards constituents by local representatives” and disputes among parties due to inability to win the majority vote. In any case among some of the recommendations it has to be stated that many of the weaknesses of the proportional system are eliminated through this amendment.

However the below listed weaknesses /challenges remain:

- ◀ Whereas a combination of the First-Past-the-Post and Proportional Representation (FPP: PR System) has been recommended, **the necessary legal provisions have not been specified**. In particular according to the amendment the fact that selection of members will be 70% through the FPTP system and 30% through proportional representation, there is no clear law on exactly how this should be accomplished.

- ◀ **The negative impact on minority aspirations. In areas where minority political parties dominate there are no negative effects but where there are limited numbers of minority constituents, it is difficult for minority political parties to obtain representation.**
- ◀ Nominations **independent groups are compelled to deposit** amounts ranging from Rs 250- 20,000/-. It is difficult to understand why such a large amount is required from independent groups compared to political parties. That opposition political parties expressed their serious disapproval of this as can be ascertained from the Hansard reports.⁵
- ◀ **Youth and Women’s representation:**
- ◀ **Sri Lanka demonstrates the lowest female representation in the South Asian region. With regard to Local Government,** the percentage of women’s representation in Sri Lanka is below 2% in comparison to more than 33% in Pakistan. In this context, concerned activists and organizations have been demanding over 40% women representation in all tiers governance including Local Government. However only 25% women/ youth representation has been granted through this.

³ A Brief Commentary and Table on the Local Authorities Elections (Amendment) Bill 2010 : By Bhavani Fonseka, Supipi Jayawardena and Mirak Raheem, October 2010

⁴ Parliamentary Debate Hansard Wednesday 10th October 2012

During the parliamentary debate on the new amendment which took place in the latter part of 2012, a number of the ruling party members gave various opinions on the subject of the youth quota and they highlighted that though there is only 25% representation for both youth and women allocated in this amendment if any political party or independent group is willing to give 100% youth/women representation in their nomination papers. Theoretically, there would be no barriers.

⁵ Parliament Debate: Hansard report on 10th October 2012

This brief analysis in two sections is a contribution to the discussion around these new amendments, to enhance the knowledge of Local Government personnel who are governed by such regulation in their day to day official work. The Governance programme of the Centre for Policy Alternatives which has a long history of working with local authorities, believes that strengthening and complementing the important work of the Local Government system, in particular Pradeshiya Sabhas, will benefit the community as a whole, and promote participatory democracy at the level of government and governance closest to the people.