

**A Brief Guide
to the
Nineteenth
Amendment
to the
Constitution**

**Centre for
Policy
Alternatives**

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CENTRE FOR POLICY ALTERNATIVES

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மாற்றுக் கொள்கைகளுக்கான நிலையம்

The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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BACKGROUND

A [Bill](#) titled the Nineteenth Amendment to the Constitution was gazetted on the 16th of March 2015 and placed on the order paper of Parliament on the 24th of March 2015. Thereafter the Cabinet of Ministers approved several changes to the Bill and news reports indicated that these changes would be made during committee stage in Parliament.

Subsequently several individuals invoked the jurisdiction of the Supreme Court to examine whether the gazetted Bill as a whole or any part of it required to be passed by the people at a referendum in addition to a two thirds majority of the total number of Parliament. During these proceedings the Attorney General submitted to Court, the proposed changes to the gazetted Bill that were approved by the Cabinet of Ministers (hereinafter referred to as “the Cabinet”). During proceedings before Court, parties made submissions on both the gazetted version of the Bill and the proposed changes.

The Supreme Court in [SC SD 4-19/2015](#) stated that the following paragraphs contained in Clause 11 and 26 of the gazetted bill required to be approved by the people at a referendum, in addition to being passed by a special majority of the Members of Parliament.

Provisions of the Gazetted Bill that required approval by the people at a referendum (As per the Supreme Court Determination, SC SD 4-19/2015)

Clause 11 of the Bill

Proposed Article 42(3) The Prime Minister shall be the Head of the Cabinet of Ministers

Proposed Article 43(1) The Prime Minister to determine the number of Ministers and Ministries and the assignment of subjects and functions to such Ministers.

Proposed Article 43(3) The Prime Minister can at any time change the assignment of subjects and recommend to the President changes in the composition of the Cabinet of Ministers.

Proposed Article 44(2) The Prime Minister to determine the subjects and functions to be assigned to Non Cabinet Ministers.

Proposed Article 44(3) The Prime Minister can at any time change the subjects assigned to Non Cabinet of Ministers.

Proposed Article 44(5) At the request of the Prime Minister any Cabinet Minister may by notification published in the gazette delegate any power, duty or function assigned to such Minister to any other Cabinet Minister.

Clause 26 of the Bill

Proposed Article 104B(5)(c) The power of the Election Commission to appoint a competent authority in order to take over the management of a State or Private broadcaster/telecaster, which violates the regulations, issued by the Election Commission. The competent authority shall take over the management insofar as it relates to political broadcasts or any other broadcasts which could impinge on the election until the conclusion of elections.

- The Supreme Court was of the view that, the proposed article 33(1), which stated that the President shall be a symbol national unity **was incorrect** and further stated that **it should be deleted.**

Despite several Counsel addressing the Court on issues regarding the proposed changes to the gazetted Bill (which were approved by the Cabinet of Ministers), the Supreme Court did not specifically comment on any of the provisions included in that document. Subsequently what was put to debate in Parliament was the version of the Bill that was gazetted on the 16th of March 2015.

The Bill was [passed in Parliament on the 28th April 2015](#) with a majority of two-thirds after having taken a division

by name (212 in favour, 01 against, 01 abstained, 10 absent). It was [reported](#) that a total of 174 amendments had been submitted for consideration during the committee stage of the Bill (63 amendments by the Government and 111 by the Opposition).

THE PRINCIPAL CHANGES TO THE CONSTITUTION BY THE NINETEENTH AMENDMENT

CHANGES TO THE EXECUTIVE PRESIDENCY

- 1) Reducing the term of office of the President – the term of office of the President has been reduced from 6 years to 5. ***[Clause 3 of the 19th Amendment, Article 30(2) of the Constitution]***
- 2) Re - introducing the two term limit on the number of terms a person can hold office as President – a person who is twice elected as President is disqualified from contesting for a third time. ***[Clause 4 of the 19th Amendment, Article 31(2) of the Constitution]***

- 3) A person who is;
- Below the age of 35 years [**Clause 21 of the 19th Amendment, Article 92(a) of the Constitution**] or
 - A dual citizen (see below paragraph 24)

Is disqualified from being elected to the office of President.

- 4) Imposition of additional duties on the President – these include:
- Ensure that the Constitution is respected and upheld;
 - Promote national reconciliation and integration;
 - Ensure and facilitate the proper functioning of the Constitutional Council and the institutions referred to in Chapter VIIa; and
 - On the advice of the Election Commission, ensure the creation of proper conditions for the conduct of free and fair elections and referenda.

[Clause 5 of the 19th Amendment, Article 33(1) of the Constitution]

- 5) The President no longer has the power to remove the Prime Minister at his discretion. [**Clause 9 of the 19th Amendment, Article 46(2) of the Constitution**]
- 6) The President is required to act on the advice of the Prime Minister when appointing or removing from

office any Cabinet Minister, Non-Cabinet Minister or Deputy Minister. ***[Clause 9 of the 19th Amendment, Article 43(2), 44(1), 45(1) and 46(3)(a) of the Constitution]***

However in determining the number of Cabinet Ministers and subjects assigned to each Cabinet Minister and in assigning subjects to Non-Cabinet Ministers, the President is required to consult the Prime Minister only if s/he considers such consultation necessary ***[Clause 9 of the 19th Amendment, Article 43(1), 44(2) of the Constitution]***

The President may at any time change

- a. the assignment of subjects and functions of both Cabinet and Non-Cabinet Ministers,
- b. the composition of the Cabinet of Ministers.

Such changes will not affect the continuity of the Cabinet of Ministers and the continuity of its responsibility to Parliament.

[Clause 9 of the 19th Amendment, Article 43(3), 44(3) of the Constitution]

- 7) Actions of the President in his/her capacity as President are subject to the Fundamental Rights jurisdiction of the Supreme Court. Prior to the 19th Amendment **no proceedings** could be instituted or continued against the President. After the Amendment the scope of the immunity conferred on the President has been limited to “civil” or “criminal” proceedings.

[Clause 7 of the 19th Amendment, Article 35 of the Constitution]

Article 35 (1) prior to the 19 th Amendment	New Article 35
<p>While any person holds office as President, <u>no proceedings</u> shall be instituted or continued against him <u>in any court or tribunal</u> in respect of anything done or omitted to be done by him either in his official or private capacity. (emphasis added)</p>	<p>While any person holds office as President of the Republic of Sri Lanka, <u>no civil or criminal proceedings</u> shall be instituted or continued against the President in respect of anything done or omitted to be done by the President, either in his official or private capacity (emphasis added)</p>

- 8) Removes the power of the President to submit to the People by a referendum any Bill (which is not a constitutional amendment), which has been rejected by Parliament. ***[Clause 19 of the 19th Amendment, by repealing what was previously Article 85(2) of the Constitution]***.
- 9) Prior to the 19th Amendment the President could assign to himself/herself any subject or function not assigned to any other Cabinet Minister. This provision

was repealed by the 19th Amendment. [**Clause 9 of the 19th Amendment, by repealing amongst other provisions, what was previously Article 44(2) of the Constitution**]. However special provisions have been made for the person holding office as President on the date of commencement of the 19th Amendment. [**Clause 50(a) and 51 of the 19th Amendment**]

THE CONSTITUTIONAL COUNCIL AND INDEPENDENT COMMISSIONS

10) Makes provision for a Constitutional Council (hereinafter sometimes referred to as “the Council”), which will consist of 7 Members of Parliament and 3 eminent persons. The Constitutional Council comprises of;

<p>Three <i>ex officio</i> members</p>	<p>The Speaker, the Prime Minister and the Leader of the Opposition in Parliament. [Clause 8 of the 19th Amendment, Article 41A (1)(a),(b) and (c)]</p>
<p>Four Members of Parliament appointed to the Constitutional</p>	<p>One Member of Parliament appointed by the President. [Clause 8 of the 19th Amendment, Article 41A</p>

<p>Council.</p>	<p><i>(1)(d)</i></p> <p>Two Members of Parliament appointed by the President, on the nomination of both the Prime Minister and the Leader of the Opposition. <i>[Clause 8 of the 19th Amendment, Article 41A (1)(e)]</i></p> <p>One Member of Parliament nominated by agreement of the majority of the Members of Parliament belonging to political parties or independent groups. <i>[Clause 8 of the 19th Amendment, Article 41A (1)(f)]</i></p>
<p>Three Eminent Persons appointed to the Constitutional Council.</p>	<p>Three persons of eminence and integrity who have distinguished themselves in public or professional life and who are not members of any political party, to be nominated together by the Prime Minister and the Leader of Opposition. The nominations made by the Prime Minister and the Leader of the Opposition</p>

	<p>are required to be approved by Parliament. <i>[Clause 8 of the 19th Amendment, Article 41A (1)(e), Article 41A (4), Article 41A (5) of the Constitution]</i></p>
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11) The President shall, within **fourteen days** of receiving a written communication specifying the nominations made under Article 41A (1) (e) - (f) [i.e the four Members of Parliament and the three eminent persons] make the necessary appointments to the Constitutional Council. If the President fails to do so, the persons nominated shall **be deemed to have been appointed** as members of the Council, with effect from the date of expiry of such fourteen days. ***[Clause 8 of the 19th Amendment, Article 41A (6) of the Constitution]***

12) The term of the Constitutional Council;
 The Speaker, the Prime Minister and the Leader of the Opposition, incumbent in Parliament, will continue to be members of the Constitutional Council notwithstanding the dissolution of Parliament, until such time after the General Election, the Speaker, the Prime Minister and the Leader of Opposition are elected, appointed and recognized, respectively. ***[Clause 8 of the 19th Amendment, Article 41A (7) of the Constitution]***

The four Members of Parliament appointed to the Constitutional Council in terms of Articles 41A (1) (d) – (f) will continue to be members of the Constitutional Council notwithstanding the dissolution of Parliament, until such time after the General Election, where new appointments are made from among Members of Parliament in terms of the said article. ***[Clause 8 of the 19th Amendment, Article 41A (7) of the Constitution]***

The four Members of Parliament and the three eminent persons appointed to the Constitutional Council (as described above) shall hold office for a period of **three years** unless such person/ Member of Parliament;

- resigns,
- is removed by the President on both the Prime Minister and the Leader of the Opposition forming an opinion that such member is physically or mentally incapacitated and is unable to function further in office,
- is convicted by a court of law for any offence involving moral turpitude or if a resolution for the imposition of civic disability upon such member has been passed in terms of Article 81 of the Constitution,
- is deemed to have vacated his/her office because of absenting himself/herself from three consecutive meetings of the Council without prior permission.

[Clause 8 of the 19th Amendment, Article 41A (8) of the Constitution]

A member appointed to the Constitutional Council in terms of article 41A (1) (d) – (f) either as one of the four Members of Parliament or the three eminent persons (as described above), is not eligible to be re-appointed. ***[Clause 8 of the 19th Amendment, Article 41A (10) of the Constitution]***

13) Members to the below mentioned Commissions can be appointed by the President **only** on the recommendation of the Constitutional Council. The Commissions are;

- The Election Commission
- The Public Service Commission
- The National Police Commission
- The Human Rights Commission of Sri Lanka
- The Commission to Investigate Allegations of Bribery or Corruption
- The Finance Commission
- The Delimitation Commission
- The National Procurement Commission
- The Audit Service Commission.

[Clause 8 of the 19th Amendment, Article 41B (1) of the Constitution]

14) The President is to appoint a Chairman for each of the above mentioned Commissions on the recommendation of the Council. For this purpose the

Council shall recommend three names for each Commission to the President. ***[Clause 8 of the 19th Amendment, Article 41B (3) of the Constitution]***

- 15) Makes provisions for the Constitutional Council to approve the nominees of the President for
- The office of Chief Justice
 - The Judges of the Supreme Court
 - The President and the Judges of the Court of Appeal
 - The Members of the Judicial Service Commission
 - The Attorney-General
 - The Auditor-General
 - The Inspector-General of Police
 - The Ombudsman
 - The Secretary-General of Parliament.

[Clause 8 of the 19th Amendment, Article 41C (1) of the Constitution]

- 16) The quorum for any meeting of the Council is five members ***[Clause 8 of the 19th Amendment, Article 41E (3) of the Constitution]***, however for any recommendation, approval or decision of the Council to be valid, it must be supported by at least five members of the Council.

- 17) The Council should endeavour to make every recommendation, approval or decision it is required to make, by unanimous decision. Where a unanimous

decision is not possible, no recommendation, approval or decision made by the Council shall be valid, unless supported by no less than **five members of the Council** present at such meeting (The Chairman of a meeting will not have an original vote, and is only entitled to a casting vote if there is an equality of votes on any recommendation, approval or decision). ***[Clause 8 of the 19th Amendment, Article 41E (4) & (5) of the Constitution]***

18) All decisions, approvals and recommendations made by the Council are final and can only be challenged in a Court of Law, by way of a Fundamental Rights application in terms of Article 126 of the Constitution. ***[Clause 8 of the 19th Amendment, Article 41I of the Constitution]***

19) The Election Commission has the power to prevent the political party in government from using State resources, including State broadcasters for their election campaign. ***[Clause 23 of the 19th Amendment, Article 104B(4) and (5) of the Constitution]***

20) Allows the Election Commission to appoint a Commissioner General of Elections on such terms and conditions as it may determine subject to the approval of the Constitutional Council. ***[Clause 24 of the 19th Amendment, Article 104E(1) of the Constitution]***

21) Article 41(b)(6) provides that all the Commissions referred to in the Schedule to the Article, other than the Election Commission, shall be responsible and answerable to Parliament. However in terms of Article 104B(3) the Election Commission has specifically been made “responsible and answerable” to Parliament. Whilst there is no clarity regarding the role of the Election Commission *vis a vis* Parliament, no Standing Orders have been promulgated to give effect to this provision.

CHANGES TO THE LEGISLATURE

22) Reduces the term of Parliament from 6 years to 5.
[Clause 15 of the 19th Amendment, Article 62(2) of the Constitution]

23) Removes the President’s power to dissolve Parliament in his own discretion. According to the 19th Amendment the President can dissolve Parliament only;

- If two thirds of the Members of Parliament pass a resolution requesting him to dissolve Parliament.
- Any time after the expiration of four and a half years, since the first meeting of Parliament.

[Clause 17 of the 19th Amendment, Article 70(1) of the Constitution]

24) Persons who are dual citizens are disqualified from being elected as Members of Parliament [by virtue of article 92(b)]. This provision also disqualifies a person who is a dual citizen from being elected as President of the Republic. ***[Clause 20(4) of the 19th Amendment, Article 91(1)(d)(xiii) of the Constitution]***

OTHER CHANGES

25) Introduces a ceiling on the number of Ministers (Both Cabinet and Non- Cabinet) – The total number of Cabinet of Ministers shall not exceed **thirty** and Ministers who are not members of the Cabinet of Ministers and Deputy Ministers shall not, in total **exceed forty**. ***[Clause 9 of the 19th Amendment, Article 46(1) of the Constitution]***

The gazetted Bill included a special transitional provision that would apply for the next Parliament only, where a “government of national unity” was established, the ceiling on the number of Cabinet Ministers would be increased to **forty five** and the total of Non-Cabinet Ministers and Deputy Ministers would be increased to **fifty five**.

However during the committee stage debate this was amended to allow Parliament to determine on its own accord the number of Cabinet Ministers and the total

number of Non-Cabinet Ministers and Deputy Ministers where a “national government” is formed. Subsequent to the amendment at the committee stage, this provision will no longer **only** apply to the next Parliament. ***[Clause 9 of the 19th Amendment, Article 46(4) and (5) of the Constitution]***

26) Inclusion of a Right to Access Information as provided for by law. ***(Clause 2 of the 19th Amendment, Article 14A of the Constitution)***

27) Removes the provision in the Constitution which permitted the government to pass legislation as “Urgent Bills” – The Constitution prior to the 19th Amendment permitted the President to refer to the Supreme Court directly any Bill certified by the Cabinet of Ministers as “urgent in the national interest”. The Supreme Court was then tasked to decide on the Constitutionality of the Bill within 24 hours or 72 hours depending on the instructions of the President. ***[Clause 30 of the 19th Amendment, by repealing what was previously Article 122 of the Constitution]***

28) Increases from 7 days to 14 days, the period of time a Bill is to be made public (by being published in the gazette), before it can be placed on the order paper of Parliament. ***[Clause 18 of the 19th Amendment, Article 78(1) of the Constitution]***