

Impeachment and No Confidence Motion Procedure and Protocol Explained

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Is it unconstitutional to ask the President to go home?

No, asking the President to resign, and expressing displeasure at the President's decisions / policies is an exercise of the Freedom of Expression, guaranteed under Article 14(1) of the Constitution. As such it is not unconstitutional to ask the President to "go home".

Article 38 of the Constitution provides six grounds by which the office of the President becomes vacant, they are;

1. Death of the president;
2. Resignation (addressed to the Speaker of Parliament);
3. Ceasing to be a citizen of Sri Lanka;
4. Willfully failing to assume office within two weeks of the commencement of term as President;
5. Impeachment; or
6. The Supreme Court declaring the election of the President void.

When the citizenry demand that the President 'go home', it is well within the powers of the President to choose to resign.

If the President refuses to resign, can he be impeached?

The impeachment process is a democratic check on the President, allowing Parliament to put in motion a process of removing a President.

While Article 38(2) the Constitution does lay out the procedure for the impeachment of the President, it must be noted that this process is very difficult, and in the almost 45 years since the adoption of the 1978 Constitution, Sri Lanka has never impeached a President. One of the biggest challenges considering Sri Lanka's Constitutional reality is that 2/3 of the Members of Parliament must support the impeachment, three times over.

There are several steps to a successful impeachment process-

- Step 1 – A resolution
 A member of Parliament gives the Speaker a resolution stating that the President is permanently incapable of discharging the functions of his office due to a mental or physical infirmity, or the President has been guilty of;
 - 1. Intentional violation of the Constitution,
 - 2. Treason,
 - 3. Bribery,
 - 4. Misconduct or corruption involving abuse of office,
 - 5. Any offence in law involving moral turpitude.
- Step 2 – getting the resolution tabled in Parliament
 The speaker shall only entertain, or place the resolution on the order paper of parliament if;
 - It has been signed by at least 2/3 of the members of Parliament (this would mean that 150 MPs of the 225 would have to sign the resolution); or
 - It has been signed by at least half the members of Parliament and the Speaker is satisfied that the allegations merit inquiry.

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- Step 3 – passing the resolution
 The resolution must be passed by at least 2/3 of the members of Parliament in order to proceed.
- Step 4 – reference to the Supreme Court
 If the resolution is passed, then the Speaker must send the resolution to the Supreme Court for consideration. The Court must hold an inquiry, at which the President is also permitted to be heard, himself or represented by a lawyer. The Supreme Court then decides whether the President is permanently incapable of discharging the functions of his office due to a mental or physical infirmity, or whether the President has been guilty of any of the offences cited in the resolution. The Supreme Court has to make a report containing reasons for its decision which has to be sent to Parliament.
- Step 5 – voting to remove the President
 If the Supreme Court has found the President is permanently incapable of carrying out office, or is guilty of one of the acts as contained in the resolution, then, once again, Parliament must vote on the resolution. Again, 2/3 of the Members of Parliament must vote on the resolution.
 If the Supreme Court makes no such finding the process comes to an end.

It is only if all these steps are successfully met that the President can be impeached from office. While a President may be guilty of an impeachable offence, political factors, such as members of Parliament voting according to party lines, make it difficult to secure the requisite members for an impeachment motion.

What happens if the President does resign?

President Gotabaya Rajapaksas' term in office is five years from the date he was elected, and thus would continue until November 2024. If he were to resign from office, the Constitution provides for the selection of a President for the remainder of this term. This does not involve a Presidential election at which the people vote in a new President.

As per Article 40 of the Constitution, if the President resigns, then Parliament must select, as soon as possible (within a period not exceeding a month) a person from within Parliament as a replacement. The vote would be done by secret ballot. It is also required that the candidates fulfil the other qualifications to hold the office of President, so it cannot be a person below 30 years of age, or someone who has held office as President twice before. The provisions of the Presidential Elections (Special Provisions) Act, No. 2 of 1981 will apply to this election.

In the interim period, which cannot exceed one month, the Constitution provides for the Prime Minister to act as President. However, if the Prime Minister is unable to do so, then it provides that the Speaker should act as the President for that brief period.

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How can the Prime Minister and cabinet be removed?

As per Article 49(1) of the Constitution, if the Prime Minister ceases to hold office by death, removal or resignation then the cabinet also stands dissolved, and the President can appoint a new Prime Minister and cabinet from within the members of Parliament. The person he appoints must be one who is most likely to command the confidence of Parliament.

The other way that the Prime Minister and cabinet can be removed is if a vote of no-confidence is passed against the government. If such vote is passed, then cabinet will stand dissolved.

How does a no-confidence motion work?

A no-confidence motion is a motion brought in Parliament against a Government, under Article 49(2) of the Constitution. If the no confidence motion passes by a majority of MPs voting for it, then the Government no longer has the support or “confidence” of the Parliament. A government needs the support of at least half the Members of Parliament for any laws to be passed or decisions to be made, and a successful no-confidence motion indicates that it does not have this support.

Any member of Parliament can bring a no-confidence motion. For it to be successful, a majority of the Members of Parliament must vote in favour of the motion.

How is a new government selected if a no-confidence motion is passed?

If a no confidence motion is successful, the Cabinet of Ministers stands dissolved. Thus, the process by which a new Prime Minister and cabinet is appointed will apply afresh. The President would have to appoint as Prime Minister the person who he believes commands the confidence of the Parliament, and in consultation with the Prime Minister, appoint a new Cabinet of Ministers.

What are the main changes that the 20th Amendment to the Constitution brought in, in 2020?

The crux of the 20th Amendment was that it consolidated a large amount of power in the President. In effect, it did away with the changes that were brought in with the 19th Amendment, in 2015, save for a few Articles.

How can the executive Presidency be abolished?

There have been requests from politicians, lawyers, academics, activists and the public at large that the executive Presidency should be abolished. This is the system that was introduced by way of the 1978 Constitution, by which large amounts of power are consolidated in the President, allowing the overshadowing of the other organs of Government.

For the executive Presidency to be abolished, a Bill would need to be proposed, and passed in terms of the Constitution. There are several steps which need to take place before the proposed Amendment can be passed.

- Any Bill must be published in the Gazette 7 days before it can be placed on the Order Paper of Parliament (Article 78(1) of the Constitution).
- Thereafter, it may be placed on the Order Paper of Parliament for its first reading.
- Within 7 days from a Bill being placed on the order paper of Parliament, any citizen can challenge the Bill in the Supreme Court (Article 121 of the Constitution).
- If it is challenged, the Court will examine if the proposed Amendment violates any entrenched provisions recognized in Article 83 of the Constitution. If the Court decides that any one or more provisions of the proposed Amendment violate one or more of these entrenched provisions, then, in addition to 2/3rds of the MPs voting in its favour, the proposed Amendment will also have to be voted on by the People at a Referendum.

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- If a referendum is not required, the Bill will be put to the second and third reading in Parliament, after which it would have to be passed by a 2/3 majority in Parliament.
- While most Bills are introduced as Government Bills, approved by Cabinet, a Bill can also be brought by any other Member of Parliament, known as a 'Private Members Bill'. While such Bills must go through the same procedures in Parliament, there are additional steps that such Bills must go through which means a 'Private Members Bill' can take a longer time to pass than a Government Bill.