

**CONSTITUTION  
OF THE  
REPUBLIC OF SRI LANKA  
(Draft)**

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**MARCH 2022**

**COMMITTEE TO DRAFT A NEW CONSTITUTION  
(APPOINTED BY THE CABINET OF MINISTERS)**



# **DRAFT CONSTITUTION**

## **INTRODUCTION**



## METHODOLOGY

- 1.1 This Committee was appointed on the 16<sup>th</sup> of September 2019.
- 1.2 The Committee met on several occasions to discuss and devise the methodology it would adopt.
- 1.3 The Committee was of the view that the Constitution should take into account the views of the People of Sri Lanka.
- 1.4 To this end, the Committee:
  - i. Placed public advertisements published in multiple newspapers in Sinhala, Tamil & English languages, calling on members of the public to express their views with respect to the proposed Constitution. The deadline to submit proposals was extended twice, based on requests received by members of the public, to enable maximum participation by the People in the process;
  - ii. By letters dated 12th January 2021 and thereafter, invited all political parties represented in Parliament to express their views on the proposed Constitution;
  - iii. Requested religious leaders to grant them an audience.
- 1.5 The Committee received approximately 873 written submissions from the public.
- 1.6 The Committee invited all political parties represented in Parliament to present their views.
- 1.7 The Committee met with most political parties represented in Parliament, and met the following delegations, among others:
  - i. A delegation led by Hon. Basil Rajapakse (SLPP)
  - ii. A delegation led by Hon. Sampanthan (TNA)
  - iii. A delegation led by Hon. Dinesh Gunawardane (UPF)
  - iv. A delegation led by Hon. Udaya Gammanpilla (PHU)
  - v. A delegation led by Hon. Wimal Weerawansa (JNP)
  - vi. A delegation led by Hon. Tiran Alles (UPP)
  - vii. A delegation led by Hon. Vasudeva Nanayakkara (DLF)
  - viii. A delegation led by Hon. Anura Dissanayake (JJB)
  - ix. A delegation led by Mr. Raja Collure (Socialist Alliance)
  - x. A delegation led by Hon D. E. W. Gunasekera (Communist Party of SL)



- xi. A delegation led by Hon. Nimal Siripala de Silva (SLFP)
  - xii. A delegation led by Mr. Rushdi Habeeb, AAL (All Ceylon Makkal Congress)
  - xiii. A delegation led by Hon. Douglas Devananda(EPDP)
  - xiv. A delegation led by Mr. Bandula Chandrasekara (JHU)
  - xv. A delegation led by Hon. Mano Ganeshan (TPA)
  - xvi. A delegation led by Hon. Dr. V Radhakrishnan (Upcountry People’s Front)
  - xvii. Delegation led by Hon. Sivanesathurai Santhirakanthan (Thamil Makkal Viduthalai Pulikal)
  - xviii. Delegation led by Hon. Senthil Thondaman (CWC)
  - xix. Delegation led by Hon. Prof. Tissa Vitarana (LSSP)
  - xx. Delegation led by Hon. C.V. Wigneswaran (Thamil Makkal Theshiya Kuttani)
  - xxi. Delegation led by Hon. Asanka Nawaratne (Sri Lanka Mahajana Pakshaya)
- 1.8 Of the political parties invited by the Committee, the Samagi Jana Balawegaya, did not meet with the Committee. However, Mr. Farman Cassim PC and Mr. Thisath Wijegunawardena PC (the Joint Legal Secretaries of the Party) initially met the Chairman of the Committee to discuss the modalities of such a meeting. The Chairman explained the modalities.
- 1.9 The Committee also met with:
- i. Most Venerable Mahanayake of the Malwatte Chapter along with a representative body of the Chapter;
  - ii. Most Venerable Mahanayaka of the Asgiriya Chapter along with a representative body of the Chapter;
  - iii. Most Venerable Mahanayake of the Amarapura Nikaya along with a representative body of the Amarapura and Ramannge Nikaya;
  - iv. The Buddha Sasana Karya Saadhaka Mandalaya;
  - v. All Ceylon Buddhist Conference;
  - vi. The Catholic Bishops’ Conference;
  - vii. The Anglican Bishop of the Diocese of Colombo and the President of the Methodist Church;
  - viii. The National Christian Council of Sri Lanka;
  - ix. A delegation of the All Ceylon Jamiyyathul Ulama;

- x. A delegation of the Supreme Council of Sufi Tareeqas;
  - xi. The Central Province Hindu Association.
- 1.10 Although representatives of the Hindu faith such as the All-Ceylon Hindu Congress, the All Ceylon Kamban Kalaham and Hon. Vellan Swamy were invited by the Committee, and although the said meetings were rescheduled several times at the request of the invitees, they did not eventually meet with the Committee, citing administrative difficulties at their end.
- 1.11 In addition, the Committee met with other organisations and members of the public, including delegations of academics, professionals and leaders of industry where the Committee sought further clarifications on a written proposal submitted or where the Committee sought specific input on a matter to be included or referenced in the draft Constitution.
- 1.12 The Committee has accorded careful consideration to the diverse array of views represented.
- 1.13 It has sought, to the extent possible, to ensure that the Constitution accommodates the views of the People as a whole.
- 1.14 The draft Constitution is the result of these endeavours. A summary is given below.

## EXECUTIVE SUMMARY

### STATE<sup>1</sup>

1. The draft affirms that Sri Lanka is a free, sovereign, independent and democratic Republic. Sri Lanka shall be called the Republic of Sri Lanka.<sup>2</sup> The basis / foundation of the Constitution is that sovereignty is in the People of Sri Lanka and is inalienable.

### THE NATIONAL FLAG, NATIONAL ANTHEM AND NATIONAL EMBLEM<sup>3</sup>

2. No change made to the National Flag and the National Anthem as depicted in the present Constitution. The National Anthem remains the “Sri Lanka Matha”, the words and music of which are set out in the 3<sup>rd</sup> Schedule. A Tamil translation of the words are set out also in the 3<sup>rd</sup> Schedule. The National Flag and National Emblem are depicted in the 2<sup>nd</sup> Schedule.<sup>4</sup>

### NATIONAL DAY<sup>5</sup>

3. National Day shall be the 22<sup>nd</sup> day in the month of May.<sup>6</sup>

### TERRITORY OF THE REPUBLIC<sup>7</sup>

4. The territory of the Republic is described as follows<sup>8</sup>;

#### *Territory of the Republic*

2. (1) *The territory of the Republic of Sri Lanka shall consist of twenty-five administrative districts, the names of which are set out in the First Schedule, and its off-shore islands, territorial waters, air space and any other territory as may be acquired. The limits of each such administrative district shall be the limits existing on the day immediately prior to the date of the commencement of the Constitution.*

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1 Chapter I

2 Article 1

3 Chapter I

4 Article 7 and 8

5 Chapter I

6 Article 9

7 Chapter I

8 Article 2

- (2) *Any territory acquired by the Republic shall be declared by the President as a new administrative district or as part of any administrative district set out in the First Schedule.*
- (3) *The administrative districts shall not be subdivided or amalgamated.*
- (4) *The State shall not cede or renounce its rights over any part of the territory of the Republic of Sri Lanka.*

Professor G. H. Peiris objects to the last sentence of Article 2(1) and Article 2(3) on the basis that it has the effect of perpetuating the existing spatial delineations of provinces and districts and suggests to delete the last sentence of Article 2(1) and to change Article 2(3) to read as “the administrative districts shall not be amalgamated to constitute large territorial units”.

Professor Peiris adds that “a future transformation of the existing network of provinces and districts should be made only on the basis of proposals submitted by an independent delimitation commission, such proposals based on in-depth and impartial investigations.” With regard to the provisions relating to the proposed delimitation commission referred to in Chapter XVII, Professor Peiris suggests an amendment to Article 179.<sup>9</sup>

Mr Manohara De Silva PC and Mr. Samantha Ratwatte PC are of the view that, the delimitation commission should not be entrusted with the power to change boundaries of provincial and administrative districts.

## RESOURCES OF THE REPUBLIC

- 5. Article 3 asserts the rights of the Republic over national resources within the territorial sea, continental shelf and the Exclusive Economic Zone in the following manner.
  - (1) *All biotic and abiotic resources including soil, minerals, metal, oil and gases in, on or beneath the surface of the territorial waters, the contiguous zone and the exclusive economic zone of the Republic shall belong to the Republic of Sri Lanka and be held for the purpose of the Republic.*
  - (2) *The limits of the territorial waters, the Contiguous Zone, the Continental Shelf, the Exclusive Economic Zone and other maritime zones of Sri Lanka shall be as may be from time to time prescribed by or under any Law.*

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<sup>9</sup> See foot note 60 of paragraph 25.1

## **SOVEREIGNTY OF PEOPLE**<sup>10</sup>

6. In the Republic of Sri Lanka the sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and franchise.

## **SEPARATION OF POWER**<sup>11</sup>

7. There is a clear delineation of the exercise of the sovereignty of the People wherein:
- i. The legislative power of the People shall be exercised by the National State Assembly elected by the People;
  - ii. The executive power of the People shall be exercised by the President of the Republic elected directly by the People; and
  - iii. The judicial power of the People shall be exercised by the courts.<sup>12</sup>

## **UNITARY STATE AND PROHIBITION AGAINST VIOLATION OF SOVEREIGNTY AND TERRITORIAL INTEGRITY OF SRI LANKA**

- 8.1. Article 4 provides that;

The Republic of Sri Lanka is a unitary state and is undivided and indivisible.<sup>13</sup>

*Article 77 (1) provides that;*<sup>14</sup>

*It shall be the duty of the State –*

- (a) *to protect the sovereignty and the territorial integrity of the Republic and the unitary character of the State;*
- (b) *not to permit any person to, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of the Republic;*

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10 Article 5

11 Article 6

12 Article 6(c) (The judicial power of the people is presently exercised by Parliament through the Courts). Professor G. H. Peiris however prefers the existing Article 4(c) in place of the proposed Article 6(c) since the judiciary is not elected by the people. Mr. Samantha Ratwatte P.C. supports this view

13 Professor A. Sarveswaran does not agree with Article 4 and states that “it affects power sharing to reconcile the ethnic conflict.”

14 Professor A. Sarveswaran does not agree with Article 77 and states that the “protection of the unitary character of the State affects power sharing to reconcile the ethnic conflict.”

- (c) *not to promote, facilitate or initiate the altering or changing the unitary character of the State unless such alteration or change is first approved by the People at a Referendum in accordance with Article 192.*<sup>15</sup>

*Article 78 (1) provides inter alia that;*<sup>16</sup>

- (1) *No person shall directly or indirectly in or outside Sri Lanka support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka.*
- (2) *No person shall refer to any part of Sri Lanka as a separate State.*
- (3) *Any person who acts in contravention of Article 4 and paragraphs (1) and (2) of this Article shall, on conviction by the Court of Appeal, after trial on indictment filed by the Attorney General –*
- (a) *be subjected to civic disability for such period not exceeding fifteen years as may be determined by such Court;*
- (b) *forfeit as determined by Court, the movable and immovable property of such person other than the property as is determined by an Order of such Court as being necessary for the sustenance of such person and his family as the Court may deem fit;*
- (c) *not be entitled to civic rights for such period not exceeding fifteen years as may be determined by such Court; and,*
- (d) *if such person, is a Member of the National State Assembly, a Provincial Council or a Local Authority or is a public officer, judicial officer or in the service of a public corporation or holds any other paid office under the Republic ceases to be such Member or to be in such service or to hold such office.*
- (4) (a) *No political party or other association or organization shall have as one or any of its aims or objects, the establishment of a separate State within the territory of Sri Lanka.*

8.2. Members of the National State Assembly, Members of Provincial Councils and Local Authorities, Judges and public officers are required to take the oath/affirmation prescribed by the 6<sup>th</sup> Amendment to assume Office.

15 Professor G. H. Peiris objects to the words “unless such alteration or change is first approved by the People at a Referendum in accordance with Article 192” in this sub paragraph, because changing the unitary character of the Sri Lankan state should not be permitted under any circumstance and through any means. Mr Manohara De Silva P.C. and Mr. Samantha Ratwatte P.C. supports this view.

16 Professor A. Sarveswaran is not in agreement with Article 78(6) and states that “It violates the commitments under the international Conventions.”

## NATIONAL SECURITY<sup>17</sup>

- 9.1. There is a Chapter on national security in the draft.
- 9.2. Among the provisions introduced in this Chapter, the following have been included
- i. Prohibiting Armed Service Personnel (including intelligence officers) of any Foreign State being engaged without the approval of the National State Assembly.
  - ii. Providing for the enactment of laws,
    - a) To establish a National Security Council to formulate and implement a national defence strategy
    - b) To regulate organisations operating with foreign funds and to regulate inward remittances
    - c) To maintain a National Intelligence Service
- 9.3. Further Article 79(1) provides inter alia that:
- 79. (1) Whoever either within or outside the Republic of Sri Lanka;*
- (a) deprives or attempts to deprive or conspires or encourages or promotes the deprivation of the People of the Republic of Sri Lanka of their sovereignty in Sri Lanka or any part thereof;*
  - (b) Encourages, promotes, or instigates the United Nations or any organ of the United Nations to apply any measures involving the use of armed force against the Republic of Sri Lanka or for the termination or suspension or the interruption of economic relations with the Government of Sri Lanka, or to prosecute, charge or punish any citizen of Sri Lanka in any other jurisdiction, for any offence alleged to have been committed by such person within the territory of Sri Lanka<sup>18</sup>;*
  - (c) by words, either spoken or intended to be read, or by signs, or by visible representations, cause insult or show disrespect to the National Flag, National Emblem or National Anthem of the Republic of Sri Lanka.*
- commits an offence punishable with imprisonment of either description for a term which may extend to twenty years and forfeiture of property.*
- 9.4. A State of Emergency may be declared when the life of the People of Sri Lanka or the State is threatened by war, invasion, general insurrection, disorder, national disasters or other public emergency.

<sup>17</sup> Chapter IX

<sup>18</sup> Professor A. Sarveswaran is not in agreement with Article 79(1)(b) and states that “is not in consonance with the principles of International law”

## **SAFEGUARDING THE ARMED FORCES**<sup>19</sup>

- 10.1. The draft recognizes the duty to safeguard the Armed Forces. Attempts to discourage the armed forces from being committed to safeguard the country through the threat of prosecution for fulfilling their duty by interested parties have been addressed by providing immunity for bona fide actions of the Armed Service Personnel.
- 10.2. Accordingly, no suit, prosecution, or other proceedings, civil or criminal shall lie against any officer or person of the Armed Forces for any act or thing, in good faith done in pursuance of any order made or direction given in fulfillment of a duty under this Chapter.<sup>20</sup>
- 10.3. This Draft Constitution permits special provisions being made in the interest of members of the Armed Forces and their dependents notwithstanding the equality provisions incorporated in the Constitution.<sup>21</sup>

## **INTERNATIONAL RELATIONS**<sup>22</sup>

- 11.1. Sri Lanka affirms its commitment to peace and friendly cooperation among nations founded on principles of sovereign equality, reciprocity, mutual respect and non-interference in the internal affairs of other countries.
- 11.2. No person on behalf of the Government of Sri Lanka or any of its agencies shall initiate or proceed on any negotiation of any treaty, or consent to the adoption of the text of the treaty without the written authority of the President.
- 11.3. The President shall grant such authority only with the approval of the Cabinet of Ministers.
- 11.4. The Supreme Court shall determine the constitutionality of International Treaties and Agreements.
- 11.5. Every treaty has to be approved by the National State Assembly.
- 11.6. Total prohibition of the alienation of State resources to Foreign States, Foreign Companies and Foreign Nationals and restrict the period of lease, transfer of possession or management of State resources.

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19 Article 78(6)

20 Article 78(b)

21 Article 29(4)

22 Chapter VIII



- 11.7. Contracts entered into between the Government of Sri Lanka and a Foreign Company or Foreign National relating to the transfer of possession or management of immovable property shall only be entered with the prior approval of the National State Assembly.
- 11.8. To prohibit entering into agreements to use any part of the Republic of Sri Lanka for a military purpose by any Foreign States.

## **FUNDAMENTAL DUTIES AND RIGHTS**

### **DUTIES OF THE STATE AND CITIZEN**

- 12.1. A novel feature of the draft is its recognition of enforceable duties of the State.<sup>23</sup> The draft's recognition of duties is in consonance with the cultural ethos of Sri Lanka.
- 12.2. The enumerated duties of the State include:
  - i. To ensure that the resources of the Republic are not alienated or encumbered against national interests;
  - ii. To preserve the national heritage of Sri Lanka;
  - iii. To provide adequate social security to senior citizens of the Republic;
  - iv. To adopt necessary measures to ensure that persons with disabilities can meaningfully exercise their rights and freedoms guaranteed by the Constitution;
  - v. To afford the citizens of Sri Lanka the freedom to lead their lives in a peaceful environment provided that the rights and freedoms of other persons and of the society are not infringed;
  - vi. To ensure that:
    - a. The best interests of the child be the paramount consideration in all matters concerning children;
    - b. Every citizen who is a child has his primary and secondary education in a school;
    - c. A child is not directly and/or indirectly used or allowed to be used in armed conflict;
    - d. The system of education be value based and be allowed to provide for the development of the child;

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23 Chapter V

- vii. To ensure the welfare of animals and the protection of their habitat;
  - viii. To ensure:
    - a. that foreign investments are permitted only after due compliance with the provisions of chapter XXVII of the Constitution and the law;
    - b. To protect and safeguard such investments unless they constitute a threat to national security.<sup>24</sup>
- 12.3. The duties of the citizen include the duty:
- i To foster national interest and national unity;
  - ii. To respect the rights and freedoms of others;
  - iii. To preserve and protect public property and combat the misuse and waste of public property;
  - iv. To render national service when called upon to do so.
- 12.4. The breach of enumerated duties binding on the State and/or individuals shall be justiciable in law.

## **FUNDAMENTAL RIGHTS**<sup>25</sup>

- 12.5. Rights relating to a safe environment devoid of violence.
- 12.6. Right to life.
- 12.7. Right to freedom from torture or cruel, inhuman or degrading treatment or punishment
- 12.8. Right to be free from arbitrary arrest, detention, punishment and prohibition from retrospective penal legislation.
- 12.9. Right to freedom of thought and religion.
- 12.10. Right to manifest religion.
- 12.11. Right to enjoy and promote culture.
- 12.12. Right to equality before law.
- 12.13. Right to just administrative action.

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24 Article 20(1) (r) - Mr. Manohara De Silva P.C. does not agree with this formulation. It is his view that it is unnecessary to incorporate provisions in the Constitution to “protect and safeguard” investments in the manner suggested in Article 20(1)(r), in as much as the State should be at liberty to take whatever action that is required, if such investment is in any manner detrimental to the interest of the State. Mr. Samantha Ratwatte P.C. is of the view that Article 20 (1)(r) as presently constituted may have serious repercussions on future generations in as much as it may be impossible to reverse a project which is subsequently discovered to be environmentally harmful.

25 Chapter V

- 12.14. Right to have the freedom of expression.
- 12.15. Right of access to information.
- 12.16. Rights relating to environment.
- 12.17. Right of peaceful assembly and association.
- 12.18. Right to have the freedom to engage in lawful occupation, profession or trade.
- 12.19. Right to equality and fair treatment in employment.
- 12.20. Right to have the freedom to join trade unions.

### **PREVENTION OF VIOLATION OF FUNDAMENTAL RIGHTS<sup>26</sup>**

- 12.21. Even if in any proceedings initiated by a petitioner, relief is not given by the Supreme Court in such proceedings on the merits, if the pleadings disclose a fundamental rights violation of any other person, the Supreme Court will be required to make necessary orders to prevent any infringement or recurrence of such infringement in the future.

### **RESTRICTIONS ON FUNDAMENTAL RIGHTS<sup>27</sup>**

- 12.22. The exercise and operation of all the fundamental rights declared and recognised other than the Fundamental Rights guaranteed by Article 26 (freedom of religion) and 24 (torture and inhuman treatment) are subject to such restrictions as may be prescribed by law:
  - 1) in the interests of national security, public order, racial and religious harmony, protection of public health, morality, or in relation to defamation, Parliamentary privilege and contempt of Court
  - 2) in the interests of national economy or in relation to –
    - i. the professional, technical, academic, financial and other qualifications necessary for practising any profession or carrying on any occupation, trade, business or enterprise and the licensing and disciplinary control of the person entitled to such fundamental right; and
    - ii. the carrying on by the State, a State or a public corporation of any trade, business, industry, service or enterprise whether to the exclusion, complete or partial, of citizens or otherwise.

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<sup>26</sup> Chapter V. Article 53.

<sup>27</sup> Chapter V. Article 49

- iii. to fulfil any duty of the State or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society;

### **POWER TO MAKE SPECIAL PROVISIONS IN FAVOUR OF CHILDREN, WOMEN, DISABLED PERSONS, CITIZENS AND ARMED SERVICE PERSONNEL**

12.23. Article 29 (4)<sup>28</sup> provides an exception to the equality provision in Article 29, which reads as follows,

29. (4) *Nothing in this Article shall prevent special provision being made by law, subordinate legislation or executive action,*
- (a) *for the advancement of women, children, elders or disabled persons;*
  - (b) *in the interest of members of the Armed Forces and their dependants in the event of death or permanent disability while in service or;*
  - (c) *in the interest of all citizens;*

### **EXISTING LAWS VIOLATIVE OF FUNDAMENTAL RIGHTS<sup>29</sup>**

12.24. Whilst appreciating that Sri Lanka should endeavour to adopt a uniform system of law, until such possibilities are worked out, the existing written and unwritten law shall remain. However, the existing Article 16 is amended in the following manner to prevent blatant discrimination.

- (i) All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter.  
Provided however that any law, the application of which is restricted on the ground of religion, ethnicity, cast, social status, sex or gender shall all be null and void in so far as it relates to;
  - (a) the minimum age of marriage,
  - (b) succession to State land.
- (ii) Any existing written or unwritten law which imposes social disability on any person on the ground of religion, ethnicity, cast, social status, sex or gender shall be null and void to the extent of its inconsistency.

28 Similar to Article 12(4) of the present Constitution. Citizens and Members of the armed service personnel are included in the new provision.

29 Chapter V

## RIGHT TO SEEK RELIEF AGAINST NON STATE ACTORS

12.25. The draft explicitly recognises, for the first time in Sri Lanka, that a citizen could institute action against another person for the breach of fundamental rights or fundamental duties.<sup>30</sup>

## BUDDHISM AND OTHER RELIGIONS<sup>31</sup>

13.1. Article 9 of the present Constitution states as follows:

“The Republic shall give to Buddhism the foremost place and accordingly it shall be duty of the state to protect and foster the Buddha Sasana while assuring to all religions the rights granted by Articles 26 and 27”

13.2. The consistent view of those who made representations to the Committee was that there was no compelling reason to alter the existing formulation.

13.3. The Committee specifically invited members representing religious institutions and groups to express their views on the matter. All religious organisations that made representations before the Committee intimated to the Committee that they had no objection to Article 9 in its present form.

13.4. In these circumstances, the text of Article 9 has been retained as Article 10.<sup>32</sup>

13.5. Most of the Venerable members of the Maha Sangha who appeared before the Committee were of the view that Article 9 in the present Constitution was meaningless in practice.

For this reason, several new provisions have been proposed, including:

- i. The interpretation proposed by the Buddha Sasana Commission (2001) to the phrase “Buddha Sasana” is included in the Chapter on Interpretations.<sup>33</sup>
- ii. Provision for a Viharadhipathy of any temple to institute proceedings in the Supreme Court for the violation of Article 10 by executive or administrative action;
- iii. A Council of the Maha Sanga,<sup>34</sup> is established to advise and guide the Government in fulfilling the constitutional obligations embodied in Chapters II and VII and on any other matter the Government may seek the advice of the Council.<sup>35</sup>

30 Article 292

31 Chapter II

32 Professor A. Sarveswaran does not agree with Article 10 and states that “the foremost place should not be given to any religion.”

33 Chapter XXIX

34 Article 13 – Mr. Manohara De Silva P.C. States that this provision should more appropriately be included in Chapter II.

35 See Article 13 Professor A.Sarveswaran is not in agreement with Article 13 and states that “it becomes violation of equal rights of communities, and complicates governance in the Country.”

- iv. The Council to consist of not more than 16 members to represent the Siyamopali Mahanikāya, Sri Lanka Amarapura Mahanikāya and the Sri Lanka Rāmañña Mahanikāya and who shall be appointed by the President on the recommendations of the most Venerable Mahanayakas of the Malwatta and Asgiriya Chapters of the Siyamopali Mahanikaya, Sri Lanka Amarapura Mahanikāya and Sri Lanka Rāmañña Mahanikāya.
  - v. Special provision is made with regard to the encroachment of temple property. Once temple property is identified by the relevant authorities, the Magistrate's Court may make an order of ejection of any person encroaching on temple property. This procedure is swift and without delay akin to the recovery of possession of State lands. However, a person ejected has the the right to file action in an appropriate court for vindication of title.<sup>36</sup>
  - vi. In addition, the draft Constitution envisages a separate court to adjudicate upon disputes relating specifically to Buddhists:<sup>37</sup>
    - a. Buddhist Temples;
    - b. Disputes between Bhikkus;
    - c. Disputes relating to the performance of services or payment of commuted dues payable in relation to any temple property;
    - d. Any dispute in relation to Buddhist temporalities by any Bhikku to which such Bhikku is a party;
    - e. Registration of Samanera and Upasamprada;
    - f. Recognition of Nikayas;
    - g. Registration of temples of each Nikaya;
    - h. Enforcement of disciplinary orders made in relation to any Bhikku of any Nikaya by the disciplinary authority of such Nikaya.
- 13.6. Special reference is made to the Dasa Raja Dhamma in the Directive Principles of State Policy to guide the Government in conducting the affairs of the State.<sup>38</sup>
- 13.7. It may be noted however that the following provisions are also emphasised in the draft so that no religion is unfairly treated:<sup>39</sup>
- i. Every person shall have the freedom of thought, conscience and religion;

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36 Chapter VII

37 Article 235

38 Article 11(2) - Professor A. Sarveswaran does not agree with this Article and states that "The Government shall be guided by the universal values of governance."

39 Article 26 and 27

- ii. Every person shall have the freedom to have and to adopt a religion of belief of his choice. No person shall be subjected to coercion which would impair his freedom to leave or adopt a religion or belief of his choice;
- iii. Subject to restrictions every person has the freedom either by himself or in association with others and either in public or in private to manifest his religion or belief in worship, observance, practice and teaching;
- iv. A breach of any of these Articles is justiciable in law in that any person may petition the Supreme Court in the event of an infringement of the said rights by executive action.<sup>40</sup>

## PROTECTION OF NATIONAL HERITAGE

- 13.8. The following provisions find expression in the draft Constitution:<sup>41</sup>
- 13.9. The State shall preserve, protect and promote the national heritage and shall prevent the degradation of its core cultural and civilizational norms.
- 13.10. The State shall advance the cause of cultural enrichment of the Sri Lankan society and provide adequate funding for the preservation and research, devoting special attention to Sri Lanka's hydraulic technology, indigenous agrarian practices, architecture, local arts including sculpture and painting.
- 13.11. It shall be the duty of the State to:<sup>42</sup>
- a. Protect the archaeological heritage of Sri Lanka consisting of ancient monuments, antiquities and other places of historical interest;
  - b. Ensure the preservation of all Ola leaf manuscripts of the Mahavamsa and other historical records of ancient origin;
  - c. Ensure the teaching of history in Sri Lanka, as a common heritage in all schools;
  - d. Assist the custodians of all temples to preserve the relics of the Buddha, conserve the ancient manuscripts of the Tripitika as part of the national heritage of Sri Lanka and prevent any attempt of its distortion;
  - e. To conserve and preserve all ancient temples and grant adequate funding for such purpose;
  - f. Prevent unlawful encroachment, trespass, occupation or possession of temple property by any person.

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40 Article 268

41 Chapter VII

42 Article 66 - Professor A. Sarveswaran is not in agreement with this Article and states that "the special protection by the State shall be given to the heritage of all communities in the Country."

13.12. It shall be the duty of the State to:<sup>43</sup>

- a. Protect, conserve and improve the natural resources of the Republic and environment including its fauna and flora and safeguard the bio diversity of the country;
- b. Prevent pollution and ecological degradation;
- c. Secure ecologically balanced sustainable development while promoting justifiable economic and social development;
- d. Preserve and protect all wild life, national parks, reserves, forests, bio-sphere reserves and all such areas declared to be protected by law; provided that it shall be lawful to take all necessary steps to protect and preserve all ancient monuments, antiquities and other places of archaeological and historical interests within such parks, reserves, forests and such other areas while preserving and conserving the environment and natural habitat of wildlife without damage.

13.13. Any citizen shall be entitled to apply to the Supreme Court for the enforcement of the duties and obligations of the State specified in this Chapter.<sup>44</sup>

## LANGUAGES<sup>45</sup>

- 14.1. Sinhala and Tamil shall be the languages of the State.
- 14.2. Use of English shall be recognised in the Constitution.
- 14.3. Sinhala and Tamil shall be the languages of administration throughout the Republic of Sri Lanka.
- 14.4. Sinhala and Tamil shall be used for the maintenance of public records throughout Sri Lanka.
- 14.5. Sinhala and Tamil being the languages of the State shall be the languages of administration, legislation and the languages of the courts of Sri Lanka.
- 14.6. A citizen shall be entitled to be educated in the Sinhala or Tamil medium. However, no citizen shall be prevented from receiving his primary and secondary education in the English medium.

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43 Chapter VII

44 Article 268

45 Chapter VI - Professor A. Sarveswaran is not in agreement with the formulation of Article 56 and states that it should be amended as "Sinhala and Tamil shall be the National and Official Languages of the State."

Professor A. Sarvewaran also does not agree with Article 63, he states that in the event of any inconsistency between texts, the text which is in consonance with the intention of the Legislature should prevail.



- 14.7. Every citizen shall be entitled to receive communications from and transact business with any official in his official capacity in either of the languages of the State, or in the English language if it is reasonably possible for any officer to extend such facility
- a. Sinhala and Tamil shall be the languages of the courts throughout Sri Lanka;
  - b. The record and proceedings shall be in the Sinhala and Tamil languages;  
 Provided however that the court may with the consent of all parties to any proceeding maintain any record of such proceeding only in any one of the languages of the State or in the English language
  - c. The Minister of Justice may with the concurrence of the Cabinet issue directions permitting the use of English in relation to records or proceedings in Court
  - d. Any party or a pleader may address court in Sinhala, Tamil or English.

#### **DIRECTIVE PRINCIPLES OF STATE POLICY<sup>46</sup>**

- 15.1. The Chapter on Directive Principles of State Policy is revised to ensure adherence to the Rule of Law and principles of Good Governance which respect the rights of the People. The Chapter captures the rich cultural heritage of the Nation and highlights the importance to guide the Nation in line with the cultural ethos of the Country. Dasa Raja Dhamma shall be the guiding principle. The State is required to ensure the protection of the environment and the welfare of animals. Access to education is also guaranteed. The need to adopt a robust national economy which takes into account national interest and the interest of the citizens and local industries are emphasised.
- 15.2. The Republic of Sri Lanka shall protect, foster and nurture the Sinhala language being the language indigenous to Sri Lanka while assuring to the Tamil language the rights and status contained in Chapter VI.<sup>47</sup> This clause is to be included in the Directive Principles of State Policy.

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46 Chapter III - Professor A. Sarveswaran does not agree with Article 11(11) and states that “It violates the political rights and the sovereignty of the citizens.”

Professor A. Sarveswaran does not agree with Article 11(26) and states that “a Unified legal system should not be introduced to the multi-ethnic and multi-religious Country.”

47 Article 11(7) - Mr. Manohara De Silva P.C. expressed the view that the Constitutional obligations set out in Article 11(7) should be included in chapter V as an enforceable duty.

Professor A. Sarveswaran does not agree with Article 11(7) and states that “the same protection should be given to Sri Lankan Tamil, being a language indigenous to Sri Lanka.”

## THE EXECUTIVE

### THE PRESIDENT<sup>48</sup>

- 16.1. There shall be an Executive President who shall be elected directly by the People.
- 16.2. The Constitution builds in effective checks and balances in respect of the powers of the President.
- 16.3. The President shall be responsible to the National State Assembly for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any law.
- 16.4. As described later, the President shall not himself dissolve Parliament prior to the end of the term for which it was elected.

### APPOINTMENTS BY THE PRESIDENT TO HIGH POSTS ON THE RECOMMENDATION OF THE HIGH POSTS COMMITTEE SUBJECT TO THE APPROVAL OF THE LEGISLATIVE COUNCIL.<sup>49</sup>

- 16.5. All appointments by the President to the posts of Chief Justice, judges of the Supreme Court, the President and judges of the Court of appeal, the Attorney General and the Solicitor General, and the Chairperson and members of the Law Officers' Commission shall be only on the recommendations of the High Posts Committee
- 16.6. The President shall nominate as the Auditor General, Commissioner General of Elections, Secretary General of the National State Assembly, members of the Public Services Commission, Members of the Public Enterprise Commission, National Advisory Committee, Human Rights Commission of Sri Lanka, Finance Commission and Delimitation Commission, only upon the recommendations of High Posts Committee II.
- 16.7. All such appointments referred to in the paragraphs above require endorsement by the Legislative Council. However, where the Legislative Council refuses to endorse the first nominee submitted by the President, the President may submit a second nominee. Where the Legislative Council refuses to endorse a second nominee, the President shall nominate a third. Where the Legislative Council refuses to endorse all three nominees of the President, the President may nominate any other person.<sup>50</sup>

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48 Chapter X

49 Professor G. H Peiris is of the view that Chapter XIII has the effect of curtailing the powers of elected personnel constituting the Executive Branch of government and states that "what is prescribed constitutes cumbersome procedures that are detrimental to the smooth and efficient functioning of the government, apart from constituting and encroachment of the peoples' will as expressed at the polls by way of excessive bureaucratization.

50 Article 122(15)

## **GRANT OF PARDON**

16.8. The President may, after due consultation with the Attorney General, and having obtained the views of the Chief Justice, grant a pardon.

## **IMMUNITY OF THE PRESIDENT**

16.9. While a person holds office as President, no proceedings may be instituted or continued against him in any court or tribunal in respect of anything done or committed to be done in either of his official or private capacity. This provision would not apply to official acts of the President in the context of writ or fundamental rights applications.

16.10. No civil or criminal proceeding shall be instituted against any person who has previously held the office of President with regard to anything done or omitted to be done in good faith in the performance of his duties during his term of office.

## **RESTRICTIONS ON WHO MAY SERVE AS PRESIDENT**

16.11. The President shall be a citizen by descent which means that either one of his/her parents was a citizen of Sri Lanka at the time of his/her birth. A person who is a citizen of another country is disqualified from being elected President.<sup>51</sup>

## **PRIME MINISTER AND MEMBERS OF CABINET**

16.12. The President shall appoint as Prime Minister a member of the National State Assembly who in the opinion of the President is most likely to command the confidence of the National State Assembly.

16.13. The President shall determine the number of Ministers of the Cabinet of Ministers and the assignment of functions to such Ministers.

16.14. The President shall appoint from members of the National State Assembly, Ministers to be in charge of the ministries.

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51 “Mr. Navin Marapana P.C. is of the view that all citizens including dual citizens should be afforded equal rights under the constitution, including the right to stand for elections and hold any public office, subject only to the qualification that if a dual citizen stands for election to the office of the executive president and he is declared elected, then he must renounce his citizenship of any other nation, as executive president, is empowered to declare war and peace.

## **RESTRICTION ON THE NUMBER OF MINSTERS OF CABINET**

16.15. The total number of Ministers of the Cabinet shall not exceed twenty and the Ministers who are not members of the Cabinet of Ministers and Deputy Ministers shall not in the aggregate exceed twenty.<sup>52</sup>

## **SUBJECTS AND FUNCTIONS HELD BY THE PRESIDENT**

16.16. The subject of Defence shall be under the President.

16.17. The President may assign to himself any subject or function and shall remain in charge or any subject or function not assigned to a minister.

## **CABINET TO BE REPRESENTATIVE**

16.18. There shall be at least one Cabinet Minister from every province appointed from among the members of the National State Assembly representing the government in any of the electoral divisions of such province where representation is available.

16.19. There shall be an executive committee in respect of each Ministry.

16.20. The Cabinet shall contain at least one member from every province so as to ensure that each province is represented in the Cabinet, in the event there are members from each respective Province in the party forming the government.

## **LEGISLATIVE COUNCIL**<sup>53</sup>

20.1. All appointments to High Posts shall be subject to the approval of the Legislative Council.

20.2. The Legislative Council shall comprise:

- a. The Prime Minister;
- b. The Speaker;
- c. The Leader of the Opposition in the National State Assembly;
- d. Four members of the National State Assembly elected by the majority of the members of the National State Assembly representing the government;

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52 Article 95(3) - Professor G. H. Peiris objects to Article 95(3) which curtails the number of ministerial posts. It is his position that it is undesirable in a multi ethnic nation like ours to be stringent in prescribing the size of the Cabinet and the number of Ministers. The consolidation of the system of representative government in countries like ours depends much on adequate room at the top being made available to representatives of the citizens of different ethnic identities. (The ceilings suggested by Professor G. H. Peiris – Cabinet 30 and other Ministers 40).

53 Professor G. H. Peiris objects to Chapter XIII in as much as the articles contained therein “have the effect of straightjacketing the elected representatives of the people in the exercise of their powers and performance of their functions”.

- e. Three members of the National State Assembly elected by the majority of the members of the National State Assembly representing the opposition, provided that at least one such member shall be from a political party other than that of the Leader of the Opposition.<sup>54</sup>

## **HIGH POSTS COMMITTEE**

- 21.1. There shall be the following two High Posts Committees to nominate persons for appointment by the President with the concurrence of the Legislative Council:
- i. High Post Committee I comprising the Chief Justice and four former judges of the Supreme Court or the Court of Appeal (of which at least two judges shall be former judges of the Supreme Court);
  - ii. High Post Committee II comprising two retired judges of the Supreme Court or Court of Appeal and three retired public officers who have held the office of Secretary to a Ministry.

## **PUBLIC SERVICE**

### **PRINCIPAL CRITERIA FOR APPOINTMENT AND PROMOTIONS - MERIT**

- 21.2. The State shall ensure that, subject to the provisions of the Constitution, merit shall be the principal criteria for appointments and promotions to any public office.

### **PUBLIC SERVICE COMMISSION**

- 21.3. There shall be a Public Service Commission which shall consist of fifteen members appointed by the President:
- a. Five members shall be persons who have had over fifteen years of service as a public officer with senior management experience;
  - b. Seven members shall be persons having academic or professional qualifications;
  - c. Two members shall be persons who have served not less than five years in the Board of Directors of a public quoted company;
  - d. One member who has served as a judge of the Supreme Court or of the Court of Appeal who shall be the chairperson of the Commission.

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<sup>54</sup> Professor G.H. Peiris objects to sub paragraph (e) of Article 113

- 21.7. There shall be such number of committees of the public service for the purpose of delegating its powers with regard to the fields of management, administration, education, health and police.
- 21.8. The Public Service Commission shall appoint members of such committees after consultation with the High Posts Committee for a period determined by the Commission.
- 21.9. The independence of the Public Service Commission has also been strengthened.

### **INDEPENDENT DEPARTMENTS**<sup>55</sup>

- 21.10. Three departments, (Attorney General's Department, Auditor-General's Department and Elections Department) are identified to be independent departments which will not fall within any Ministry to avoid any political interference or any public perception to that effect. The relevant Article reads as follows;

#### ***Independent Departments***

137. (1) *The Attorney General's Department, Auditor-General's Department and the Department of the Commissioner General of Elections shall be independent and shall not be under any Ministry.*
- (2) *The Attorney General, Solicitor General, Auditor General or the Commissioner General of Elections may be removed from office by the President.*
- (a) *upon reference being made by the President, the relevant High Posts Committee established under Article 121 recommends the removal, after an inquiry being held by the Committee according to the principles of natural justice; or*
- (b) *is convicted by a Court of law of any offence involving moral turpitude; or (c) a resolution for the imposition of civic disability has been passed under Article 216;*

### **PUBLIC ENTERPRISE MANAGEMENT COMMISSION**<sup>56</sup>

- 21.11. There shall be a Public Enterprise Management Commission to oversee all public enterprises (commercial enterprises of the State) in addition to the Public Service Commission, the Judicial Service Commission, the Law Officers' Commission, and the Local Government Service Commission referred to in the draft.

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55 Chapter XV

56 Professor G. H. Peiris objects to sub paragraph (b) of Article 157(1) stating that "it amounts to taking the role of this commission too far".

The Public Enterprise Management Commission shall have the power and duty to;

- (i) recommend to the President qualified and suitable persons to be appointed to Boards of Management of public enterprises and the President shall appoint suitable persons notwithstanding anything to the contrary in any other law, or in the Memorandum of Articles of any Government owned company after taking into consideration the recommendations so made. The President shall appoint one member as its Chairman. The Chairman and members of the public enterprise shall hold office for a term not exceeding three years and shall be eligible for reappointment.
- (ii) prepare schemes of recruitment and promotion applicable to staff of each public enterprise in consultation with such public enterprise;
- (iii) take such action as may be necessary to advance the skills of the employees of public enterprise;
- (iv) formulate a framework for a sustainable and stable Public Enterprise Reform Strategy;
- (v) advise and assist public enterprises to augment their revenue and profits;
- (vi) monitor the performance of public enterprises and to identify weaknesses in their performance and to make recommendations to the Board of Management of public enterprises for the correction of the said weaknesses;
- (vii) submit a report annually to the President on the efficiency of public enterprises.

21.12. The power of the Cabinet of Ministers to formulate policy relating to the Public Service and to appoint Heads of Department shall remain but appointment of Heads of Department need to be done in consultation with the Public Service Commission or the Public Enterprise Management Commission as the case maybe. All policies formulated shall be published to enable the public to have advance notice and to prevent ad-hoc policies being made. All Island Services are constitutionally recognised.

21.13. Public officers are required to take the oath prescribed in the Fourth Schedule and is also required to submit an assets declaration annually.

## **ATTORNEY GENERAL**

22.1. The President shall appoint the Attorney General and Solicitor General upon the recommendation of the High Posts Committee and subject to approval of the Legislative Council.

22.2. The Attorney General's Department shall be independent.

- 22.3. The Attorney General and Solicitor General shall hold office until they attain the age of sixty years.<sup>57</sup>
- 22.4. There shall be a Law Officers' Commission consisting of
- a. Two members who shall be retired judges of the Supreme Court who were not former officers of the Attorney General's Department;
  - b. The Attorney General;
  - c. The Solicitor General;
  - d. A retired public officer who has held office as a Secretary to a Ministry.
- 22.5. Subject to the Constitution, the Law Officers Commission shall have the power of appointment, promotion, transfer, disciplinary control and dismissal of law officers including the power of formulating schemes of recruitment, promotion and transfer.

### **LOCAL GOVERNMENT SERVICE**

- 23.1. There shall be a Local Government Services Commission.
- 23.2. The Local Government Services Commission shall consist of five members
- a. Two members who shall be persons who have had over fifteen years' service as a public officer with senior management experience; and
  - b. Three persons who have academic or professional qualifications
- 23.3. Subject to the provisions of the Constitution, the Local Government Services Commission shall be responsible for and shall have powers of appointment, transfer, dismissal and exercise disciplinary control over members of the Local Government Service.

### **POLICY PLANNING**<sup>58</sup>

- 24.1. There shall be a National Council of Policy planning consisting of
- a. The President
  - b. The Prime Minister

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57 Professor G. H. Peiris objects to Article 169(2) as there is at present a rational move warranted mainly by "life-expectancy" trends to raise the retirement age of employees in the civil segment of the public sector to 65

58 Professor G.H. Peiris is not in agreement with Chapter XII. His objection is mainly based on the inclusion of the leaders of the opposition political parties of the legislature in a 'National Planning Council' on the premise that parties in the opposition have commitments to policies that are different from those of the government. Therefore a council as envisaged in Chapter XII could be realistic only in a context of a 'National Government' formed by a broad alliance of political parties.



- c. The Leader of the Opposition
  - d. Ministers who are members of the Cabinet of Ministers
  - e. Ministers who are not members of the Cabinet of Ministers and deputy ministers
  - f. Leaders of political parties represented in the National State Assembly
  - g. One Minister from each of the Provincial Council.
- 24.2. The President shall be the head of the National Planning Council.
- 24.3. The National Planning Council shall formulate national policy.
- 24.4. Every national policy formulated by the National Planning Council shall after approval by the Cabinet of Ministers be published and placed before the National State Assembly for its approval.
- 24.5. Every national policy will come into effect after the approval of the National State Assembly and every activity of the government shall be carried out in conformity with such policy.

#### **NATIONAL ADVISORY COUNCIL**<sup>59</sup>

- 25.1. There shall be a National Advisory Council.
- 25.2. The Members of the Council shall be persons having qualifications and experience in the fields of government activity including planning, national security, international affairs, education, agriculture, irrigation, industries, trade, engineering, architecture, housing, urban development, transport and highways.
- 25.3. The functions of the advisory council are:
- a) to express its opinion in relation to proposed legislation, the development of policies, formulation of international treaties and agreements, preparation of national and provincial economic, social and development plans.
  - b) to review national policies and to make recommendation to revise such policies in the public interest.

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<sup>59</sup> Chapter XIV - Professor G. H. Peiris objects to Chapter XIV. He states “a permanent standing ‘council’ as envisaged in the Draft Proposals is an unnecessary institutional arrangement. No government of Sri Lanka has lacked expert advice which is readily given when requested. Moreover, in technically complex issues (such as the use of chemical inputs in farming, the use of coal power, conservation of lacustrine and palustrine ecosystems, ‘devolution’ of political power, permitting joint ventures with foreign firms, priorities of government investment in capital development projects, death penalty) there is so much controversy among ‘experts’ that ‘standing committees’ of the type envisaged will not cater to the prevailing needs. The list of powers ascribed to this institution in Article 127 has the effect of eroding the powers of the elected representatives of the people.

## **GOOD GOVERNANCE**

### **FINANCE**

26.1. The independence of the Monetary Board is strengthened by ensuring the proper appointment of its members, their tenure of office and their removal.

### **NATIONAL PROCUREMENT OVERSIGHT COMMISSION**

26.2. This Commission is an independent Commission, the members of which are appointed by the President after recommendation by the High Posts Committee and subject to endorsement by the Legislative Council.

26.3. The Commission shall have the following powers:

- i) to monitor every government institution for the purpose of ascertaining:
  - a) whether all procurement of goods and services, works, consultancy services, information systems and investments by government institutions are based on duly approved procurement plans;
  - b) whether terms and conditions relating to every procurement including the formulation of specifications for the purchase of good and services, works, consultancy services, information systems and investments are in the interests of the relevant government institutions and are reasonable and fair;
  - c) whether all qualified bidders for the provision of goods and services, works, consultancy services, information systems and investments relating to procurements by a government institution are afforded an equal opportunity to participate in the bidding process for the procurement of such goods and services, works, consultancy services, information systems and investments;
  - d) whether the procedure followed in the selection of all contractors, suppliers or investors and the award of contracts for the procurement of good and services, works, consultancy services, information systems and investments relating to a government institution are fair and transparent;
  - e) whether the members of the procurement committees and bid evaluation committees relating to procurements appointed by government institutions are suitably qualified and whether the decisions, recommendations or awards made by such committees have been just and equitable and according to law.
- ii) The Commission shall have the power to issue directions, both interim and final as may be necessary in the event the procurement process is being conducted in violation of the provisions of the Constitution or any law.

## FRANCHISE AND ELECTIONS<sup>60</sup>

26.4. To change the system of elections in the following manner.

### **Election to the National State Assembly.**

- a) There shall be a hybrid system for the election of members of the National State Assembly.
  - i. 160 members to be elected directly by the first-past-the-post for each electorate.
  - ii. 50 members to be nominated by political parties based on the percentage of votes received by them provided the political party receives at least 5% of the total vote.

*[The All Party Conference by consensus accepted the aforesaid methodology proposed by the Dinesh Gunawardena Committee.]*

### **Women Representation**

- b) Only a recognised political party, which has nominated at least 24 female members (approximately 15% of the elected members) on the first past the post system to contest the General Election will be allowed to elect the aforesaid 70 elected members for electoral districts. The objective of this provision is to compel political parties to nominate women to the legislature.

### **Local Authority Elections**

- c) Local Authorities to be constituted with Members representing every ward in any Local Authority area elected on the “First Past the Post” system (70%) and with members elected on a proportional representation system (30%) similar to the National State Assembly elections.<sup>61</sup>

60 See Chapter XVII – Professor Peiris suggests Article 179 be amended by renumbering sub paragraphs (4), (5) and (6) as (3), (4) and (5) and inserting the following paragraphs;

- (1) The Delimitation Commission shall, on the basis of detailed investigations, propose changes in the existing network of Provinces and Districts as deemed appropriate to the political, socioeconomic, conservational, and security needs of Sri Lanka.
- (2) The Delimitation Commission shall submit proposals relating to the desired correspondence between its proposed network of Provinces and Districts, on the one hand, and the Electoral Districts and Electoral Divisions, on the other, ensuring the spatial Delimitation of the 160 Electoral Divisions as stipulated by the Constitution.

61 Professor A. Sarveswaran is not in agreement with Article 184 and states that “it affects the representation of the minority communities in the National State Assembly.”

Professor Sarveswaran is not in agreement with Article 185 and states that “it affects the Provincial Council System, and power sharing to reconcile the ethnic conflict”

### **Provincial Council Elections**

- d) To do away with a separate Provincial Council election and to constitute Provincial Councils with those elected separately out of those who contest for Local Authorities which shall constitute 70% members and balance 30% nominated proportionately based on the votes obtained by parties at the Local Authority Elections. Every elector shall be entitled to vote to elect a Local Authority member to represent the ward he is residing and to elect a Provincial Council member to represent his Local Authority from among the members contesting in his Local Authority area.

### **Presidential Elections**

- e) At the election of the President, the candidate who receives more than one half of the valid votes cast is declared elected under the existing provisions in the Constitution.<sup>62</sup> Majority of the members (5) were of the view that the existing provisions should be incorporated in the draft. However Mr. Manohara De Silva, PC, Professor G.H. Peiris, Mr. Sanjeeva Jayawardane, PC and Mr. Samanthe Ratwatte, PC, prefers the double majority system which recognises the geographical distribution of votes as well as the number of votes received by a candidate in electing a president.

Mr. Samanthe Ratwatte, PC points out that the fundamental objective sought to be achieved here is the enabling of the formation of stable governments for effective governance. As the President is constrained to select his Cabinet out of the Members of the Legislature and a majority of those members in turn are elected on the basis of first-past-the-post in each electorate, there would be an incongruous situation if no weightage is given to the electorates when electing the President in such a situation. The party with a legislative majority and the President are highly likely to be from different parties paving the way for constant unstable governments. The harm caused to democratic principles by the ability of a particular candidate to get the support of regional politicians with promises of numerous favours to such politicians at the cost of national interest is also averted by giving an equal weight to number of electoral divisions secured and the cumulative national vote.

### **Conduct of Free and Fair Elections**

- (1) The Commissioner of Election to be appointed with the approval of the Legislative Council.

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62 Article 94 of the 1978 Constitution.

- (2) Prohibit the use of any movable or immovable property belonging to the State or any public corporation by any candidate or by any political party.
- (3) The Commissioner of Elections is empowered to issue guidelines to broadcast and telecast operations, the print media and those who use social media necessary to conduct free and fair elections. Non-compliance is made a punishable offence.
- (4) Provision is made to deploy the Police and the Armed Forces to assist elections when necessary.

## **LEGISLATURE**

### **NATIONAL STATE ASSEMBLY**

- 27.1 “Parliament” to be described as the “National State Assembly” in line with the First Republican Constitution of Sri Lanka enacted in 1972.<sup>63</sup> The tenure of the National State Assembly shall remain as 5 years.
- 27.2 The President shall not have the power to dissolve the National State Assembly. This restriction on the President’s power to dissolve National State Assembly is a significant departure from the existing constitutional model, where the President is given that power. Under the prevailing constitutional provisions introduced by the Twentieth Amendment, the President may dissolve National State Assembly after National State Assembly has concluded three and a half years of its term.

### **DECLARATION OF ASSETS AND OATHS AGAINST SUPPORTING A SEPARATE STATE MADE MANDATORY<sup>64</sup>**

- 27.3 A member of the National State Assembly to sit and vote in the National State Assembly,
- (i) has to take the affirmation/oath in the 4<sup>th</sup> Schedule which includes the affirmation/oath introduced by the 6<sup>th</sup> Amendment. (oath against creating a separate State),
  - (ii) has to submit annually a declaration of assets of himself and of the members of his family.

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63 Professor G. H. Peiris is opposed to the idea of referring to the Legislature being called the National State Assembly.

64 Article 196.

**DUAL CITIZENS NOT PERMITTED TO CONTEST**<sup>65</sup>

- 27.4 Only citizens of Sri Lanka (who are not citizens of any other country) shall be permitted to be elected as a member of the National State Assembly.
- 27.5 No citizen of any other country shall be entitled to contest any election. Local Authority Elections are recognised as part of the sovereignty of the people in the same way other elections are recognised.

**“CROSSING THE FLOOR” RESTRICTED**<sup>66</sup>

- 27.6 A member of the National State Assembly, who has contested the election being nominated by a recognised political party voluntarily gives up his membership of such party or obtains the membership of another political party or votes against a party decision, such member shall vacate his seat in the National State Assembly, unless such member together with others have constituted a separate group which is not less than one third of the members of such party represented in the National State Assembly. If a political party merges with another political party and a member is not in agreement with such merges and the member opts not to join with such new party consequent to such member, shall not vacate his seat.

**LEGISLATIVE POWERS**

- 27.7 In the present Constitution, the Parliament needs two-thirds majority to enact legislation on subjects included in the Provincial Council List. In the proposed draft, the National State Assembly can also enact any law the Provincial Council is empowered to enact. Laws of the National State Assembly shall supersede statutes of Provincial Councils.
- 27.8 The relevant Article is reproduced below.

*210. (1) The National State Assembly shall have power to make laws including laws having retrospective effect and repealing or amending any provision of the Constitution, or adding any provision to the Constitution:*

*Provided that, the National State Assembly shall not make any law –*

- (a) suspending the operation of the Constitution or any part thereof, or*
- (b) repealing the Constitution as a whole unless such law also enacts a new Constitution to replace it.*

<sup>65</sup> Article 176(e) – see the view of Mr. Navin Marapana, PC referred to in foot note 51.

<sup>66</sup> Article 200 – Professor G. H. Peiris objects to this curtailment on ‘crossing the floor’. His reasons are (a) most of the political parties in Sri Lanka do not have registered lists of party members; (b) in order to implement this proposal it would be necessary for every party to register and publicise their lists of members well in advance of the polls.

- (2) *Nothing in Chapter XXII shall be read or construed as derogating from the powers conferred on the National State Assembly by the Constitution to make any laws including any subject enumerated in the Schedule to Chapter XXII.*
- (3) *If any provision of any statute made by a Provincial Council is inconsistent with the provisions of any law, whether enacted before or after the enactment of the statute, the provisions of such law shall prevail and the provisions of such statute shall to the extent of such inconsistency be void.*

## 27.9 PROPRIETARY AND CONSTITUTIONALITY OF BILLS PLACED BEFORE THE NATIONAL STATE ASSEMBLY

### **Obtaining the Attorney General's Advice is Mandatory**

- (i) The Attorney General is required to examine every Bill before its publication to ascertain whether the Bill is unconstitutional to enable the Government to amend before the legislative process is taken further. Where the Attorney General is of the opinion that any Bill or any provision is inconsistent with the Constitution, the Government may proceed with the same Bill only after invoking the jurisdiction of the Supreme Court to seek the opinion of the Supreme Court with regard to its Constitutionality.

### **Committee Stage Amendments are subject to review**

- (ii) Provisions relating to challenging of Bills in the Supreme Court are strengthened. When amendments are introduced at the Committee stage which are inconsistent with the Constitution and the Attorney General is of the opinion that the proposed amendment is unconstitutional, it shall be the duty of the Speaker to refer the amendment to the Supreme Court for review. In any event an amendment that has escaped the scrutiny of the Supreme Court can be challenged before the Supreme Court even after its enactment.

### **Time Granted to Challenge Bills Extended**

- (iii) The time given to challenge Bills have been increased to two weeks from the present "one week".

### **All Bills Reviewed by the National Advisory Council**

- (iv) All Bills presented by the Government shall be referred to the National Advisory Council (NAC) forthwith for their opinion and recommendation to ensure the propriety and constitutionality of the proposed legislation. A period of two weeks is given to the NAC for their deliberations and to make their opinion and

recommendations known. The report of the NAC shall be published to keep the public informed. When the Supreme Court assembles to hear interested parties and the State with regard to the constitutionality of the proposed legislation, the Supreme Court will have the benefit of the report of the NAC.

### **No “Urgent Bills” Permitted**

- (v) No provision is made to bring “Urgent Bill” within 24 hours as it was under the original 1978 Constitution and the 20<sup>th</sup> Amendment. Urgent Bills have been provided for to circumvent the provisions relating to challenging of Bills.

## **TAX EXEMPTIONS AND OTHER PRIVILEGES GIVEN TO MEMBERS OF PARLIAMENT**

27.10. A Member of the National State Assembly shall not be entitled to any exemption or reduction of any tax, duty of other levy more favourable than those exemptions and reductions granted to public officers. Members of the National State Assembly will not be permitted to alienate property acquired using such privilege during his tenure as a member of the National State Assembly.

27.11. A member of the National State Assembly who has been given any residence or vehicle is required to handover such residence or vehicle within one month of his relinquishing his office and failure to do so will be treated as an offence committed by such member which may result in imprisonment or a payment of fine.

## **CODE OF CONDUCT OF MEMBERS OF THE NATIONAL STATE ASSEMBLY<sup>67</sup>**

27.12 The National State Assembly is expected to formulate a code of conduct for members of the National State Assembly incorporating sanctions for violating such code of conduct

## **REFERENDUM**

28 Any Bill which violates any provision referred to in Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 72, 77, 183, 184, 210, 211, 218 and 221 to be enacted needs the approval of the People at a Referendum. The President or the National State Assembly can refer any matter of national importance to the people at a Referendum and the decision of the people shall be binding.

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<sup>67</sup> Article 209(1)(iii).



## **JUDICIARY**

### **INDEPENDENCE OF THE JUDICIARY**

28.1. The draft Constitution has set out various provisions to ensure the independence of the judiciary.

### **METHOD OF IMPEACHMENT OF SUPERIOR COURT JUDGES**

28.2. The present Constitution provides for the impeachment of a superior court judge by Parliament.

28.3. The draft Constitution requires that any impeachment of a superior court judge be only upon:

- i. A motion signed by at least 1/3<sup>rd</sup> of the members of the National State Assembly;
- ii. Subsequent to the said resolution, the High Posts Committee [consisting of former judges of the Superior Courts] shall inquire into the allegations. Such Judge has the right to be present at such inquiry and may be represented by Counsel.
- iii. If the High Posts Committee finds the judge not guilty of the allegations, no further steps shall be taken.

### **JUDICIAL SERVICE COMMISSION**

28.4. The Judicial Service Commission is increased to five members including the Chief Justice and the four most senior judges of the Supreme Court.

28.5. A superior court judge on retirement shall receive for a period of two years, all emoluments, inclusive of salary and all perquisites, equal to that received at the point of retirement.

28.6. No Superior Court Judge for a period of two years can hold any other office.

28.7. There shall be immunity from suit for all judges and members of the JSC in respect of all official acts, except those done in bad faith.

### **THE JUDICATURE**

28.8. Subject to the provisions of the Constitution, the institutions for the exercise of the judicial power of the People shall be:

- a. The Supreme Court of the Republic;
- b. The Court of Appeal of the Republic;
- c. The courts of first instance, tribunals or such institutions as the National State Assembly may from time to time ordain and establish.

- 28.9. A Court of First Instance established in a judicial zone or district in any province shall not be conferred exclusive jurisdiction in respect of any category of cases which is not conferred on such court in other judicial zones or districts unless one such court is established in every province. This would ensure that no court in one province will have exclusive jurisdiction in respect of any matter.
- 28.10. The Supreme Court and the Court of Appeal shall have power to punish for contempt of itself or elsewhere with fine or punishment, provided that the punishment for such offence shall be a fine not exceeding 10 million rupees or rigorous imprisonment for a term not exceeding 2 years or both.<sup>68</sup>

## THE SUPREME COURT

- 28.11. The Supreme Court shall be the highest and final Superior Court of record in the Republic and, subject to the provisions of the Constitution, the Supreme Court's jurisdiction shall include:
- a. Jurisdiction in respect of Constitutional matters;
  - b. Jurisdiction for the protection of fundamental rights, language rights and the enforcement of Constitutional duties;
  - c. Final appellate jurisdiction;
  - d. Consultative jurisdiction;
  - e. Jurisdiction in election petitions;
  - f. Jurisdiction in respect of any of the privileges of the National State Assembly;
  - g. Jurisdiction in respect of such other matter vested in the Supreme Court by the Constitution or by any other law.
- 28.12. The Supreme Court shall also exercise revisionary jurisdiction.<sup>69</sup>
- 28.13. In the exercise of its revisionary jurisdiction, the Supreme Court on the application of any person or of its own motion may call for any record of any other court and make an order in the interests of justice.
- 28.14. The Supreme Court may also at any time exercise its inherent jurisdiction in the interests of justice or to prevent abuse of the process of court. The inherent powers of the Supreme Court will be expressly recognized whereby the Supreme Court may at any time exercise such powers to make any appropriate order in any matter, proceeding or in relation to any matter.

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68 Article 236.

69 Article 271.

## **SUSPENSION / REMOVAL OF ATTORNEYS-AT-LAW**

28.15. An Attorney-at-Law may be removed by the Supreme Court on the recommendation of the disciplinary committee of the BASL.

At present an Attorney-at-Law may be removed by the Supreme Court. The draft requires that such removal be preceded by a recommendation of the Bar Association of Sri Lanka. This provision has been introduced to cater to situations in which the conduct of an Attorney is judged by his own peers and to prevent situations in which the functions/duties/responsibilities of an Attorney-at-Law are not adequately understood or appreciated.

## **COURT OF APPEAL**

28.16. The jurisdiction of the Provincial High Courts presently hearing appeals from District Courts, Magistrate Courts or any other Court of First Instance shall be vested in the Court of Appeal.

28.17. The Court of Appeal may sit in the Provinces.

*[It is expected that there will be several divisions of the Court of Appeal sitting in the Provinces].*

28.18. The number of judges of the Court of Appeal shall be increased to 46.

28.19. There shall be several divisions of the Court of Appeal:

- i. Civil appellate division;
- ii. Criminal appellate division;
- iii. Any other division as determined by the President of the Court of Appeal.

28.20. A bench consisting of the President of the Court of Appeal shall exercise its jurisdiction in Colombo.

28.21. The Court of Appeal shall provide reasons in every judgment and final order.

28.22. The Court of Appeal shall have jurisdiction to hear and determine any question relating to infringement or imminent infringement of any fundamental right by persons other than those engaging in executive and administrative action.

## **DUAL CITIZENS<sup>70</sup>**

29. No dual citizen shall hold the office of:

- a. The President;

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<sup>70</sup> Mr. Navin Marapana, PC is of the view that all citizens including dual citizens should be afforded equal rights under the Constitution, including the right to stand for election to and hold any public office, subject only to the qualification that if a dual citizen stands election for the executive presidency and he is declared elected, then he must renounce his citizenship of any other nation, since as executive president, he will be empowered to declare war and peace.

- b. A member of the National State Assembly, Provincial Council or Local Authority;
- c. An ambassador, high commissioner or a member of the foreign service or of the public service;
- d. A Judge.

## ASSETS

- 30.0 No person shall assume office as President, Prime Minister, a member of the Cabinet, Deputy Ministers/State Ministers, a member of the National State Assembly, a judge of the Supreme Court, Court of Appeal and Court of First Instance unless he submits in such form as may be prescribed a declaration of all –
- i. his assets and liabilities;
  - ii. the assets and liabilities of his spouse;
  - iii. the assets and liabilities of each of his children;
  - iv. the assets and liabilities of any trust of which he or any member of his family is directly or indirectly a beneficiary;
  - v. the transfers of all assets and liabilities made by him in favour of any person during a period of six years immediately prior to the date of such declaration.
- 30.1. It shall be an offence to make a false declaration. [Up to now , there was no provision for the declaration of assets prior to assuming office.]

## PROVINCIAL COUNCILS<sup>71</sup>

- 31.1. The Majority of the members of this Committee are not in favour of the Provincial Councils introduced by the 13th Amendment. They are of the view that there should be one country where all citizens are equal and are not discriminated upon on any ground whatever inclusive of racial or religious grounds. They are of the view that no citizen should be granted privilege based upon racial or religious grounds. Merit should be the criteria of appointment. Religion and culture of all citizens should be respected and recognized.
- 31.2. Professor A. Sarveswaran expressed the view that the structure introduced by the 13<sup>th</sup> Amendment should be retained.
- 31.3. Professor G.H. Peiris, Manohara De Silva PC and Samantha Ratwatte PC particularly is of the view that the 13th Amendment is prejudicial to the independence, sovereignty,

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71 Chapter XXII - Professor A. Sarveswaran is not in agreement with Chapter XXII and states that “The provisions of this Chapter deprives the powers the Provincial Councils have under the present Constitution, and affects power sharing to reconcile the ethnic conflict.

unitary character, territorial integrity, and national security of the State. Accordingly, they do not favour the retention of the Provincial Councils established under the 13th Amendment. The overwhelming majority of those who made representations before this Committee are in support of a unitary state and against the Provincial Council structure introduced by the 13th Amendment.

31.4. Mr. Manohara De Silva PC and Mr. Samantha Ratwatte PC agrees with with proposed Chapter XXII on the basis that

- (i) No separate elections are held to constitute Provincial Councils,
- (ii) The Provincial Councils to consist of representatives of Local Authorities elected at the Local Authority Elections,
- (iii) The Provincial Councils to exercise executive power subject to the executive powers of the President and the Ministers of the Cabinet of Ministers
- (iv) Power of the National State Assembly is not restricted in any manner with regard to any subject on which a Provincial Council has the power to make statutes.

31.5. Professor G. H. Peiris is against the provincial council system and accordingly is not in favour of the provisions incorporated in Chapter XXII.

31.6. Professor Peiris is of the view that devolving real power from the Central Government to relatively large sub-national units of territory where there is a preponderance of people with a distinctive ethnic identity has an irreversible impact of intensifying secessionist forces, especially because such forces have formidable sponsorship from several external and internal sources of support. Accordingly, he proposes to provide;

- (1) statutory devices designed to accommodate the minority groups in national centres of executive and legislative power at their highest levels;
- (2) for the establishment of a bicameral legislature designed to accommodate an enhanced level of participation of representatives of the ethnic minorities (as distinct from ad hoc ‘experts’) in the functions of the Central Government while facilitating an improvement in the quality of decision-making at the highest levels of government.
- (3) constitutional provisions for a re-delimitation of the archaic provincial system (delineated about 130 years ago to cater to different administrative possibilities to serve a different ‘plantation-led economy’ and accordingly, as a compromise, pending a proper re-delimitation of the sub-national spatial networks of government sometime in the future, Professor Peiris suggests the bifurcation of the present Eastern Province so as to establish a ‘North-Eastern Province’ (the re-delimited ‘North-Eastern Province’ includes the present Trincomalee District and three Prādēshiys Sabba (PS) units presently in the North-Central Province) and

a new 'South-Eastern Province' (An area in the south-eastern lowlands consisting of the present Batticaloa and Ampara Districts and the adjacent Prādēshīya Sabhā areas of Welikanda, Thamankaduwa, Dimbulagala and Dehiattakandiya.)

- 31.7. Professor Peiris also suggests that with a network of Administrative Districts constituting the second tier of spatial units of sub-national government in Sri Lanka:
- a) it would be possible to devolve more powers from the Centre to the Regions without a serious threat to the territorial integrity of the nation;
  - b) with appropriate changes in District-level and Pradeshiya Sabha-level delimitation would be possible to curtail the impact of ethnic enclaves;
  - c) the development strategies which ought to be adopted for optimum harnessing of the resources of the Vanni are different from those appropriate for the Jaffna Peninsula. In the former region there is an abundance of underutilised physical resources which could be harnessed for dairying and for the production of a wide range export-oriented agricultural products drawing appropriate lessons from the highly successful forms of 'dry farming' with modern technology. Likewise its periphery provides sites that could be converted to major centres of tourism. This form of development could cater to the dire demands of employment from the densely populated Jaffna peninsula where, due mainly to its educational advances, generated a numerically large youth whose rising aspirations needs to be catered to;
  - d) the geographical 'remoteness' of the Far North will be drastically reduced by the ongoing advances of its links in travel and transport with the metropolitan Greater Colombo;
  - e) the constraint to the implementation of such a strategy of economic advancement lies mainly in the prevailing arrangement of political control over the entirety of the Northern Province.
- 31.8. However, all persons [and organisations] whom the Committee met were in favour of a Provincial Council system, though a few were of the view that the Provincial Councils be changed to District Councils.
- 31.9. It is in these circumstances that the draft contains the chapter on Provincial Councils.
- 31.10. A novel method is suggested for the election of the members of the Provincial Councils so as to ensure greater participation of each local government area in the Provincial Council.
- i. The Election of members to Provincial Councils and Local Authorities will be held on the same day in one election.

- ii. Each elector shall have two votes to elect
- iii. a. a member for his electoral unit [ward].
- b. a member for the Provincial Council from any one of the candidates in his local government area.

Example – a voter in the Colombo Municipal Council area could vote for

- (i) a candidate from his own ward to represent him in the Colombo Municipal Council;
- (ii) A candidate from any ward of a municipal council standing for election in the Colombo Municipal Council to represent him in the Provincial Council.

- c. This would ensure that all local government areas are represented in the Provincial Council.

Example – the members of the Western Provincial Council cannot be solely from the Colombo Municipal Council thus depriving the other local government areas of representation. In this method each local government area would be represented in the Provincial Councils.

## **CENTRE PERIPHERY RELATIONS / PROVISIONS FOR THE PARTICIPATION OF PROVINCIAL COUNCIL MEMBERS AT THE CENTRE**

- 32.1. The draft (Chapter XXII) provides for the devolution of power to the provinces whilst also providing for the participation of the Provincial Council in decision making at the centre.
- 32.2. Thus, citizens at the grass roots will have the ability to exercise power within the province and also at the centre.
- 32.3. In the circumstances, the draft provides for enhanced power distribution in that the Provincial Council could participate in central decision making in respect of various matters.
- 32.4. A member from each Provincial Council will participate in the formulation of national policy. In addition, each Minister of the Cabinet shall have an Inter-Ministerial Executive Council where the relevant Cabinet Minister, State Minister, Deputy Minister if any, and the relevant Provincial Council Minister together with the relevant officials participate in the formulation of policies regarding such Ministries and necessary steps to be taken to overcome practical difficulties in the implementation of such policies.
- 32.5. The draft envisages an inter-ministerial executive committee, to ensure that ministers of the Centre [cabinet and non-cabinet] and provincial ministers are provided a

platform for all matters relating to administration and development including projects of government to be carried out after consulting each other.

- 32.6. For example, the Cabinet Minister of Housing together with Provincial Ministers of Housing and relevant officials would assist in formulating policies with regard to housing and coordinate activities in overcoming difficulties with respect to service delivery and implementation.
- 32.7. The people at the ground level will also participate in the affairs of the Centre in that the Local Authorities will participate in the Divisional Planning Committee established in every Divisional Secretariat division.
- 32.8. The Divisional Planning Committee shall consist of the Members of the National State Assembly representing any area of the Divisional Secretary's Division; all members of Local Authorities within the Divisional Secretary's Division; any Divisional Secretary and Assistant Divisional Secretaries within the Divisional Secretary's division; Grama Niladharis of the Divisional Secretary's Division and all officers in charge of government institutions within the Divisional Secretary's division on invitation, Heads of Co-operative Societies within the Divisional Secretary's division on invitation, clergy in charge of any place of religious worship within the Divisional Secretary's division on invitation. Thus, the Divisional Planning Committee will be comprised of those representing the grass roots.
- 32.9. The National Planning Council shall consult and take into consideration the views of the Divisional Planning Committees in formulation of National Policy.
- 33.1. National Policy shall be formulated in accordance with chapter XII and shall be formulated by the following —<sup>72</sup>
  - a. The President;
  - b. The Prime Minister;
  - c. Leader of the Opposition;
  - d. Ministers of the cabinet of ministers;
  - e. Ministers who not members of the cabinet of ministers;
  - f. Deputy Ministers;
  - g. Leaders of all political parties represented in the National State Assembly;
  - h. A minister representing each Board of Ministers of the Provincial Council.

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72 Professor G. H. Peiris records his objection to this paragraph. Please see fn. 59 above.



- 33.2. Thus, National Policy will be formulated by the aforesaid after consulting various other representatives at local authority level. Such National Policy shall be published.
- 33.3. The draft provides for the provincial administration to participate in the decision making at the centre, which is a notable departure from the existing Constitution.

## **POWERS OF THE PROVINCIAL COUNCIL**

- 34.1. The Provincial Council shall have the power to:
- a. In accordance with the provisions of the Constitution, law and National Policy enact statutes for that province with regard to subjects enumerated in the Provincial Council List.<sup>73</sup>
  - b. The draft contemplates one list only – a Provincial Councils List. This list is based primarily, albeit with a few alterations, on the Provincial Councils List adopted by the All Party Representatives Committee in 2010.
  - c. Nothing in Chapter XXII shall be read or construed as derogating from the powers conferred on the National State Assembly by the Constitution to make any laws including any subject enumerated in the Schedule to Chapter XXII.<sup>74</sup>
  - d. If any provision of any statute made by a Provincial Council is inconsistent with the provisions of any law, whether enacted before or after the enactment of the statute, the provisions of such law shall prevail and the provisions of such statute shall to the extent of such inconsistency be void.<sup>75</sup>
  - e. The Board of Ministers of a Provincial Council of a Province shall exercise executive power within the Province in respect of the subjects enumerated in the Schedule to the Chapter in accordance with the provisions of the Constitution and in compliance with the law and National Policy formulated under Chapter XII.<sup>76</sup>
  - f. In the event the Board of Ministers of the Provincial Council or any provincial minister exercise executive power by any act or omissions in violation of sub paragraph (b) above, the President or the Cabinet of Ministers or any member of the Cabinet of Ministers with the concurrence of the President may give any direction to the Board of Ministers of the Provincial Council or any Provincial Minister to rectify such violation within a time and in the manner prescribed by the President.<sup>77</sup>

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73 Article 226.

74 Article 210 (2).

75 Article 210 (3).

76 Article 228.

77 Article 228.

- g. The Local Authorities will have greater participation in the affairs of the Provincial Council through the District Executive Committees (consisting of members of Provincial Council representing that district) and ministerial Executive Committees (consisting of the Provincial Council and selected members of the Provincial Council with sufficient knowledge and experience relating to such Ministry.)

## DISSOLUTION OF PROVINCIAL COUNCILS

- 34.2. The President shall have the power to dissolve the Provincial Councils only when a Provincial Council acts in violation of the provisions of the Constitution or law or National Policy formulated in chapter XII.<sup>78</sup>
- 34.3. However, prior to dissolution, the President or the Cabinet of Ministers or a minister with the consent of the the President shall issue a direction to the relevant Provincial Council to act in compliance with the Constitution, the law or national policy.<sup>79</sup>
- 34.4. A direction issued could be challenged in the Supreme Court or Court of Appeal if such direction is issued ultra vires.<sup>80</sup>
- 34.5. Thus the Supreme Court and the Court of Appeal are empowered to ensure that a direction issued may only be done so lawfully and only if the conduct alleged is in violation of the Constitution, a law or National Policy.
- 34.6. Once the direction is so issued, the Provincial Council shall comply with the said direction.
- 34.7. In the event the Provincial Council complies with the direction no further action could be taken.
- 34.8. If however, the Provincial Council does not comply with the direction, the President may dissolve the Council on the ground that the direction has not been complied with.<sup>81</sup>
- 34.9. The dissolution of a Council by the President is also subject to judicial review.<sup>82</sup>
- 34.10. These provisions are designed to ensure that:
  - a. The directions given are limited in scope;
  - b. The dissolution has been done in accordance with the Constitution.

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78 Article 231.

79 Article 228 read with Article 231.

80 Article 232.

81 Article 231(a).

82 Article 232.

35. At present:
- a. There is no provision for Provincial Councils to participate in national planning.
  - b. There is no provision for Provincial Councils to participate in the planning with regard to subjects not included in the provincial list or concurrent list;
  - c. There is no remedy if funds are not given to Provincial Councils;
  - d. Furthermore there is uncertainty as to the scope of powers of the lists because there is more than one list;
  - e. There is also uncertainty as to whether administrative authority vests with the Governor or the Chief Ministers and the Board of Ministers, since it is the Governor who is vested with executive power in the Province.
  - f. It is understood and appreciated that the draft cannot reflect the views of everyone. However the draft reflects the views of the people of Sri Lanka who are sovereign.

In conclusion we wish to place on record our appreciation for the efficient manner in which Ms. Molligoda discharged her duties.

On this 20th day of April 2022

Romesh De Silva  
*President's Counsel*  
***Chairman***

Justice Abdul A. W. Salaam

Professor G. H. Peiris

Manohara R. De Silva  
*President's Counsel*

Sanjeewa Jayawardane  
*President's Counsel*

Samantha Ratwatte  
*President's Counsel*

Navin Marapana  
*President's Counsel*

Professor Wasantha Seneviratne

Professor Sarveswaran Arulanantham

**Members of the Committee**

Kaushalya Molligoda  
*Secretary*

On this 20th day of April 2022



# **DRAFT CONSTITUTION**



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# **SVASTI**

WE THE PEOPLE OF SRI LANKA, CONSTITUTING ONE NATION GUIDED BY THE CIVILIZATIONAL VALUES THAT HAVE BEEN CHERISHED AND SUSTAINED FOR WELL OVER TWO MILLENNIA, DERIVING POWER AND AUTHORITY SOLELY FROM THE PEOPLE IN WHOM SOVEREIGN POWER RESIDES IN ORDER TO ENSURE OUR SOVEREIGNTY, THE RULE OF LAW, OUR FREEDOM AND INDEPENDENCE, THE INTEGRITY OF OUR TERRITORIAL POSSESSIONS, THE DUE PROTECTION OF OUR TERRESTRIAL AND MARITIME ECOLOGICAL ENDOWMENTS AND TO SAFEGUARD THE RIGHTS OF THE PEOPLE OF SRI LANKA IN EQUAL MEASURE REGARDLESS OF ANY DIFFERENCES AMONGST US INCLUSIVE OF ETHNIC, RELIGIOUS, SOCIO-ECONOMIC AND CULTURAL DIFFERENCES PRESERVING AND CONSOLIDATING CORDIAL AND MUTUALLY BENEFICIAL RELATIONS OF AMITY AND CONCORD WITH OTHER NATIONS FOUNDED ON THE PRINCIPLES OF SOVEREIGN EQUALITY RECIPROCITY AND MUTUAL RESPECT DO HEREBY ADOPT AND ENACT THIS CONSTITUTION AS THE SUPREME LAW OF THE REPUBLIC OF SRI LANKA ON THE .... DAY IN THE MONTH OF ..... IN THE TWO FIVE HUNDRED AND SEVENTY FIFTH YEAR OF THE BUDDHIST ERA [BEING THE ... DAY OF THE MONTH OF ..... IN THE YEAR TWO THOUSAND AND TWENTY TWO],



## CHAPTER I

# THE STATE

### **The State**

1. Sri Lanka is a Free, Sovereign, Independent and Democratic Republic and shall be known as the Republic of Sri Lanka.

### **Territory of the Republic**

2. (1) The territory of the Republic of Sri Lanka shall consist of twenty-five administrative districts, the names of which are set out in the First Schedule, and its off-shore islands, its territorial waters, air space and any other territory as may be acquired. The limits of each such administrative district shall be the limits existing on the day immediately prior to the date of the commencement of the Constitution.  
(2) Any territory acquired by the Republic shall be declared by the President as a new administrative district or as part of any administrative district set out in the First Schedule.  
(3) The administrative districts shall not be subdivided or amalgamated.  
(4) The State shall not cede or renounce its rights over any part of the territory of the Republic of Sri Lanka.

### **Resources of the Republic**

3. (1) All biotic and abiotic resources including soil, minerals, metal, oil and gases in, on or beneath the surface of the territory, its territorial waters, the contiguous zone and the exclusive economic zone of Republic shall belong to the Republic of Sri Lanka and be held for the purposes of the Republic.  
(2) The limits of the territorial waters, the Contiguous Zone, the Continental Shelf, the Exclusive Economic Zone and other maritime zones of Sri Lanka shall be as may be from time to time prescribed by or under any Law.

### **Unitary State**

4. The Republic is a Unitary State and is undivided and indivisible.

## **Sovereignty of the People**

5. In the Republic of Sri Lanka, sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise.

## **Exercise of Sovereignty**

6. The sovereignty of the People shall be exercised and enjoyed in the following manner-
- (a) the legislative power of the People shall be exercised by the National State Assembly, consisting of elected representatives of the People and by the People at a Referendum;
  - (b) the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People;
  - (c) the judicial power of the People shall be exercised by Courts, tribunals and institutions created and established, or recognised, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of the National State Assembly and of its Members, wherein the judicial power of the People may be exercised directly by the National State Assembly according to law;
  - (d) the fundamental rights which are by the Constitution declared and recognised shall be respected, by all people and secured and advanced by all the organs of Government. Fundamental rights shall not be abridged, restricted, or denied, save in the manner and to the extent hereinafter provided; and
  - (e) the franchise shall be exercised at the election of the President of the Republic, members of the National State Assembly, members of the Provincial Councils and members of Local Authorities and at every Referendum by every citizen who has attained the age of eighteen years and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors.

### **The National Flag and National Emblem**

7. (1) The National Flag of the Republic of Sri Lanka shall be the Lion Flag depicted in Part I of the Second Schedule.
- (2) The National Emblem of the Republic of Sri Lanka shall be the Emblem depicted in Part II of the Second Schedule.

### **The National Anthem**

8. The National Anthem of the Republic of Sri Lanka shall be “Sri Lanka Matha”. The words and music of the National Anthem and a translation of the words thereof in the Tamil Language are set out in the Third Schedule.

### **The National Day**

9. The National Day of the Republic of Sri Lanka shall be the Twenty Second day of May.

CHAPTER II

**BUDDHISM**

**Buddhism**

10. The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly, it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 26 and 27.

## CHAPTER III

**DIRECTIVE PRINCIPLES OF STATE POLICY****Directive Principles of State Policy**

11. (1) The Directive Principles of State Policy contained in this Chapter shall guide the National State Assembly in the enactment of laws, the President and the Cabinet of Ministers in the formulation of policies and the governance of the Republic of Sri Lanka and the Judiciary in interpreting the law.
- (2) (a) The Government of the Republic shall be guided by the Dasa Rája Dhamma in conducting the affairs of the State.  
(b) In this paragraph “Dasa Rája Dhamma” means the qualities of Dana (generosity); Sila (morality); Pariccaga (selfless for common good); Ajjava (honesty); Maddava (civility); Tapa (restraint); Akkodha (free from hatred); Avihimsa (humane); Kanti (empathy); and Avirodha (harmony).
- (3) The State shall safeguard the Independence, Sovereignty and the unitary character of the State and protect the territorial integrity of the Republic of Sri Lanka.
- (4) The Legislature, the Executive and the Judiciary shall at all times ensure that the People of the Republic of Sri Lanka exercise and enjoy their sovereign rights as set out in Article 6 of the Constitution.
- (5) The State shall ensure:
  - (a) that the Rule of Law is adhered to;
  - (b) the Independence of the Judiciary;
  - (c) subject to national interests of the Republic of Sri Lanka, endeavour to maintain friendly relations with all Nations;
  - (d) that no country or entity interferes with the internal affairs of Sri Lanka;
  - (e) that subject to the provisions of the Constitution and the law, due evaluation of merit shall be the fundamental criteria for appointments and promotions to any public office under the Republic; and
  - (f) a free and independent media.
- (6) The State shall preserve the core cultural values and the civilisational heritage of Sri Lanka.



- (7) The Republic of Sri Lanka shall protect, foster and nurture the Sinhala Language, being the language indigenous to Sri Lanka whilst assuring to the Tamil Language the rights and status declared and recognised in Chapter VI.
- (8) The State shall ensure that all historical records and ancient monuments of Sri Lanka are preserved.
- (9) The State is pledged to establish in Sri Lanka a just society, the objectives of which include;
  - (a) the promotion of the welfare of the People by securing and protecting as effectively as it may, a social order in which justice, (social, economic and political) shall guide all the institutions of national life;
  - (b) the full realisation of the fundamental rights and freedoms of all citizens;
  - (c) raising of the moral and cultural standards of the People and ensuring the full development of human personality;
  - (d) a value based education;
  - (e) the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels;
  - (f) the realisation by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities;
  - (g) encouraging the Sri Lankan Entrepreneur through a well-formulated National Economic Policy;
  - (h) the participatory and sustainable economic development within a framework of national planning ensuring equity and social justice;
  - (i) the equitable distribution among all citizens of the material resources of the country and the social product, so as to best serve the common good;
  - (j) the establishment of a just social order in which the means of production, distribution and exchange are not concentrated and centralised in the State, State agencies or in the hands of a privileged few, but are dispersed among and owned by, all the People of Sri Lanka.
- (10) The State shall strengthen the democratic structure of Government and the democratic rights of the People by decentralising the administration where necessary whilst ensuring that the unitary character of the State is not altered in any manner and by affording all possible opportunities to the People to participate at every level in national life and in government safeguarding national sovereignty and national interest.

- (11) The State shall not permit the creation of political enclaves based on identities of ethnicity, religion, caste or tribe.
- (12) The State shall promote national unity by encouraging the preservation of the common historical heritage of Sri Lanka.
- (13) The State shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the People of Sri Lanka, and shall take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice.
- (14) Subject to the provisions of the Constitution, the State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the grounds of ethnicity, religion, language, caste, sex, gender, political opinion, occupation or any such grounds.
- (15) The State shall protect industries in Sri Lanka and shall encourage and promote local produce and services provided by the Sri Lankan labour force.
- (16) The State shall endeavour to eliminate economic and social privilege and disparity and the exploitation of man by man or by the State.
- (17) Subject to the provisions of the Constitution, the State shall create the necessary economic and social environment to enable the People of Sri Lanka to enjoy their fundamental freedoms without discrimination.
- (18) The State shall ensure that the operation of the economic system does not result in the concentration of wealth and the means of production to the detriment of the people of Sri Lanka.
- (19) The State shall protect, preserve and improve the environment for the benefit of all living beings.
- (20) The State shall encourage sustainable agricultural practices and effectively regulate the use of pesticides or other harmful chemicals.
- (21) The State shall ensure the welfare of animals and the protection of their environment.
- (22) The State shall recognise and protect the family as the basic unit of society.
- (23) The State shall promote with special care the interests of children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination.
- (24) The State shall ensure the wellbeing of the senior citizens and of persons with disabilities and provide them with adequate social security.

- (25) The State shall ensure that the legal system promotes due administration of justice, on the basis of equality and shall in particular, provide free legal aid, to the needy by suitable legislation or schemes suitably designed or in any other manner.
- (26) The State shall endeavour to secure a unified legal system throughout the territory of the Republic which respects the fundamental rights of its citizens as set out in Chapter V.
- (27) The State shall promote international peace, security and co-operation, and the establishment of a just and equitable international economic and social order and shall endeavour to foster respect for international law and Treaty obligations based on the principle of sovereign equality in dealings with Nations whilst respecting the sovereignty of all Nations.

### **Principles of State Policy and Fundamental Duties Not Justiciable**

12. Other than in fulfilment of the duties and obligations in Chapter II, VI, VII and IX, the preceding provisions of this Chapter do not confer or impose legal rights or obligations and are not enforceable in any Court or tribunal. A question of inconsistency with such provisions shall not be raised in any Court or tribunal.

### **Council of Maha Sanga**

13. (1) A Council of the Maha Sanga, is established to advise and guide the Government in fulfilling the constitutional obligation embodied in Chapters II and VII and on any other matter the Government may seek the advice of the Council.
- (2) The Council shall consist of not more than 16 members to represent the Siyamopali Mahanikāya, Sri Lanka Amarapura Mahanikāya and the Sri Lanka Rāmañña Mahanikāya and shall be appointed by the President on the recommendations of the most Venerable Mahanayakas of the Malwatta and Asgiriya Chapters of the Siyamopali Mahanikāya, Sri Lanka Amarapura Mahanikāya and Sri Lanka Rāmañña Mahanikāya.
- (3) Each Venerable Mahanayaka referred to in paragraph (2) shall be entitled to recommend up to four Bhikkus to the Council.
- (4) All members of the Council shall hold office for a period of three years and be eligible for re-appointment.
- (5) The Council shall have a Secretary, who shall be appointed by the Council, and shall have its own Secretariat. All expenses of the said Council shall be paid from the Consolidated Fund.
- (6) The procedure to be followed at its meetings shall be as determined by the Council.

## CHAPTER IV

# CITIZENSHIP

### **Citizenship of Sri Lanka**

14. (1) There shall be one status of citizenship known as the status of “a citizen of Sri Lanka”.
  - (2) Every person who immediately prior to the commencement of the Constitution was a citizen of Sri Lanka, shall be entitled to the status and to the rights of a citizen of Sri Lanka as provided in this Chapter and by any law.
  - (3) A citizen of Sri Lanka shall be described only as a “citizen of Sri Lanka”, whether such person became entitled to citizenship by descent or by virtue of registration in accordance with the law relating to citizenship.
  - (4) Subject to the provisions of the Constitution, a citizen of Sri Lanka shall not be discriminated based on the distinction of whether citizenship had been acquired by descent or by virtue of registration, by such citizen.
15. (1) Notwithstanding anything contained in any other law, a person who is not a citizen of Sri Lanka or who is a citizen of any other country shall not hold public office:  

Provided that, it shall be lawful to engage any person who is a citizen of a foreign country in a consultative capacity if the knowledge and expertise of such person is required by the State.
  - (2) A person who is not a citizen of Sri Lanka shall not be entitled to be employed or to engage in any profession without the written permission of the Minister of Foreign Affairs.
  - (3) In this Article “Public Office” shall include any paid office under the Republic of Sri Lanka including the office of President, Prime Minister, Minister, Member of the National State Assembly, Member of any Provincial Council, members of any Local Authority, any office referred to in the Schedule to Chapter XIII, a Public Officer, Judicial Officer, Ambassador, High Commissioner, Plenipotentiaries and other diplomatic agents appointed by the Government of Sri Lanka.

### **Citizenship by Registration**

16. (1) No person shall be granted citizenship by registration unless such person satisfies that he has sufficient knowledge of the history and culture of Sri Lanka as prescribed by law and subscribes the affirmation or oath set out in the Fourth Schedule.
- (2) The Minister of Foreign Affairs shall, before the end of every year place before the National State Assembly, lists of persons who have been granted citizenship by registration under the law relating to citizenship, persons who have been engaged under paragraph (1) of Article 15 and persons to whom permission had been granted under paragraph (2) of Article 15.

### **Citizens not to be Deprived of His Status**

17. A citizen of Sri Lanka shall not be deprived of his status of a citizen of Sri Lanka, except under and by virtue of any law relating to citizenship.

### **Existing Written Laws Relating to Citizenship**

18. The provisions of all existing written laws relating to citizenship and all other existing written laws wherein reference is made to citizenship shall be read subject to the provisions of this Chapter.

## CHAPTER V

**FUNDAMENTAL DUTIES AND RIGHTS****Fundamental Duties**

19. It shall be the duty of the State and all those acting for and on behalf of the State to duly advance, respect, protect, promote and fulfill the fundamental duties referred to in this Chapter.

**Duties of the State**

20. (1) It shall be the duty of the State –
- (a) to defend Sri Lanka and to ensure its external and internal security and not to act to the detriment of the national security of Sri Lanka;
  - (b) not to act against the interests of the Republic;
  - (c) to ensure that the resources of the Republic are not alienated, nor encumbered against national interest;
  - (d) to preserve the national heritage of Sri Lanka;
  - (e) to ensure that food cultivated, manufactured, imported, exported and offered for sale is fit for human consumption;
  - (f) to regulate the use of agrochemicals and other chemicals harmful to health;
  - (g) to ensure the maintenance of essential supplies and services;
  - (h) to ensure that, subject to the provisions of the Constitution or any law, appointments to any public office are based strictly on merit;
  - (i) to ensure that citizens have access to safe and nutritious food and ensure availability of water;
  - (j) to provide adequate social security to senior citizens of the Republic;
  - (k) to provide access to hospitalisation, basic health care services, reproductive health care and emergency medical treatment to citizens of Sri Lanka;
  - (l) to adopt necessary measures to ensure that persons with disabilities can meaningfully exercise their rights and freedoms guaranteed by the Constitution;
  - (m) to afford the citizens of Sri Lanka the freedom to lead their lives in a peaceful environment provided that the rights and freedoms of other persons and of the society are not infringed;

- (n) to ensure that
    - (i) the best interest of the child be the paramount consideration in all matters concerning children;
    - (ii) every citizen who is a child has his primary and secondary education in a school;
    - (iii) a child is not directly or indirectly used or allowed to be used in armed conflicts; and
    - (iv) the system of education be value based, and be provided for the development of the child;
  - (o) to ensure the facilitation of adequate opportunities for education by making available requisite resources and guarantee the academic and professional freedom of all the citizens of Sri Lanka.
  - (p) to ensure the welfare of animals and the protection of their habitat.
  - (q) to ensure that;
    - (i) investments are permitted only in due compliance with the provisions of Chapter XXVII of the Constitution and the law; and
    - (ii) protect and safeguard such investments referred to in sub paragraph (i) unless such investments constitute a threat to national security.
- (2) It shall be the duty of every citizen of Sri Lanka –
- (a) to uphold and defend the Constitution and refrain from violating the Constitution;
  - (b) to honour the National Anthem, National Emblem and the National Flag;
  - (c) to further national interest and foster national unity;
  - (d) to preserve and protect public property and combat the misuse and waste of public property;
  - (e) to respect the rights and freedoms of others;
  - (f) to work conscientiously in his chosen occupation;
  - (g) to render national service when called upon to do so; and
  - (h) who is a parent or guardian, to provide opportunities for education to their children;

### **Fundamental Rights**

21. The fundamental rights and freedoms embodied in the succeeding Articles affirm the values of human dignity, equality and liberty cherished by the People of Sri Lanka which are integral in upholding their sovereignty. The State and those acting on behalf

of the State shall subject to the provisions of this Chapter respect, protect, promote and fulfill the fundamental rights and freedoms of all citizens of the Republic and prevent the violation thereof.

### **Right to a Safe Environment Devoid of Violence**

22. Every citizen shall have the right to live in a safe, secure and peaceful environment within the territory of Sri Lanka free from external and internal aggression, violence and terrorism.

### **Right to Life**

23. (1) Every person shall have the inherent right to life.
- (2) No person shall be punished with death.
- (3) No person shall be deprived of his life except as provided for by law.
- (4) The deprivation of life shall not be regarded as a contravention of this Article if it results from the use of force which is no more than absolutely necessary:
- (a) in defence of any person or property as provided by law from unlawful violence; or
- (b) in action lawfully taken for the purpose of quelling an insurrection or in the course of a war or the prevention of any act of terrorism.

### **Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment**

24. No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### **Freedom from Arbitrary Arrest, Detention and Punishment, and Prohibition of Retrospective Penal Legislation**

25. (1) No person shall be arrested or detained except in accordance with the procedure established by law.
- (2) No person shall be arrested or detained unless the arrest or detention is,
- (a) essential for due and proper investigation;
- (b) to prevent the commission of a crime; or
- (c) to prevent any person from escaping from the due process.
- (3) Every person deprived of liberty shall have, without delay, the right to communicate with and be visited by his immediate family members or Attorney-at-Law.



- (4) Where any person is arrested or detained, he shall be informed of the reason for arrest or detention at the time of arrest or detention.
- (5) All persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- (6) The State shall maintain a public record of all persons arrested as provided by law.
- (7) Every person held in custody, detained or otherwise deprived of personal liberty, shall be brought before the Judge of the nearest competent Court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the Order of such Judge made in accordance with procedure established by law.
- (8) Every person who is arrested shall have the right to be released on bail, unless there are compelling reasons not to be so released.
- (9) Any person arrested in respect of or charged with an offence as the case may be, shall be entitled to the following minimum rights –
  - (a) the right to a fair and lawful investigation;
  - (b) to be informed promptly, in any Language of the State preferred by such person and in detail, the reasons for his arrest or of the nature of the charges against him as the case may be;
  - (c) the right to a fair trial by a competent Court;
  - (d) the right to be tried without delay and in their presence unless the law otherwise provides;
  - (e) to have adequate time and facilities for the preparation of his defence;
  - (f) the right not to be compelled to testify against himself or to confess guilt;
  - (g) to defend himself in person or through legal assistance of his own choice and, if he has not sufficient means to pay for legal assistance, to be given free legal assistance where justice so requires;
  - (h) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (i) to have the assistance of an interpreter if he is unable to understand or speak the language used in Court.
- (10) No person shall be punished with imprisonment except by Order of a competent Court, made in accordance with procedure established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment.

- (11) Every person shall be presumed innocent until he is proven guilty:  
 Provided that the burden of proving particular facts may, by law, be placed on an accused person.
- (12) No person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence and no penalty shall be imposed for any offence more severe than the penalty in force at the time such offence was committed.
- (13) Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.
- (14) It shall not be a contravention of this Article to require the imposition of a minimum penalty for an offence provided that such penalty does not exceed the maximum penalty prescribed for such offence at the time such offence was committed.
- (15) The arrest, holding in custody, detention or other deprivation of personal liberty of a person, by reason of a removal order or a deportation order made under the provisions of the Immigrants and Emigrants Act (Chapter 351) or the Indo-Ceylon Agreement (Implementation) Act No. 14 of 1967, or such other law as may be enacted in substitution therefor, shall not be a contravention of this Article.

### **Freedom of Thought and Religion**

26. (1) Every person is entitled to freedom of thought, conscience and religion.
- (2) Every person shall have the freedom to have or to adopt a religion or belief of his choice. No person shall be subjected to coercion which would impair his freedom to leave or to adopt a religion or belief of his choice.
- (3) Subject to the provisions of the Constitution and any law, parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children that is in accord with their own convictions.
- (4) In this Article, “coercion” shall include the use of force, allurement and fraud.

### **Freedom to Manifest Religion**

27. Every citizen has the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.

### **Freedom to Enjoy and Promote Culture**

28. Every citizen has the freedom by himself or in association with others to enjoy and promote his own culture and to use a language recognised in Chapter VI.

### **Right to Equality before Law**

29. (1) All persons are equal before the law and are entitled to the equal protection of the law.
- (2) No citizen shall be discriminated against on the grounds of ethnicity, religion, language, caste, sex, gender, political opinion, place of birth or any one or more of such grounds:

Provided that, it shall be lawful to require a person to acquire within a reasonable time, sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any public corporation, where such knowledge is reasonably necessary for the discharge of the duties of such employment or office:

Provided further, that it shall be lawful to require a person to have a sufficient knowledge of any language as a qualification for any such employment or office where functions of such employment or office cannot be satisfactorily discharged otherwise than with such knowledge of such language.

- (3) No person shall, on the grounds of nationality, ethnicity, religion, language, caste, sex, gender, any physical or other impairment or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, and places of public entertainment and places of public worship of his own religion.
- (4) Nothing in this Article shall prevent special provision being made by law, subordinate legislation or executive action –
- (a) for the advancement of women, children, elders or disabled persons;
  - (b) in the interest of members of the Armed Forces and their dependants in the event of death or permanent disability while in service;
  - (c) in the interest of all citizens.

### **Right to Just Administrative Action**

30. (1) Every citizen has the right to administrative action that is lawful, reasonable, procedurally fair and in due accord with the Rule of Law.
- (2) Any citizen whose rights have been adversely affected by administrative action has the right to be given reasons in writing.

### **Freedom of Expression**

31. (1) Every citizen is entitled to the freedom of speech and expression, and this right shall include freedom to receive and impart information.
- (2) (a) Every person injured by inaccurate or offensive statements disseminated to the public in general by a medium of communication has the right to reply or to make a correction using the same medium of communication, under such conditions as the law may prescribe; and
- (b) The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

### **Right of Access to Information**

32. Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of the right of a citizen held by –
- (a) the State, a Ministry or any Government Department or any statutory body established or created by or under any law;
- (b) any Ministry of a Minister of the Board of Ministers of a Province or any Provincial Department;
- (c) any Provincial Council or Local Authority; and
- (d) any other person, who is in possession of such information relating to any institution referred to in sub paragraphs (a) (b) or (c) of this Article.

### **Rights Relating to Environment**

33. Every citizen has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and administrative measures that –
- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

### **Freedom of Peaceful Assembly and Association**

34. Every citizen is entitled to the freedom of peaceful assembly and the freedom of association.

### **Freedom to Engage in Lawful Occupation, Profession or Trade**

35. Every citizen by himself or in association with others has the freedom to engage in and has the right of access to any lawful occupation, profession, trade, business or enterprise.

### **Equality and Fair Treatment in Employment**

36. (1) Every citizen shall have the right of equal opportunity and treatment in matters of public employment, or to any office under the State.
- (2) No citizen shall on the grounds of religion, ethnicity, caste, sex, gender, political opinion, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the State:
- Provided that, nothing in this Article shall prevent the State from taking into consideration any requirement as to residence as a pre-requisite qualification with regard to any class of employment or appointment in any service:
- Provided further, that in the interest of such service, specified posts or classes of posts may be reserved for members of either sex.
- (3) Every citizen has a right to equal remuneration for work of equal value without discrimination.
- (4) No person shall be subjected to forced or compulsory labour.
- (5) Every citizen in employment has the right to safe, just, healthy and fair conditions of work.

### **Freedom to Join Trade Union**

37. Every citizen is entitled to the freedom to form and join a trade union.

### **Freedom of Movement**

38. Every citizen has the freedom of movement and of choosing his residence within Sri Lanka.

### **Freedom to Return**

39. Every citizen has the freedom to return to Sri Lanka.

### **Right to Primary and Secondary Education**

40. A child of school going age of any citizen shall be entitled to primary and secondary education without the levy of any fee in a Government School, provided by the State as prescribed by law.

### **Right to Peaceful Enjoyment of Property**

41. Every citizen is entitled to the peaceful enjoyment of his property in accordance with the law. No citizen shall be deprived of his property except on the ground of national security or in the public interest as prescribed by law.

### **Right to Privacy, Family Life and Protection of Personal Data**

42. (1) The State shall recognise and protect the family as the basic unit of society.
- (2) Every citizen has the right to respect for his private and family life, his home and his correspondence.
- (3) No citizen shall be the object of arbitrary or abusive interference with his private life, his family or his home.
- (4) Subject to any requirement of national security and matters relating to law and order, every citizen has the right to the protection of personal data concerning such citizen as prescribed by law.
- (5) No marriage shall be entered into between persons –
- (i) below the age of eighteen years; and
  - (ii) without his or her free and full consent.

### **Right to Medical Care**

43. Every citizen has a right to access basic health care services including reproductive health care and emergency medical treatment.

### **Rights of Senior Citizens**

44. (1) All senior citizens shall have the right to special protection and social security from the State, as prescribed by law.
- (2) In this Article, “senior citizens” means citizens above the age of sixty-five.

### **Rights of Persons with Disabilities**

45. (1) Every citizen with a disability shall have access to public places including buildings, education, employment, transportation, information and communication, and all other facilities.
- (2) Persons with disabilities have a right to seek and receive information through all forms of communication of their choice including augmentative and alternative means and modes of communication.

- (3) Every citizen who has a disability shall have the right –
  - (a) to be protected and be assisted by the family of such person and the State;
  - (b) to work in appropriate conditions, consistent with possibilities and capacities, of such person with fair remuneration that ensures a dignified life; and
  - (c) to the development of the individual potential, of such person.

### **Right to Free and Fair Elections**

- 46. Every citizen has the right to free and fair elections by secret ballot in accordance with the Constitution.

### **State Obligation Based on Availability of Resources**

- 47. The State shall give effect to the fundamental rights referred to in Articles 43, 44 and 45 to the extent of and subject to the availability of resources of the State.

### **Budgetary Provisions for Fundamental Rights**

- 48. The State shall make budgetary provisions for the promotion, protection and fulfillment of fundamental rights and duties.

### **Restrictions on Fundamental Rights**

- 49. (1) The exercise and operation of all the fundamental rights and duties other than the fundamental rights guaranteed by Articles 24 and 26 declared and recognised by this Chapter shall be subject to such restrictions as may be prescribed by law;
  - (a) in the interests of national security, public order, racial and religious harmony, protection of public health and morality or in relation to defamation, Parliamentary privilege, contempt of Court, or incitement to an offence;
  - (b) in the interest of the national economy or in relation to –
    - (i) professional, technical, academic, financial and other qualifications necessary for practising any profession or carrying on any occupation, trade, business or enterprise and the licensing and disciplinary control of persons entitled to such fundamental rights; and
    - (ii) the carrying on by the State, a State or a public corporation of any trade, business, industry, service or enterprise whether to the exclusion, complete or partial, of any person or entity.
  - (c) to fulfill any duty of the State or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.

- (2) The exercise and operation of the fundamental rights declared and recognised by this Chapter shall, in their application to the members of the Armed Forces, Police Force and other Forces charged with the maintenance of public order, be subject to such restrictions as may be prescribed by law in the interests of the proper discharge of their duties and the maintenance of discipline among them.

### **Application of Existing Written Law and Unwritten Law**

50. (1) Subject to the legislative power of the National State Assembly, all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter:

Provided that, any law, the application of which is restricted on the ground of religion, ethnicity, caste, social status, sex shall all be null and void in so far as it relates to;

- (a) The minimum age of marriage; and  
(b) succession to State land:

Provided further, any existing written or unwritten law which imposes social disability on any person on the ground of religion, ethnicity, caste, social status, sex or gender shall be null and void to the extent of its consistency.

- (2) The subjection of any person on the Order of a competent Court to any form of punishment recognised by any existing written law shall not be a contravention of the provisions of this Chapter.
- (3) Notwithstanding the application of any personal laws in respect of any citizen, such citizen may upon reaching the age of twenty one years declare as prescribed by law that the General Laws shall apply to him. Whereupon he shall be so governed by the General Laws in place of the Personal Laws that were hitherto applicable to such citizen, from the date of such declaration.

In this paragraph “General Laws” shall mean the residuary Law of the land including legislation which is of general application to the entire territory of the Republic of Sri Lanka, not limited to any community or geographical area.

### **Implementation of the Provisions in Articles 10, 13 and 66**

51. Notwithstanding anything contained in this Chapter, the National State Assembly may enact laws for the implementation of the provisions in Articles 10, 13 and 66.



## Remedy for the Infringement of Fundamental Rights and Duties

52. (1) Any person shall be entitled to apply to the Supreme Court, as provided by Article 268, in respect of the infringement or imminent infringement, by Executive or Administrative action, of a fundamental right to which such person is entitled or to any duties the State is obliged to perform under this Chapter.
- (2) Where any person applies to the Supreme Court under Article 268 –
- (a) against any other person, the Attorney General and the person who has infringed, about to infringe or continues to infringe any right or has failed or refused to perform any duty against any other person shall be named as respondents;
  - (b) against any Commission referred to in Part III of the Schedule to Chapter XIII or a public corporation, such Commission or public corporation shall be named as a party respondent, and any order or direction made against such Commission or Corporation shall be deemed to be an order or direction made against every member of such Commission or Corporation who held such office at the time such application was made and all members including those members holding office subsequent to such application, order or direction shall be bound to comply with any such order or direction;
  - (c) against any public officer who holds public office every successor to such office, shall be bound by any decision made against such public officer;
- (3) Any person, being aggrieved by any infringement or imminent infringement of any fundamental right declared and recognized under Articles 22, 23, 24, paragraph (2) of Article 31, Articles 35, 38, 39, 41, paragraphs (2), (3) and (5) of Article 42, Article 45 or 46 other than by Executive or Administrative action may seek relief from the Court of Appeal as provided by Article 292.
- (4) Any person aggrieved by any infringement or imminent infringement of any fundamental right declared and recognized in paragraph (3) of Article 29 other than by Executive or Administrative action may seek relief from the Court of Appeal as provided by Article 292:
- Provided that, no Court or tribunal shall inquire into pronounce upon any infringement or imminent infringement with regard to any activity relating to any institution of any religious denomination in relation to any internal matter of such institution connected to the religion of such denomination.
- (5) (a) Where an order or direction is made against any person under Article 268 or 292, such person shall comply with such order or direction.

- (b) Any person who willfully violates any order or direction by refusing or failing to comply with such order or direction shall be guilty of contempt of the Supreme Court or Court of Appeal as the case may be, and shall be punished as provided by Article 236.
- (c) Where such Court finds any such violation, refusal or failure by any respondent or by any person against whom an order or direction had been made the Court may after notice to such respondent or person make a further order or direction.
- (d) Where such Court finds that any other person who is not a respondent need to be directed or be given any order to ensure effective compliance, it shall be lawful for the Court to make such order or direction, as may be necessary against such person, to ensure due compliance with the orders made by such Court.

### **Prevention of Violation of Fundamental Rights**

53. Notwithstanding anything in the preceding Articles, the Supreme Court shall, if the pleadings or proceedings disclose an infringement or imminent infringement of any fundamental right or duty in relation to any person make such Orders as provided by Article 268 as may be necessary to prevent any infringement or the recurrence of such infringement.

### **Interpretation**

54. In this Chapter,
- (a) “Executive and Administrative action” shall include actions of public corporations.
  - (b) “Law” includes written and unwritten law, regulations, rules, directions, instructions, guidelines, circulars and schemes that are designed to guide public authorities.
  - (c) “Elections” shall mean any election held for the election of the President, members of the National State Assembly, Provincial Councils, Local Authorities and includes a Referendum.

### **Human Rights Commission**

55. (1) There shall be a Human Rights Commission of Sri Lanka established by law. The functions of the Human Rights Commission of Sri Lanka shall include the following –
- (a) to inquire into, and investigate complaints against all organs of Government and their procedures, with a view to ensure compliance with the provisions

- of the Constitution relating to fundamental rights and to promote respect for, and observance of, fundamental rights;
- (b) to inquire into and investigate complaints regarding infringements or imminent infringements of fundamental rights, which any person may invoke the jurisdiction of any Court and shall provide for the resolution thereof by conciliation and mediation;
  - (c) to advise and assist the Government in formulating legislation and when making administrative directives and procedures, in furtherance of the promotion and protection of fundamental rights;
  - (d) to make recommendations to the Government regarding measures which should be taken to ensure that written laws and administrative practices are in accordance with this Chapter;
  - (e) to promote awareness of, and provide education in relation to, fundamental rights.
- (2) The members of the Human Rights Commission shall be appointed in accordance with the procedure prescribed in Chapter XIII.
  - (3) The Human Rights Commission of Sri Lanka Act No. 21 of 1996 shall remain in force subject to the provisions of this Article until a law in accordance with the preceding Article is enacted by the National State Assembly.

## CHAPTER VI

# LANGUAGES

### **Languages of the State**

56. Sinhala and Tamil shall be the Languages of the State.
57. Sinhala and Tamil being the Languages of the State shall be the Languages of Administration and Legislation and the Languages of the Courts of the Republic of Sri Lanka as set out in this Chapter.

### **Use of Sinhala, Tamil and English Languages in the National State Assembly, Provincial Councils and Local Authorities**

58. A Member of the National State Assembly or a Member of a Provincial Council or a Local Authority may perform and discharge the duties and functions in the National State Assembly, in such Provincial Council, Local Authority or in any committee thereof in Sinhala, Tamil or English language.

### **Provisions for Adequate Facilities for Use of the Languages of the State and English in Schools**

59. The State shall provide adequate facilities to teach Sinhala, Tamil and English in all Government Schools and ensure that all other schools provide such facilities.

### **Medium of Instruction in Schools**

60. (1) Sinhala, Tamil and English shall be taught in every school. Sinhala or Tamil shall be the first language in the curriculum of every school.
- (2) A citizen shall be entitled to have his primary and secondary education in the Sinhala or Tamil medium:  
Provided that, no citizen is prevented from receiving his primary and secondary education in the English medium.
- (3) Where one Language of the State is the medium of instruction for or in any course, department or faculty of any Institute of Higher Education directly or indirectly financed by the State, the other Language of the State shall also be made a medium of instruction for or in such course, department, or faculty, for

students who prior to their admission to such Institute, were educated through the medium of such other Language of the State:

Provided that, compliance with the preceding provisions of this paragraph shall not be obligatory if such other Language is the medium of instruction for or in any like course, department or faculty either at any other campus or branch of such Institute of Higher Education.

- (4) In this Article, an “Institution of Higher Education” means a University, Campus, Open University, University College, or any other Centre for higher learning established or deemed to be established by law.

### **Languages of Administration**

61. (1) Sinhala and Tamil shall be the Languages of Administration throughout the Republic of Sri Lanka.
- (2) Sinhala and Tamil shall be used for the maintenance of public records and the transaction of all business by public institutions in all the administrative districts of the Republic of Sri Lanka.
- (3) Every citizen shall be entitled –
- (a) to receive communications from and to communicate and transact business with any official in his official capacity;
  - (b) to inspect or to obtain copies of or extracts from any official register, record, publication or other document, to which he is entitled to inspect or obtain copies or extracts according to law or a translation thereof; and
  - (c) to obtain a document which is executed by any official for the purpose of being issued to him or a translation thereof;  
in either of the Languages of the State or in the English Language if it is reasonably possible for any officer to extend such facility.
- (4) A Provincial Council or a Local Authority or any committee thereof which conducts its business in;
- (a) Sinhala shall be entitled to receive communications from and to communicate and transact business with any official in his official capacity in Sinhala,
  - (b) Tamil shall be entitled to receive communications from and to communicate and transact business with any official in his official capacity in Tamil:  
Provided that, a Provincial Council, or Local Authority or any committee thereof transacting business in one language of the State, transacts business with any other Provincial Council or Local Authority or any committee

thereof which conducts its business in the other Language of the State, shall be entitled to receive communication from and to transact business in English:

Provided further that, a Provincial Council or Local Authority or any committee thereof shall be entitled to receive communication from and to transact business in English where such Provincial Council or Local Authority or any committee transacts business with any other Provincial Council or Local Authority or any committee which conducts business in the language of the State, other than the language such Provincial Council or Local Authority or any committee transacts its business.

- (5) A person shall be entitled to be examined through the medium of either Language of the State at any examination for the admission of persons to the Public Service, Judicial Service, Local Government Service or any public institution, subject to the condition that such a person may be required to acquire a working knowledge of either Language of the State, as the case may be, within a time specified by the Minister in charge of the subject after admission to such service or public institution where such knowledge is reasonably necessary for the discharge of his duties:

Provided that, a person may be required to have sufficient knowledge of either Language of the State, or any other language, as a condition for admission to any such service or public institution where functions of the office or employment for which he is recruited cannot be satisfactorily discharged otherwise than with a sufficient knowledge of such language:

Provided further, that no person without a sufficient knowledge of either Language of the State shall be recruited to any such service.

- (6) In this Article –

“Official” means the President, Prime Minister, any Minister, Deputy Minister or Minister of the Board of Ministers of a Province, or any officer of a public institution, Local Authority or Provincial Council; and

“Public Institution” means a department or institution of the Government, a public corporation or statutory institution.

### **Languages of Legislation**

63. (1) All laws and subordinate legislation shall be enacted or made and published in both Languages of the State with a translation in the English Language:

Provided that in the event of any inconsistency between texts, Sinhala text shall prevail.

- (2) All Orders, Proclamations, Rules, By-laws, Regulations and Notifications made or issued under any written law and all documents, including circulars and forms issued by any public institution shall be published in both Languages of the State with a translation thereof in the English Language:

Provided that in the event of any inconsistency between such texts, Sinhala text shall prevail.

- (3) All laws and subordinate legislation in force immediately prior to the commencement of the Constitution, shall be published both in Sinhala and Tamil within the time prescribed by the Minister in charge of the subject.

### **Languages of Court**

64. (1) Sinhala and Tamil shall be the Languages of the Courts throughout Sri Lanka.
- (2) The record and proceedings shall be in the Sinhala and Tamil Language:  
Provided that, the Court may with the consent of all parties to any proceeding maintain any record of such proceeding or any part thereof only in any one of the Languages of the State or in the English Language.
- (3) Any party, applicant or any person legally entitled to represent such party or applicant may initiate proceedings and submit to a Court, pleadings and other documents and participate in the proceedings in Court, in either Language of the State. Where any party or applicant has initiated proceedings or submitted any pleadings or documents in any Language of the State, any other party or any person legally entitled to represent such a party may submit pleadings or documents and participate in the proceedings in the other Language of the State, and in such an event the parties may be required to file an English translation of their respective pleadings and documents.
- (4) Any Judge, juror, party or applicant or any person legally entitled to represent such party or applicant, who is not conversant with the Language of the State used in a Court, shall be entitled to interpretation and to translation into the other Language of the State, to enable him to understand and participate in the proceedings before such Court and shall also be entitled to obtain in such language any such part of the record or a translation thereof, as the case may be, as such a person may be entitled to obtain according to law.
- (5) The Minister in charge of the subject of Justice may, with the concurrence of the Cabinet of Ministers, issue directions permitting the use of English in or in

relation to the records and proceedings in any Court for all purposes or for such purposes as may be specified therein. Every Judge shall be bound to implement such directions.

- (6) Nothing in this Article shall prevent any party or any person legally entitled to represent such a party addressing any Superior Court of Record or other Court in either Language of the State or in the English Language.
- (7) The State shall make every endeavour to translate all laws and judgments of Superior Courts in the English Language to both Languages of the State.
- (8) In this Article –

“Court” means any Court of First Instance or tribunal created and established for the administration of justice including the adjudication and settlement of industrial and other disputes, or any other tribunal or institution exercising judicial or quasi-judicial functions or any tribunal or institution created and established for the conciliation and settlement of disputes.

“Judge” includes the President, Chairman, Presiding Officer and member of any Court.

“Record” includes Pleadings, Judgments, Orders and other judicial and ministerial acts.

- (9) The State shall provide adequate facilities for the use of the languages provided for in this Chapter.

### **Provision of any Law Inconsistent with this Chapter**

- (10) In the event of any inconsistency between the provisions of any law and the provisions of this Chapter, the provisions of this Chapter shall prevail.



## CHAPTER VII

## PROTECTION OF NATIONAL HERITAGE OF THE REPUBLIC OF SRI LANKA

### Protection and Preservation of Culture

65. (1) The State shall preserve, protect and promote the National Heritage and shall prevent the degradation of the core cultural and civilizational norms of Sri Lanka.
- (2) The State shall advance the cause of the cultural enrichment of the Sri Lankan society and provide adequate funding for preservation and research, devoting special attention to Sri Lanka's hydraulic technology, indigenous agrarian practices, architecture, local arts, sculpture and paintings, indigenous medicine, performing arts and rituals, literature, customs and customary knowledge.
- (3) The State shall endeavor to preserve and strengthen traditional values and institutions that form the foundation of Sri Lanka's unique civilization based on its core culture.
- (4) The State shall prevent the distortion of the history of Sri Lanka.

### Duties of the State with regard to National Heritage of the Republic

66. It shall be the duty of the State to –
- (a) protect the archaeological heritage of Sri Lanka consisting of ancient monuments, antiquities, and other places of historic interest;
  - (b) ensure the preservation of all Ola leaf manuscripts of the Maháwamsa and other historical records of ancient origin;
  - (c) ensure the teaching of the history of Sri Lanka as a common heritage of all its People in all schools;
  - (d) assist the custodians of all temples to preserve the relics of Buddha, conserve the ancient manuscripts of "Tripitaka" as part of the national heritage of Sri Lanka and prevent any attempt of its distortion;
  - (e) conserve and preserve all ancient temples and grant and allocate adequate funding for such purpose, taking into consideration the availability of resources of the state;

- (f) prevent unlawful encroachment, trespass, occupation or possession of temple property by any person. The State Land (Recovery of Possession) Act No. 7 of 1979 or any other law enacted for the recovery of State Land in place of or supplementary to such Act, shall apply *mutatis mutandis* for the recovery of all temple property from such unlawful encroachment, trespass, occupation or possession. The Commissioner of Buddhist Affairs may upon a request of a *Viharadhipathi* or trustee of a temple or otherwise upon being satisfied that a particular property is owned by a temple take all necessary action under the said Act or any law to recover such temple property from unlawful occupation, encroachment, trespass or possession. Accordingly, for the purpose of the said Act, “temple property” shall be deemed to be “State land” and the “Commissioner of Buddhist Affairs” shall be a “Competent Authority” for the purpose of the said Act:

Provided that, any person who has been ejected from a temple land or any person claiming to be the owner of such land may vindicate his title by instituting action in a Court of competent jurisdiction within three months of such ejection, in which the *Viharadhipathi* or the trustee of the temple concerned shall be made respondents.

- (g) For the purpose of sub paragraph (f) –
- (i) “Temple property” shall include Sangika property but shall not include Paraveni property.
- (ii) “Person” shall be a natural or legal person other than a Bhikku.

### **Protection of Environment**

67. (1) The State shall be the trustee of the natural resources of the Republic and shall protect the environment for the benefit of the present and future generations.
- (2) The State shall make every endeavour to ensure a safe and healthy environment for its people.
- (3) The State shall protect the primary forest cover in Sri Lanka and endeavour to expand the area under forest cover to the requisite level.
- (4) The State shall provide for its wildlife an interconnected habitat by connecting Forest Reserves with required Forest Corridors where necessary.

### **Duties with regard to Environment**

68. It shall be the duty of the State to –
- (a) protect, conserve and improve Sri Lanka’s natural resources and environment including its fauna and flora and safeguard the biodiversity of the country;

- (b) prevent pollution and ecological degradation;
- (c) secure ecologically balanced sustainable development while promoting justifiable economic and social development; and
- (d) preserve and protect all wildlife, National Parks, Reserves, Forests, Biosphere Reserves, Critical Watershed and all such other areas declared to be protected by law:

Provided that, it shall be lawful to take all necessary steps to protect and preserve all ancient monuments, antiquities and other places of archaeological and historic interest, within such Parks, Reserves, Forests and such other areas whilst preserving and conserving without damaging the environment and the natural habitat of wildlife.

### **Enforcement of the Duties and Obligations of the State**

69. Any citizen shall be entitled to apply to the Supreme Court under Article 268 for the enforcement of the duties and obligations of the State specified in Articles 66 and 68 of this Chapter.

### **Protection of Ancient Monuments and Antiquities**

70. The National State Assembly may by law make provision –
- (a) for the protection and preservation of ancient monuments and antiquities;
  - (b) for the conservation and preservation of all ancient temples and its temporalities;
  - (c) to provide adequate protection to all ancient temples and prevent unlawful possession of temple property and to take all necessary action to eject persons who are in unlawful possession of temple property;
  - (d) for sustainable use of natural resources and maintain intergenerational equity and reaffirm the sovereign rights of the State over its own biological resources and historical forest cover;
  - (e) to declare any part of the country to be a National Park, Wildlife Reserve, Nature Reserve, Protected Forest, Biosphere Reserve, Critical Watershed and such other areas meriting protection:

Provided that any part of any such National Park Wildlife Reserve, Nature Reserve, Protected Forest, Biosphere Reserve, Critical Watershed and such other areas declared shall not be removed from such declaration without the approval of the National State Assembly.

## CHAPTER VIII

**INTERNATIONAL RELATIONS****Promotion of International Peace, Security and Solidarity**

71. (1) Sri Lanka affirms its commitment to peace and friendly co-operation amongst Nations founded on principles of sovereign equality, reciprocity, mutual respect and non-interference in the internal affairs of other countries.
- (2) The State shall formulate and implement its policies on international relations consistent with the Constitution.

**Treaties with Foreign States**

72. (1) The executive power of the People in relation to any treaty shall be exercised by the President, in consultation with the Cabinet of Ministers. The President may in accordance with the provisions of the Constitution and any law, delegate such powers to a Minister or an official in writing with the concurrence of the Cabinet of Ministers.
- (2) No person on behalf of the Government of Sri Lanka or any of its agencies shall initiate or proceed with any negotiation of any treaty or consent to the adoption of the text of a treaty without the written authority of the President. The President shall grant such authority only with the approval of the Cabinet of Ministers.
- (3) No person shall on behalf of the Republic of Sri Lanka consent to be bound by a treaty without due compliance with the provisions of this Chapter.
- (4) No treaty or any agreement of treaty status shall be concluded or consented to for and on behalf of the Republic of Sri Lanka unless such treaty or agreement of treaty status has been approved by the National State Assembly in terms of the provisions of this Chapter. It shall be the responsibility of all persons authorized to negotiate, conclude or consent to any treaty agreement or contract to notify the other party of this requirement.
- (5) The President shall either himself or through the Minister in charge of Foreign Affairs place every treaty the Republic intends to enter or conclude or adopt or assent or ratify or approve or consent to be bound by or acceded to before the National State Assembly. Every such treaty shall be placed on the Order Paper of the National State Assembly at least five weeks before such treaty is debated and a vote taken under paragraph (6).

- (6) Upon such treaty being so placed before the National State Assembly, the Speaker shall forthwith convey such treaty to the Supreme Court with a written reference addressed to the Chief Justice which requires the Supreme Court to determine whether such draft treaty or any provision thereof is inconsistent with any provision of the Constitution or any law.
- (7) The Supreme Court shall within a period of two weeks from the date of reference under paragraph (4), communicate its determination to the Speaker stating whether such treaty or any provision thereof is inconsistent with the Constitution or any law and if so which provision or provisions of the Constitution or any law. Paragraph (2) Article 212, and Article 262 shall *mutatis mutandis* apply in respect of such reference.
- (8) Upon receipt by the Speaker of the determination of Supreme Court relating to such treaty, it shall be debated in the National State Assembly and a vote be taken.
- (9) (a) Where the Supreme Court determines that the treaty or any provision thereof is inconsistent with any provision of the Constitution, such treaty or any provision thereof may be approved only if the number of votes cast in favour thereof amounts to not less than two-third of the whole number of Members (including those not present) of the National State Assembly: Provided that if any the treaty or any provision thereof is inconsistent with any provision of this Chapter or Chapters (I), (II), (V), (VI), (VII) or (IX) of the Constitution, such treaty or any provision thereof may be approved only if the number of votes cast in favour thereof amounts to not less than two thirds of the whole numbers of Members (including those not present) and approved by the People at a Referendum.
- (b) Where the Supreme Court determines that the treaty or any provision thereof is inconsistent with any law, such treaty or any provision may be approved only if such treaty is approved by the National State Assembly, with the majority of the Members present and voting in favour thereof.
- (10) A Treaty referred to in the preceding paragraphs shall not be agreed or consented to, signed, approved, ratified, acceded to, or accepted by or on behalf of the Republic if such Treaty has not received approval of the National State Assembly in accordance with sub paragraph (a) and (b) in paragraph (9).

### **Bilateral or Plurilateral Agreements with Foreign States**

- (11) Any Agreement relating to transfer of possession or management of immovable public property shall be entered into only with the prior approval of the National State Assembly. Paragraphs (1) to (10) shall *mutatis mutandis* apply to any such agreement.

## Contracts with Foreign Companies or Foreign Nationals

- (12) Any contract entered into between the Government of Sri Lanka or any public corporation and any foreign company, foreign association or foreign national of any other State relating to transfer of possession or management of immovable public property shall be entered into only with the prior approval of the National State Assembly. Paragraphs (1) to (10) shall *mutatis mutandis* apply to any such contract.
- (13) No Agreement referred to in paragraph (11) or contract referred to in paragraph (12) shall;
- (i) contain any provision providing a right of renewal of such Agreement or contract to such foreign government or its nationals, corporations, companies or associations, or any lien over such property or any improvement made on such property:  
Provided that nothing in this sub paragraph shall prevent a fresh Agreement being entered into by parties.
  - (ii) be entered into for the grant, alienation or disposition of lands and other immovable public property within the territory of the Republic with a foreign government or of a company, association, or national of any other State and any such Agreement or contract shall be null and void.
  - (iii) be entered into for the transfer of possession or management of immovable public property shall be entered into with any foreign government, foreign company, foreign association or national of any other State beyond a period of thirty years and any such transfer beyond such period shall be null and void.
- (14) No person shall sell or transfer any land to any foreign government or foreign company, foreign association or foreign national or any other State.
- (15) (i) No Treaty referred to in paragraphs (1) to (10) or Agreement referred to in paragraph (11) or contract referred to in paragraph (12) shall be entered into by the President or authorised by the President to enter into in violation of the provisions of this Chapter.
- (ii) Where the President enters into or authorises such Agreement or contract to be entered into, the President shall be deemed to be guilty of misconduct within the meaning of Article 90.
  - (iii) Where any such Agreement or contract is entered into by the President, a Minister or any person on behalf of the Republic in violation of the provisions of this Chapter, the President, Minister or person shall commit an offence and shall on conviction be liable to a fine not exceeding 250 million rupees and imprisonment for a term not exceeding 20 years.

## **Interpretation**

73. In this Chapter

- (a) “Agreement” means a bilateral or plurilateral Agreement entered into by the Government of Sri Lanka, with any other State or international organisation and shall include regional Agreements.
- (b) “Treaty” shall include any Agreement of Treaty status.
- (c) A “Company” includes any company, or body corporate established under any law, charter, statute or other instrument constituting or defining the constitution of a company incorporated either in Sri Lanka, or in any other jurisdiction.
- (d) A “Foreign Company” means any company not incorporated in Sri Lanka or any company incorporated in Sri Lanka of which a majority of the shares are not held by citizens of Sri Lanka or majority of the shares are held by companies of which majority of shares are not held by citizens of Sri Lanka or any company which is not controlled by citizens of Sri Lanka or the management of which is entrusted to any foreign national or foreign company.
- (e) “Public Property” shall include any property of the Republic or of any Public Corporation.

CHAPTER IX

**NATIONAL SECURITY**

**Commander-in-Chief of the Armed Forces**

74. The President shall be the Commander-in-Chief of the Armed Forces.

**Armed Forces to be raised and maintained for National Security Purposes of the Republic**

75. (1) The Armed Forces shall be raised and maintained
- (a) to protect and safeguard the sovereignty, independence and territorial integrity of Sri Lanka, and ;
  - (b) to strengthen national security, resist internal and external aggression and defend Sri Lanka ; and
  - (c) to safeguard the People, assist in the development of the Republic and to carry out any other duty in the national interest.
- (2) The State shall strengthen and modernise the Armed Forces in order to increase the national defence capability.
- (3) No member of the Armed Forces including intelligence officers of any foreign State shall be permitted to function within the territory of the Republic including the territorial waters and airspace of Sri Lanka without the approval of the National State Assembly.

**National State Assembly to provide by Law, for matters relating to National Security**

76. The National State Assembly may by law provide for –
- (a) the raising and maintaining of the Armed Forces and of their reserves;
  - (b) the grant of commissions therein;
  - (c) salaries and allowances to the members of the Armed forces;
  - (d) the discipline and other matters relating to the Armed Forces and reserves;
  - (e) a National Police Force;



- (f) a National Intelligence Service;
- (h) the establishment of a National Security Council to formulate and implement a National Security Strategy for the Republic;
- (i) the regulation of inward remittances of foreign exchange that may be a threat to national security; and
- (j) the regulation of domestic and international non-governmental organisations operating with funds directly or indirectly obtained from foreign sources.

**Duty of the State to Protect the Sovereignty and the Territorial Integrity of the Republic and the Unitary Character of the State**

77. (1) It shall be the duty of the State
- (a) to protect the sovereignty and the territorial integrity of the Republic and the unitary character of the State;
  - (b) not to permit any person to, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of the Republic;
  - (c) not to promote, facilitate or initiate the altering or changing the unitary character of the State unless such alteration or change is first approved by the People at a Referendum in accordance with Article 192.
- (2) In this Article “altering or changing the unitary character” shall include any restriction whether procedural or otherwise, the curtailment and diminution in any manner of the legislative power of the National State Assembly or the executive power exercised by the President or the Cabinet of Ministers.

**Prohibition Against Violation of the Territorial Integrity of Sri Lanka**

78. (1) No person shall directly or indirectly in or outside Sri Lanka support, espouse, promote, finance, encourage or advocate the establishment for a separate State within the territory of Sri Lanka.
- (2) No person shall refer to any part of Sri Lanka as a separate State.
- (3) Any person who acts in contravention of Article 4 and paragraphs (1) and (2) of this Article shall, on conviction by the Court of Appeal, after trial on indictment filed by the Attorney General –
- (a) be subjected to civic disability for such period not exceeding fifteen years as may be determined by such Court;

- (b) forfeit as determined by Court, the movable and immovable property of such person other than the property as is determined by an Order of such Court as being necessary for the sustenance of such person and his family as the Court may deem fit;
  - (c) not be entitled to civic rights for such period not exceeding fifteen years as may be determined by such Court; and,
  - (d) if such person, is a Member of the National State Assembly, a Provincial Council or a Local Authority or is a public officer, judicial officer or in the service of a public corporation or holds any other paid office under the Republic ceases to be such Member or to be in such service or to hold such office.
- (4) (a) No political party or other association or organisation shall have as one or any of its aims or objects, the establishment of a separate State within the territory of Sri Lanka.
- (b) Where any political party or other association or organisation has as one or any of its aims or objects the establishment of a separate State within the territory of Sri Lanka, any person may make an application to the Supreme Court for a declaration that such political party or other association or organization has as one or any of its aims or objects the establishment of a separate State within the territory of Sri Lanka. The Secretary or other officer of such political party or other association or organisation shall be made a respondent to such application.
- (c) Where the Supreme Court makes a declaration in pursuance of an application made to it under subparagraph (b) in relation to any political party or other association or organisation, in pursuance of an application made to it under that sub paragraph –
- (i) such political party or other association or organisation shall be deemed, for all purposes to be proscribed and any member of such political party or other association or organisation, who is a Member of the National State Assembly, shall be deemed to have vacated his seat in the National State Assembly with effect from the date of such declaration, and any nomination paper submitted by such political party or other association or organisation shall be deemed for all purposes to be invalid;
  - (ii) any person who holds office or is a member of such political party or other association or organisation, commits an offence and shall, on conviction, by the Court of Appeal after trial on indictment and filed by the Attorney General–

- a) be subject to civic disability for such period not exceeding fifteen years as may be determined by such Court;
  - b) forfeit as determined by Court the movable and immovable property of such person other than the property as is determined by an Order of such Court as being necessary for the sustenance of such person and his family;
  - c) not be entitled to civic rights for such period not exceeding fifteen years as may be determined by such Court; and
  - d) if such person is a Member of the National State Assembly, a Provincial Council or a Local Authority or is a public officer, judicial officer or in the service of a public corporation or holds any other paid office under the Republic, shall cease to be such Member or to be in such service or hold such office.
- (5) The execution of any punishment imposed under this Chapter shall not be stayed or suspended pending the determination of any appeal against such punishment or the conviction in consequence of which such punishment was imposed.
- (6) No suit, prosecution or other proceedings, civil or criminal shall lie against any member of the Armed Forces or Police Force for any act or thing, not done in bad faith in pursuance of any order made or direction given in fulfilment of a duty under this Chapter.
- (7) In this Article, “civic rights” includes –
- (a) the right to obtain a passport;
  - (b) the right to sit for any public examination;
  - (c) the right to own any immovable property; and
  - (d) the right to engage in any trade or profession which requires a licence, registration or other authorisation, by or under any written law.

### **People not to be deprived of their Sovereignty**

79. (1) Whoever either within or outside the Republic;
- (a) deprives or attempts to deprive or conspires or encourages or promotes the deprivation of the People of the Republic of their Sovereignty;
  - (b) encourages, promotes, or instigates the United Nations or any organ of the United Nations, any other international organisation, any State or person to apply any measures involving the use of armed force against the Republic of Sri Lanka or for the termination or suspension or the interruption of economic relations with the Government of Sri Lanka, or to prosecute,

- charge or punish any citizen of Sri Lanka in any other jurisdiction, for any offence alleged to have been committed by such person within the territory of the Republic;
- (c) conspires to overthrow, by means of criminal force or the show of criminal force, the Government of Sri Lanka or any of the organs thereof;
  - (d) wages war against the Republic, or attempts to wage war, or abets or conspires the waging of war;
  - (e) collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Republic;
  - (f) by any act, or by any illegal omission, conceals the existence of a design to wage war against the Republic intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war;
  - (g) by means of criminal force or the show of criminal force, with the intention of inducing or compelling the President, a Minister or a Member of the National State Assembly, a Provincial Council or a Local Authority to exercise or refrain from exercising in any manner any of the lawful powers of such President, Minister or Member of National State Assembly or Provincial Council or Local Government;
  - (h) by words, either spoken or intended to be read, or by signs or by visible representations, cause insult or show disrespect to the National Flag, National Emblem or National Anthem, of the Republic of Sri Lanka commits an offence and upon conviction be punishable with imprisonment of either description for a term not exceeding twenty years and forfeiture of property.
- (2) Any person convicted of any offence under paragraph (1) shall be subjected to civic disability for such a period not exceeding twenty years.
  - (3) In this Chapter “war” includes acts of terrorism.

### **Public Security**

- 80. (1) The Public Security Ordinance (Chapter 40) as amended and in force immediately prior to the commencement of the Constitution shall be deemed to be a law enacted by the National State Assembly.
- (2) A State of Emergency may be declared when the life of the people of Sri Lanka or the State is threatened by war, invasion, general insurrection, disorder, national disasters or other public emergency.

- (3) The power to make emergency regulations under the Public Security Ordinance (Chapter 40) or the law for the time being in force relating to public security shall include the power to make regulations having the legal effect of overriding, amending or suspending the operation of the provisions of any law, except the provisions of the Constitution.
- (4) The provisions of any law relating to public security, empowering the President to make emergency regulations which have the legal effect of overriding, amending or suspending the operation of the provisions of any law, shall not come into operation, except upon the making of a Proclamation under such law, bringing such provisions into operation.
- (5) Upon the making of such a Proclamation, the occasion thereof shall, subject to the other provisions of this Article, be forthwith communicated to the National State Assembly and accordingly –
  - (a) if such Proclamation is issued after the dissolution of the National State Assembly, such Proclamation shall operate as a summoning of the National State Assembly to meet on the tenth day after such Proclamation, unless the Proclamation appoints an earlier date for the meeting which shall not be less than three days from the date of the Proclamation; and the National State Assembly so summoned shall be kept in session until the expiry or revocation of such or any further Proclamation or until the conclusion of the General Election whichever event occurs earlier and shall thereupon stand dissolved;
  - (b) if the National State Assembly is at the date of the making of such Proclamation, separated by any such adjournment or prorogation as will not expire within ten days, a Proclamation shall be issued for the meeting of the National State Assembly within ten days.
- (6) Where the provisions of any law relating to public security have been brought into operation by the making of a Proclamation under such law, such Proclamation shall, subject to the succeeding provisions of this Article, be in operation for a period of one month from the date of the making thereof, but without prejudice to the earlier revocation of such Proclamation or to the making of a further Proclamation at or before the end of that period.
- (7) Where the provisions of any law relating to public security, have been brought into operation by the making of a Proclamation under such law, such Proclamation shall expire after a period of fourteen days from the date on which such provisions shall have come into operation, unless such Proclamation is approved by a resolution of the National State Assembly:

Provided that, if –

- (a) the National State Assembly stands dissolved at the date of the making of such Proclamation; or
  - (b) the National State Assembly is at such date separated by any such adjournment or prorogation as is referred to in sub paragraph (b) of paragraph (5) of this Article; or,
  - (c) the National State Assembly does not meet when summoned to meet as provided in paragraph (5) of this Article, then such Proclamation shall expire at the end of ten days after the date on which the National State Assembly shall next meet and sit, unless approved by a resolution at such meeting of the National State Assembly.
- (8) Upon the revocation of a Proclamation referred to in paragraph (7) of this Article within a period of fourteen days from the date on which the provisions of any law relating to public security shall have come into operation or upon the expiry of such a Proclamation in accordance with the provisions of paragraph (7), no Proclamation made within thirty days from the date of such revocation or expiration shall come into operation until the making thereof shall have been approved by a resolution of the National State Assembly.
- (9) If the National State Assembly does not approve any Proclamation bringing such provisions as are referred to in paragraph (4) of this Article into operation, such Proclamation shall, immediately upon such disapproval, cease to be valid and of any force in law but without prejudice to anything lawfully done there under.
- (10) If the making of a Proclamation cannot be communicated to and approved by the National State Assembly by reason of the fact that the National State Assembly does not meet when summoned, nothing contained in paragraph (7) or (8), shall affect the validity or operation of such Proclamation:

Provided that in such event, the National State Assembly shall again be summoned to meet as early as possible thereafter.

CHAPTER X

**THE EXECUTIVE**

**The President of the Republic**

**The President of the Republic**

81. (1) There shall be a President of the Republic of Sri Lanka, who is the Head of the State, the Head of the Executive and of the Government, and the Commander-in-Chief of the Armed Forces and shall exercise the executive power of the people in terms of paragraph (b) of Article 6.
- (2) The President of the Republic shall be elected by the People, and shall hold office for a term of five years.

**Responsibility of the President**

82. The President shall be responsible to the National State Assembly for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any written law, including the law for the time being relating to public security.

**The Election and the Term of Office of the President**

83. (1) Any citizen by descent who is qualified to be elected to the office of President may be nominated as a candidate for such office –
- (a) by a recognised political party; or
- (b) if such citizen is or has been an elected President or an elected member of the legislature, by an elector whose name has been entered in any register of electors.
- (2) The poll for the election of the President shall be taken not less than one month and not more than two months before the expiration of the term of office of the President in office.
- (3) Where a poll for the election of a President is taken, the term of office of the person elected as President at such election shall commence on the expiration of the term of office of the President in office:

Provided that, the President in office, notwithstanding anything to the contrary in paragraph (2) of Article 81, shall continue to exercise, perform and discharge the powers, duties and functions of the office of President until the assumption of office by the person declared elected as President. If the office of President becomes vacant, by reason of the person declared elected as President failing to assume office, the President in office shall continue to exercise, perform and discharge the powers, duties and functions of the office of President, until the Prime Minister, or if the office of Prime Minister be then vacant, or if the Prime Minister be unable to act, the Speaker commences to act in the office of President in terms of Article 92.

- (4) The election of the President shall be conducted by the Commissioner General of Elections who shall fix the date for the nomination of candidates for such election and the date on which the poll shall be taken.
- (5) The National State Assembly shall by law make provision for –
  - (a) the nomination of candidates for the election of the President;
  - (b) the register of electors to be used at and the procedure for the election of the President;
  - (c) the creation of offences relating to such election and the punishment therefor;
  - (d) the grounds and manner of avoiding such election and of determining any disputed election; and
  - (e) all other matters necessary or incidental thereto.

### **Assumption of office**

84. (1) The person elected or succeeding to the office of President shall not assume office unless he,
  - (a) makes and subscribes the affirmation or takes and subscribes the oath, set out in Part I of the Fourth Schedule, in Sri Lanka before the Chief Justice or any other Judge of the Supreme Court.
  - (b) submit in such form as may be prescribed, a declaration of all –
    - (i) his assets and liabilities,
    - (ii) the assets and liabilities of his spouse,
    - (iii) the assets and liabilities of each of his children,
    - (iv) the assets and liabilities of any trust of which he or any member of his family is directly or indirectly a beneficiary, and
    - (v) transfers of all assets and liabilities made by him in favour of any person during a period of six years immediately prior to the date of such declaration.



- (2) In this Article  
 “Asset and Liabilities” mean assets and liabilities in and outside Sri Lanka and include movable and immovable property and,  
 “transfer” includes a “gift”.
- (3) The President who wilfully makes any false statement in any such declaration commits an offence and shall –
- (i) on conviction after trial before the Court of Appeal be liable to a fine not exceeding twenty-five million rupees and to a term of imprisonment not exceeding three years and,
  - (ii) be disqualified from being elected the President, a Member of the National State Assembly, Provincial Council or any Local Authority.
- (4) Upon such assumption of office, the President shall cease to hold any other office created or recognised by the Constitution and if he is a Member of the National State Assembly, a Provincial Council or a Local Authority, shall cease to be a member of the National State Assembly, a Provincial Council or a Local Authority. The President shall not hold any other office or place of profit whatsoever.
- (5) The President shall, by virtue of his office, have the right at any time to attend, address and send messages to the National State Assembly. In the exercise of such right, the President shall be entitled to all the privileges, immunities and powers, other than the right to vote, of a Member of the National State Assembly and shall not be liable for any breach of the privileges of the National State Assembly or of its Members.

### **Duties, Powers and Functions of the President**

85. In addition to the powers, duties and functions expressly conferred or imposed on, or assigned to the President by the Constitution or other written law, the President shall have the power –
- (a) to further the national interest and foster national unity;
  - (b) to make the Statement of Government Policy in the National State Assembly at the commencement of each session of the National State Assembly;
  - (c) to preside at ceremonial sittings of the National State Assembly;
  - (d) to receive and recognise, and to appoint and accredit Ambassadors, High Commissioners, Plenipotentiaries and other diplomatic agents;

- (e) to appoint after consultation with the Chief Justice as President's Counsel, Attorneys-at-Law who have reached eminence in the profession and have maintained high standards of conduct and professional rectitude as prescribed by the rules formulated by the Supreme Court under Article 282. Every President's Counsel appointed under this paragraph shall be entitled to all such privileges as were hitherto enjoyed by Queen's Counsel;
- (f) to keep the Public Seal of the Republic, and to make and execute under the Public Seal, the acts of appointment of the Prime Minister and other Ministers of the Cabinet of Ministers, the Chief Justice and other Judges of the Supreme Court, the President of the Court of Appeal and other Judges of the Court of Appeal, Judges of the High Court and such grants and dispositions of lands and other immovable property vested in the Republic as the President is by law required or empowered to do, and to use the Public Seal for sealing all things whatsoever that shall pass that Seal;
- (g) to declare war and peace; and
- (h) to do all such acts and things, not inconsistent with the provisions of the Constitution or written law, as by international law, custom or usage the President is authorised or required to do.

### **Grant of Pardon**

86. (1) The President may, after due consultation with the Attorney General and having obtained the views of the Chief Justice in the case of any offender convicted of any offence in any Court within the Republic of Sri Lanka –
- (a) grant a pardon, either free or subject to lawful conditions;
  - (b) grant any respite, either indefinite or for such period as the President may think fit, of the execution of any sentence passed on such offender;
- Provided that, where any offender shall have been condemned to suffer death by the sentence of any Court, prior to the commencement of the Constitution, the President shall cause a report to be made to him by the Attorney-General, who shall in turn consult the Judge or Judges who tried the case, provided that such Judges are available for consultation.
- (2) The President may in the case of any person who is or has become subject to any disqualification specified in paragraphs (d), (e), (f), (g) or (h) of Article 174 or paragraph (h) of Article 176;
- (a) grant a pardon, either free or subject to lawful conditions; or
  - (b) reduce the period of such disqualification.

- (3) When any offence has been committed for which, the offender may be tried within the Republic of Sri Lanka, the President may grant a pardon to any accomplice in such offence who shall give such information as shall lead to the conviction of the principal offender or of any one of such principal offenders, if more than one.
- (4) The President shall, in due consultation with the Chief Justice and the Attorney-General, formulate guidelines pertaining to the grant of any such pardon or respite referred to in paragraphs (1), (2) and (3) and such guidelines shall be published.

### **Immunity of President from Suit**

87. (1) While any person holds office as President, no proceedings shall be instituted or continued against him in any Court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity:

Provided that, nothing in this paragraph shall be read and construed as restricting the right of any person to make an application under Article 268 or Articles 290 and 291 against the Republic, in respect of anything done or omitted to be done by the President in his official capacity. The Attorney General shall be made a party respondent in every such application.

- (2) The immunity conferred by the provisions of paragraph (1) of this Article shall not apply to any proceeding in any Court in relation to the exercise of any power pertaining to any subject or function assigned to the President or remaining in his charge under paragraph (4) of Article 95 or to proceedings in the Supreme Court under paragraph (2) of Article 273 and to proceedings under paragraph (a) of Article 274 relating to the election of the President or the validity of a Referendum.
- (3) Subject to paragraph (3) of Article 84, no civil or criminal proceeding shall be instituted against any person who has held the office of President with regard to anything done or omitted to be done in the performance of his duties during his term of office.
- (4) Where provision is made by law limiting the time within which proceedings of any description may be instituted against any person, a period of time during which such person holds the office of President of the Republic of Sri Lanka shall not be taken into account in calculating any period of time prescribed by that law.

### **Salary and Pension**

88. (1) The National State Assembly shall by law determine the salary, allowances and pension entitlement of the holders of the office of President and any entitlement to a former President or widow or widower of a former President. The Presidential Entitlement Act No. 4 of 1986 shall apply to any former President or widow

or widower of a former President until such Act is replaced by any other law. Such pension shall be in addition to any other pension to which such person is entitled by virtue of any prior service.

- (2) Upon the assumption of the office of President, the holder of such office shall become entitled to the receipt of such salary and allowances and thereafter, of such pension as may be determined by law. Any subsequent amendment, repeal or replacement of this Article and any subsequent law or any provision thereof inconsistent with this Article shall not have retrospective operation.
- (3) The salary, allowances and pension of the President shall be charged on the Consolidated Fund.
- (4) The National State Assembly may increase, but shall not reduce the salary, allowances or pension entitlement of the holders of the office of President.

### **Exercise, Performance and Discharge of Powers, Duties and Functions of the President by the Prime Minister**

89. (1) If the President is of the opinion that by reason of illness, absence from Sri Lanka or any other cause he will be unable to exercise, perform and discharge the powers, duties and functions of his office, he may appoint the Prime Minister to exercise, perform and discharge the powers, duties and functions of the office of President during such period and may also appoint one of the other Ministers of the Cabinet to act in the office of Prime Minister during such period:

Provided that, if the office of Prime Minister be then vacant or the Prime Minister is unable to act, the President may appoint the Speaker to exercise, perform and discharge the powers, duties and functions of the office of President during such period.

- (2) If the Chief Justice and the Speaker are of the opinion that the President is temporarily unable to exercise, perform and discharge the powers, duties and functions of his office and is unable to make an appointment in terms of paragraph (1) of this Article, the Prime Minister shall exercise, perform and discharge the powers, duties and functions of the office of President during such period and shall appoint one of the Ministers of the Cabinet of Ministers to act in the office of Prime Minister during such period, notwithstanding the absence of such appointment as is provided for in paragraph (1) of this Article:

Provided that, if the office of Prime Minister be then vacant or the Prime Minister is unable to act, the Speaker shall exercise, perform and discharge the powers, duties and functions of the office of President during such period.

- (3) The provisions of the Constitution relating to the President (other than the provisions of paragraph (2) of Article 84) shall apply, in so far as they can be applied, to the person so exercising, performing and discharging the powers, duties and functions of the office of President.
- (4) In this Article, “the Speaker” includes, during any period when the National State Assembly is dissolved, the person who held the office of Speaker immediately before the dissolution of the National State Assembly.

### **Vacation of Office by President**

90. (1) The office of President shall become vacant –
- (a) upon his death;
  - (b) if he resigns from his office by a writing under his hand addressed to the Speaker;
  - (c) if he ceases to be a citizen of Sri Lanka or becomes a citizen of any other country, voluntarily or having become aware of him becoming a citizen of such other country, within two weeks thereof, fails to renounce such citizenship;
  - (d) if the person elected as President willfully fails to assume office within two weeks from the date of commencement of his term of office;
  - (e) if he is removed from office as provided in the next succeeding paragraph; or
  - (f) if the Supreme Court in the exercise of its powers under paragraph (a) of Article 274 determines that his election as President was void and does not determine that any other person was duly elected as President.
- (2) (a) Any Member of the National State Assembly may, by a writing addressed to the Speaker, give notice of a resolution alleging that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of –
- (i) intentional violation of the Constitution;
  - (ii) treason;
  - (iii) bribery;
  - (iv) misconduct or corruption involving the abuse of the powers of his office; or
  - (v) any offence under any law, involving moral turpitude and setting out full particulars of the allegation or allegations made and seeking an inquiry and report thereof by the Supreme Court.
- (b) No notice of such resolution shall be entertained by the Speaker or placed on the Order Paper of the National State Assembly unless it complies with the provisions of sub-paragraph (a) and –

- (i) such notice of resolution is signed by not less than two-thirds of the whole number of Members of the National State Assembly; or
  - (ii) such notice of resolution is signed by not less than one-half of the whole number of Members of the National State Assembly and the Speaker is satisfied that such allegation or allegations merit inquiry and report by the Supreme Court.
- (c) where such resolution is passed by not less than two-thirds of the whole number of Members (including those not present) voting in its favour, the allegation or allegations contained in such resolution shall be referred by the Speaker to the Supreme Court for inquiry and report.
  - (d) the Supreme Court shall, after due inquiry at which the President shall have the right to appear and to be heard, in person or by an Attorney-at-Law, make a report of its determination to the National State Assembly together with the reasons therefor.
  - (e) where the Supreme Court reports to the National State Assembly that in its opinion, the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of any other allegations contained in such resolution, as the case may be, the National State Assembly may by a resolution passed by not less than two-thirds of the whole number of Members (including those not present) voting in its favour to remove the President from office.
  - (f) The allegations contained in the notice of resolution in sub paragraph (a) are unfounded, the National State Assembly shall not act upon such notice of resolution or by any other notice of resolution on the same or similar allegations made against the President.
- (3) In this Article, “the Speaker” includes, during any period when the National State Assembly is dissolved, the person who held the office of Speaker immediately before the dissolution of the National State Assembly.

### **Determination by the Supreme Court that the President was not Duly Elected or the Election of the President was Void**

- 91. (1) Where the Supreme Court in the exercise of its jurisdiction under Article 274 determines –
  - (a) that the election of the President was void and does not determine that any other person was duly elected, then, a poll for the election of the President shall be taken not later than three months from the date of the determination; or

- (b) that any other person was duly elected as President, then, such other person shall assume the office of President within one month of the date of the determination.

For the purposes of sub paragraph (d) of paragraph (1) of Article 90, the date of commencement of the term of office of the new President shall be the date of his election or the date of the determination, as the case may be.

- (2) Upon the Supreme Court making any such determination as is referred to in paragraph (1) of this Article, the person who was exercising, performing and discharging the powers, duties and functions of the office of President shall forthwith cease to exercise, perform and discharge such powers, duties and functions. During the period intervening between the date of such determination and the assumption of office by the new President, the Prime Minister shall act in the office of President and shall appoint one of the other Ministers of the Cabinet of Ministers to act in the office of the Prime Minister:

Provided that, if the office of Prime Minister be then vacant or the Prime Minister is unable to act, the Speaker shall act in the office of President.

- (3) For the purposes of paragraph (2) of Article 81 and notwithstanding the provisions of paragraph (4) of Article 83, the term of office of the new President shall be deemed to have commenced on the date on which the term of office of the person whose election was determined to have been void or undue would, but for such determination, have commenced.
- (4) The exercise, performance and discharge by any person of the powers, duties and functions of the office of President shall not be invalid by reason only of the fact that the Supreme Court subsequently determines that the election of such person as President was void or undue.
- (5) The provisions of this Article shall apply notwithstanding anything to the contrary in Article 92.
- (6) In this Article, “the Speaker” includes, during any period when the National State Assembly is dissolved, the person who held the office of Speaker immediately before the dissolution of the National State Assembly.

### **Vacation of Office by the President and Election of the Acting President**

92. (1) (a) If the office of President shall become vacant prior to the expiration of his term of office, the National State Assembly shall elect as acting President, one of its Members who is qualified to be elected to the office of President. Any person so elected to act for the President under this Article shall hold office for a period of not more than six months from the date of his election as the acting President.

- (b) Any such election referred to in sub paragraph (a) shall be held as soon as possible after, and in no case later than one month from the date of, occurrence of the vacancy. Such election shall be by secret ballot and by an absolute majority of the votes cast in accordance with such procedure as the National State Assembly may by law provide:

Provided that, if such vacancy occurs after the dissolution of the National State Assembly, the President shall be elected by the new National State Assembly within one month of its first meeting.

- (c) During the period between the occurrence of such vacancy and the assumption of office by the acting President, the Prime Minister shall act in the office of President and shall appoint one of the other Ministers of the Cabinet of Ministers to act in the office of Prime Minister:

Provided that, if the office of Prime Minister be then vacant or the Prime Minister is unable to act, the Speaker shall act in the office of President.

Provided further, if the Speaker is unable to act, the Chief Justice shall act in the office of the President.

- (2) The provisions of the Constitution relating to the President (other than the provisions of paragraph (2) of Article 84) shall apply, in so far as they can be applied, to an acting President.
- (3) The Commissioner General of Elections shall, in the event of any vacancy under paragraph (1), hold an election to elect a new President within six months of the occurrence of such vacancy.
- (4) The National State Assembly shall by law provide for all matters relating to the procedure for the election of the President by the National State Assembly and all other matters necessary or incidental thereto.

### **President's Staff**

93. (1) The President shall have the power to appoint such Secretaries, and, in consultation with the Cabinet of Ministers, such other officers and staff as are in his opinion, necessary to assist him in the exercise, performance and discharge of the powers, duties and functions of his office, and to determine their terms and conditions of service.
- (2) The salaries of such Secretaries, officers and staff shall be charged on the Consolidated Fund.
- (3) Such Secretaries, officers and staff shall be deemed to be public officers except that the dismissal and disciplinary control of such Secretaries, officers and staff shall



be vested in the President, who may delegate to any such Secretary his powers of dismissal and disciplinary control in respect of any such officers or staff.

- (4) Every such Secretary, officer or member of the staff shall cease to hold office upon a new President assuming office.
- (5) Where any such Secretary, officer or member of the staff so ceases to hold office, the Cabinet of Ministers may appoint such Secretary, officer or member of the staff to any post in the Public Service:

Provided that, any such Secretary, officer or member of the staff who immediately prior to his appointment as Secretary, officer or member of the staff was in the Public or Local Government Service or in the service of a public corporation shall be entitled to revert to such service without loss of seniority upon a new President assuming office.

- (6) The proviso to paragraph (5) of this Article shall, *mutatis mutandis*, apply to any person referred to in that proviso upon—
  - (a) the President terminating the services of such person, otherwise than by dismissal on disciplinary ground; or
  - (b) the resignation of such person, unless disciplinary proceedings are pending or contemplated against such person on the date of his resignation.
- (7) For the purposes of paragraphs (5) and (6) of this Article, any person who has continuously held the office of Secretary to the President, Secretary to any Ministry or any office in the President's staff or any one or more of such offices shall be deemed to have continuously held the office which such person last held.

## CHAPTER XI

**THE EXECUTIVE****The Cabinet of Ministers****Prime Minister and the Cabinet of Ministers**

94. (1) There shall be a Cabinet of Ministers charged with the direction and control of the Government of the Republic. The President shall be a member of the Cabinet of Ministers and shall be the Head of the Cabinet of Ministers.
- (2) The Cabinet of Ministers shall be collectively responsible and answerable to the National State Assembly.
- (3) Every Minister of the Cabinet of Ministers shall be bound by the decisions thereof and shall be individually responsible, accountable and answerable to the National State Assembly in respect of the functions of his Ministry.
- (4) The President shall appoint as Prime Minister, a Member of the National State Assembly, who, in the opinion of the President, is most likely to command the confidence of the National State Assembly.

**Ministers, their Subjects, Function and Powers**

95. (1) The President shall, subject to the provisions of sub paragraph (a) of paragraph (3), determine the number of Ministers of the Cabinet of Ministers and the Ministries and the assignment of subjects and functions to such Ministers.
- (2) The President shall appoint, from among the Members of the National State Assembly, Ministers, to be in charge of the Ministries so determined under paragraph (1).
- (3) The total number of –
- (a) Ministers of the Cabinet of Ministers shall not exceed twenty; and
- (b) Ministers who are not members of the Cabinet of Ministers and Deputy Ministers shall not, in the aggregate, exceed twenty.
- (4) (a) The subject of Defence shall be under the President.
- (b) The President may assign to himself any other subject or function and shall remain in charge of any subject or function not assigned to any Minister under the provisions of paragraph (1) of this Article or the provisions

of paragraph (2) of Article 97 and may for that purpose determine the number of Ministries to be in his charge, and accordingly, any reference in the Constitution or any written law to the Minister to whom such subject or function is assigned, shall be read and construed as a reference to the President.

- (5) There shall be at least one Cabinet Minister from every Province appointed from among the Members of the National State Assembly, representing the Government in any of the electoral divisions of such Province where representation is available.
- (6) The President may at any time change the assignment of subjects and functions and the composition of the Cabinet of Ministers. Such changes shall not affect the continuity of the Cabinet of Ministers and the continuity of its responsibility to the National State Assembly.
- (7) Subject to the provisions of the Constitution, each Minister of the Cabinet of Ministers shall, in respect of the functions of his Ministry, exercise the executive power of the President delegated to him.

### **Executive Committees**

96. (1) There shall be an Executive Committee for each Ministry consisting of such number of Members of the National State Assembly representing electoral districts, who have not been appointed as Ministers.
- (2) The Chairperson of the Executive Committee shall be the Minister in Charge of such Ministry.
- (3) The Prime Minister shall, with the concurrence of the relevant Minister, appoint members to each Executive Committee.
- (4) The Members of the Executive Committee shall assist the Minister in charge of the Ministry in the performance of his duties.
- (5) No member of the Executive Committee shall be entitled to any additional allowance or payment for his performance as a member of the Executive Committee.

### **Ministers who are not Members of the Cabinet of Ministers**

97. (1) The President may, in accordance with sub-paragraph (b) of paragraph (3) of Article 95, appoint from among the Members of the National State Assembly, Ministers who shall not be members of the Cabinet of Ministers.
- (2) The President may determine the assignment of subjects and functions to Ministers appointed under paragraph (1) and the Ministries, if any, which are to be in charge of such Ministers.

- (3) The President may, at any time, change any assignment made under paragraph (2).
- (4) Every Minister appointed under paragraph (1) shall be responsible and answerable to the Cabinet of Ministers and to the National State Assembly, with regard to the subject or function assigned to him.
- (5) (a) Any Minister of the Cabinet of Ministers may, with the concurrence of the President by Notification published, delegate to any Minister who is not a member of the Cabinet of Ministers, any power or duty pertaining to any subject or function assigned to such Cabinet Minister, or any power or duty conferred or imposed on him by any written law.
- (b) It shall be lawful for such other Minister to exercise and perform any power or duty delegated to him under this paragraph notwithstanding anything to the contrary in the written law by which that power or duty is conferred or imposed on such Minister of the Cabinet of Ministers.

### **Deputy Ministers**

98. (1) The President may, in accordance with sub paragraph (3) of paragraph (2) of Article 95, appoint from among the Members of the National State Assembly, Deputy Ministers to assist Ministers of the Cabinet of Ministers in the performance of their duties.
- (2) Any Minister of the Cabinet of Ministers may with the concurrence of the President by Notification published, delegate to his Deputy Minister, any power or duty pertaining to any subject or function assigned to him or any power or duty conferred or imposed on him by any written law, and it shall be lawful for such Deputy Minister to exercise and perform any power or duty delegated notwithstanding anything to the contrary in the written law by which that power or duty is conferred or imposed on such Minister.
- (3) Every Deputy Minister shall be responsible and answerable to the National State Assembly and to the relevant Minister of the Cabinet of Ministers with regard to every matter delegated to him.
- (4) The Members of the relevant Executive Committee appointed under Article 96 for the relevant Ministry shall assist the Deputy Ministers in charge of the Ministry in the performance of his powers and duties.

### **Removal of the Prime Minister, Ministers of the Cabinet of Ministers, Ministers who are not members of the Cabinet of Ministers and Deputy Ministers**

99. The President may, at any time, remove the Prime Minister and any Minister of the Cabinet of Ministers, a Minister who is not a member of the Cabinet of Ministers or a Deputy Minister.

### **Tenure of Office of the Prime Minister, Ministers of the Cabinet of Ministers, Ministers who are not members of the Cabinet of Ministers and Deputy Ministers**

100. The Prime Minister, a Minister of the Cabinet of Ministers, a Minister who is not a member of the Cabinet of Ministers and a Deputy Minister, shall continue to hold office throughout the period during which the Cabinet of Ministers continues to function under the provisions of the Constitution unless he –
- (a) is removed from office under the hand of the President;
  - (b) resigns from office by a writing under his hand addressed to the President; or
  - (c) ceases to be a Member of the National State Assembly.

### **Cabinet of Ministers after Dissolution of the National State Assembly**

101. (1) The Cabinet of Ministers functioning immediately prior to the dissolution of the National State Assembly shall, notwithstanding such dissolution, continue to function and shall cease to function upon the conclusion of the General Election and accordingly, the Prime Minister and the Ministers of the Cabinet of Ministers shall continue to function unless they cease to hold office as provided in sub paragraphs (a) and (b) of Article 100 and shall comply with the guidelines issued and directions given by the Commissioner General of Elections and shall not act in any manner that will cause any undue influence on the General Election.
- (2) Notwithstanding the death, removal from office or resignation of the Prime Minister, during the period intervening between the dissolution of the National State Assembly and the conclusion of the General Election, the Cabinet of Ministers shall continue to function with the other Ministers of the Cabinet of Ministers as its members, until the conclusion of the General Election. The President may appoint one such Minister to exercise, perform and discharge the powers, duties and functions of the Prime Minister.
- (3) On the death, removal from office or resignation, during the period intervening between the dissolution of the National State Assembly and the conclusion of the General Election, of a Minister of the Cabinet of Ministers, the President may, appoint any other Minister to be the Minister in charge of the Ministry of such Minister or to exercise, perform and discharge the powers, duties and functions of such Minister.

### **Dissolution of the Cabinet of Ministers**

102. (1) On the Prime Minister ceasing to hold office by death, resignation, removal or otherwise, except during the period intervening between the dissolution of the National State Assembly and the conclusion of the General Election, the Cabinet of Ministers shall, stand dissolved and the President shall appoint a

Prime Minister and Ministers of the Cabinet of Ministers, in terms of Articles 94 and 95, and may appoint Ministers who are not members of the Cabinet of Ministers and Deputy Ministers in terms of Articles 97 and 98:

Provided that, if after the Prime Minister so ceases to hold office, the National State Assembly is dissolved, the Cabinet of Ministers shall continue to function with the other Ministers of the Cabinet as its members, until the conclusion of the General Election. The President may appoint one such Minister to exercise, perform and discharge the powers, duties and functions of the Prime Minister, and the provisions of Article 101 shall, *mutatis mutandis*, apply.

- (2) If the National State Assembly rejects the Statement of Government Policy or the Appropriation Bill or passes a vote of no-confidence in the Government, the Cabinet of Ministers shall stand dissolved, and the President may appoint a Prime Minister, Ministers of the Cabinet of Ministers, Ministers who are not members of the Cabinet of Ministers and Deputy Ministers in terms of Articles 94, 95, 97 and 98.

### **Acting Ministers and Deputy Ministers**

103. Whenever a Minister of the Cabinet of Ministers, a Minister who is not a member of the Cabinet of Ministers or a Deputy Minister is unable to discharge the functions of his office, the President may appoint any Member of the National State Assembly to act in the place of such Minister of the Cabinet of Ministers, Minister who is not a member of the Cabinet of Ministers or such Deputy Minister.

### **Secretary to the Cabinet of Ministers**

104. (1) There shall be a Secretary to the Cabinet of Ministers who shall be appointed by the President.
- (2) The Secretary to the Cabinet of Ministries shall, subject to the direction of the President, have charge of the office of the Cabinet of Ministers, and shall discharge and perform such other duties and functions and duties as may be assigned to him by the President or the Cabinet of Ministers.

### **Secretary to the Prime Minister**

105. (1) There shall be a Secretary to the Prime Minister who shall be appointed by the President, in consultation with the Prime Minister.
- (2) The Secretary to the Prime Minister shall have charge of the office of Prime Minister and shall perform and discharge the duties and functions of his office, subject to the directions of the Prime Minister.

### Secretaries to Ministries

106. (1) There shall be a Secretary for every Ministry of a Minister of the Cabinet of Ministers, who shall be appointed by the President in consultation with the relevant Minister.
- (2) The Secretary to a Ministry shall, subject to the direction and control of his Minister on Government Policy, exercise supervision over the departments of the Government and other institutions in charge of the Minister.
- (3) The Secretary to a Ministry shall cease to hold office upon the dissolution of the Cabinet of Ministers under the provisions of the Constitution or upon a determination by the President under Articles 95 and 97 which results in the Ministry ceasing to exist:
- Provided that a person who immediately prior to his appointment as Secretary was in the Public or Local Government Service or in the service of any public corporation shall be deemed to have been temporarily released from such service and shall be entitled to revert to such service without loss of seniority upon his so ceasing to hold office as such Secretary.
- (4) The proviso to paragraph (3) of this Article shall *mutatis mutandis* apply to a Secretary to a Ministry upon –
- (a) the President terminating his services otherwise than by dismissal on disciplinary grounds or;
- (b) his resignation unless disciplinary proceedings are pending or contemplated against him on the date of his resignation.
- (5) For the purpose of paragraphs (3) and (4) any person who has continuously held the office of Secretary to the President, Secretary to a Ministry or any other office in the President's staff or any one or more of such offices, shall be deemed to have continuously held the office which such person last held.
- (6) For the purposes of this Article the office of the Secretary to the Cabinet of Ministers, independent departments referred to in Chapter XV, the office of the Secretary-General of the National State Assembly, the Legislative Council and the Commissions and the Council referred to in the Schedule to Chapter XIII shall be deemed not to be departments of Government.

### Official Oath and Affirmation

107. Every person appointed to any office referred to in this Chapter shall not enter upon the duties of his office until such person makes and subscribes the affirmation or takes and subscribes the oath, set out in Part I of the Fourth Schedule.

## CHAPTER XII

**NATIONAL POLICIES AND PLANNING****National Planning Council**

108. (1) There shall be a National Council of Policy Planning (in this chapter referred to as National Planning Council) consisting of –
- (a) the President;
  - (b) the Prime Minister;
  - (c) the Leader of the Opposition;
  - (d) Ministers of the Cabinet of Ministers, Ministers who are not members of the Cabinet of Ministers and Deputy Ministers;
  - (e) all Leaders of political parties represented in the National State Assembly;
  - (f) one Minister from every Board of Ministers nominated by the Board of Ministers of the Provincial Council; and
  - (g) by the invitation of the President,
    - (i) Secretary to the President, Secretaries of Ministries and Provincial Ministries;
    - (ii) District Secretaries; and
    - (iii) Heads of Departments.
- (2) The President shall be the Head of the National Planning Council.
- (3) The National Planning Council shall have the power to act notwithstanding the fact that there is a vacancy in its membership and no act, proceedings or decision of the National Planning Council shall be or deemed to be invalid by reason only of the fact that there has been a vacancy in its membership or that there has been any defect in the appointment of a member.
- (4) The first meeting of the National Planning Council shall be convened within one month of the General Election.
- (5) The National Planning Council may appoint such number of sub-committees as may be necessary.



### **Divisional Planning Committees**

109. (1) There shall be a Divisional Planning Committee for every Divisional Secretaries Division, consisting of –
- (a) Members of the National State Assembly representing any area of the Divisional Secretary's division;
  - (b) all members of Local Authorities within the Divisional Secretaries Division;
  - (c) the Divisional Secretary and Assistant Divisional Secretaries of the Divisional Secretaries Division;
  - (d) Grama Niladaries of the Divisional Secretaries Division;
  - (e) all officers in charge of Government institutions within the Divisional Secretaries Division on invitation by the Chairperson;
  - (f) Head of Cooperative Societies within the Divisional Secretaries Division, on invitation by the Chairperson; and
  - (g) Clergy in charge of any place of religious worship within the Divisional Secretaries Division on invitation by the Chairman.
- (2) The President shall appoint a Chairman for each Divisional Planning Committee.
- (3) The first meeting of the Divisional Planning Committee shall be convened within one month of the General Election.
- (4) The Divisional Planning Committee may appoint such number of sub-committees as may be necessary.

### **National Planning**

110. (1) The National Planning Council shall formulate a National Development Plan for the development of the country inclusive of socio-economic and infrastructure during the tenure of the Government.
- (2) The National Planning Council shall in the preparation of the National Development Plan obtain the –
- (i) advice and assistance of the National Advisory Council established under Chapter XIV; and
  - (ii) views and recommendations of the Divisional Planning Committees.
- (3) The Prime Minister shall, before the expiry of six months from the General Election, place before the National State Assembly the National Development Plan of the Government. The National Development Plan shall be published at least fourteen days before the date the National Development Plan is placed before the National State Assembly.

- (4) The National Planning Council may amend or revise the National Development Plan when necessary. Every such amendment or revision shall forthwith be placed before the National State Assembly.

### **National Policies**

111. (1) The National Planning Council shall be responsible in formulating National Policies of the Republic which may include separate policies in respect of each subject or function assigned to every Ministry. In the formulation of such policies, the National Planning Council shall duly consider the recommendation of the Inter-Ministerial Executive Committees established under Article 230 and the opinion of the National Advisory Council established under Chapter XIV.
  - (2) Every National Policy formulated by the National Planning Council shall after approval by the Cabinet of Ministers, be published and placed before the National State Assembly for its approval.
  - (3) The National Planning Council may amend or revise National Policies as and when necessary and every such amendment or revision after approval of the Cabinet of Ministers shall be published and placed before the National State Assembly for its approval.
  - (4) Every National Policy shall come into effect after the approval of the National State Assembly and all Governmental activity shall be carried out in conformity with such Policy.
112. The National State Assembly may by law make provisions for –
  - (a) the appointment of additional members to the National Planning Council, Divisional Planning Committees and sub committee and their qualifications;
  - (b) the procedure with regard to the conduct of meetings of the National Planning Council, Divisional Planning Committees and sub committees; and
  - (c) any other matter relating to the powers and functions of the National Planning Council, Divisional Planning Committees and sub committees.

CHAPTER XIII

**LEGISLATIVE COUNCIL**

**Constitution of the Legislative Council**

113. (1) There shall be a Legislative Council consisting of –
- (a) the Prime Minister;
  - (b) the Speaker;
  - (c) the Leader of the Opposition;
  - (d) four Members of the National State Assembly elected by the majority of Members of the National State Assembly representing the Government; and
  - (e) three Members of the National State Assembly elected by the majority of the Members of the National State Assembly representing the Opposition: Provided that, at least one member elected shall be from any political party other than the political party from which the Leader of the Opposition is elected or nominated as the case may be.
- (2) The Speaker shall be the Chairperson of the Legislative Council.
- (3) The Speaker shall conduct the election for the purpose of sub-paragraphs (d) and (e) of paragraph (1).
- (4) Members elected under sub paragraphs (d) and (e) of paragraph (1) shall be persons with academic or professional qualifications prescribed by law: Provided however, that until such law is enacted by the National State Assembly, the Prime Minister, the Leader of Opposition and the Speaker shall determine such academic or professional qualifications required under this proposal.
- (5) In the event of a failure to elect members under sub-paragraphs (d) and (e) of paragraph (1), the Speaker shall nominate such members and the members so nominated shall deemed to be declared elected.

**Members of the Legislative Council to continue to hold Office on the Dissolution of the National State Assembly**

114. (1) (a) On the dissolution of the National State Assembly, notwithstanding the provisions of paragraph (2) of Article 197, the Speaker shall continue to hold office as a member of the Council until a Member of the National

- State Assembly is elected to be the Speaker under paragraph (1) of the aforesaid Article;
- (b) Notwithstanding the dissolution of the National State Assembly, the Prime Minister, the Leader of the Opposition and the Members of the National State Assembly who are members of the Council, shall continue to hold office as members of such Legislative Council, until such time after a General Election following such dissolution, a Member of the National State Assembly is appointed as the Prime Minister or recognised as the Leader of the Opposition or such number of Members of the National State Assembly are appointed as Members of the Legislative Council under sub-paragraph (d) and (e) of paragraph (1), of Article 113 as the case may be.
- (2) Subject to sub-paragraph (b) of paragraph (1), every member of the Legislative Council appointed under sub paragraphs (d) and (e) of paragraph (1) of Article 113, shall hold office for a period of three years from the date of appointment unless the member earlier resigns from his office by writing addressed to the President or is removed from office by the President upon the majority of the members of the Government or majority of the members of the Opposition, as the case may be, request the removal of any member elected respectively by the members of Government or by the members of the Opposition under sub-paragraph (d) and (e) of paragraph (1) of Article 113, or such member is convicted by a Court of law for any offence involving moral turpitude or if a resolution for the imposition of civic disability upon him has been passed in terms of Article 216 or is deemed to have vacated his office under paragraph (7) of Article 115.
- (3) In the event of there being a vacancy among the members elected under sub paragraphs (d) or (e) of paragraph (1) of Article 113, the Speaker shall, within fourteen days of the occurrence of such vacancy, hold an election to elect members in accordance with paragraphs (1) and (4) another person to succeed such member. Any person so elected, shall hold office during the unexpired period of tenure of the member whom he succeeds.
- (4) A member elected under sub paragraphs (d) or (e) of paragraph (1) of Article 113, shall not be eligible for re-appointment within the term of such National State Assembly.

### **Meetings of the Legislative Council**

115. (1) The Legislative Council shall meet as often as may be necessary to discharge the functions assigned to the Legislative Council by the provisions of this Chapter or by any law, and such meetings shall be summoned by the Secretary to the Legislative Council on the direction of the Chairperson of the Legislative Council.

- (2) The Chairperson shall preside at all meetings of the Legislative Council and in the absence of the Chairman, the Prime Minister shall preside at the meetings of the Legislative Council.
- (3) The quorum for any meeting of the Legislative Council shall be five members.
- (4) The Legislative Council shall endeavour to make every recommendation it is required to make by unanimous decision and in the absence of an unanimous decision, no recommendation shall be made by the Legislative Council, unless supported by not less than five members of the Legislative Council present at such meeting.
- (5) In the event of an equality of votes on any question for decision at any meeting of the Legislative Council, the Chairman or the member presiding at such meeting shall have a casting vote.
- (6) The procedure in regard to meetings of the Council and the transaction of business at such meetings shall be determined by the Legislative Council, including procedures to be followed by the High Posts Committee appointed under Article 121, in the recommendation of persons suitable for any appointment under Article 122.
- (7) Any member of the Council appointed under sub paragraph (d) and (e) of paragraph (1) of Article 113, who without obtaining prior leave of the Council absents himself from three consecutive meetings of the Legislative Council, shall be deemed to have vacated office with effect from the date of the third of such meetings.
- (8) The Legislative Council shall have the power to act notwithstanding the fact that there is a vacancy in its membership, and no act, proceeding or decision of the Legislative Council shall be or deemed to be invalid by reason only of the fact that the Legislative Council has not been fully constituted or that there has been a vacancy in its membership or that there has been any defect in the appointment of a member.

### **Secretary to the Council**

116. The Deputy Secretary-General of the National State Assembly shall function as the Secretary to the Legislative Council.

### **Continuation in Office of the Members of the Legislative Council**

117. Notwithstanding the expiration of the term of office of the members of the Legislative Council, the said members shall continue in office until the assumption of office by the new members of the Legislative Council.

### **Powers and Duties of the Council**

118. (1) The Legislative Council shall, once in every three months, submit to the National State Assembly a report of its activities during the preceding three months.
- (2) (a) The Legislative Council may make rules relating to the performance and discharge of its duties and functions.
- (b) Every rule made under paragraph (a) shall be published and placed before the National State Assembly within three months of such publication.
- (c) Any such rule shall take effect from the date such rule is approved by the National State Assembly.

### **Expenses to be Charged on the Consolidated Fund**

119. The expenses incurred by the Legislative Council shall be a charge on the Consolidated Fund.

### **Finality of Decisions of the Legislative Council**

120. (1) Subject to the provisions of Article 268, no Court shall have the power or jurisdiction to entertain, hear or decide or call in question, on any ground whatsoever, or in any manner howsoever, any decision of the Legislative Council or of the President or any approval or recommendation made by the Council or the High Posts Committee which shall be final and conclusive for all purposes.

### **High Posts Committees**

121. (1) There shall be the following two High Posts Committees appointed by the President-
- (a) consisting of the Chief Justice and four former Judges of the Supreme Court or Court of Appeal (of which at least two Judges shall be former Judges of the Supreme Court) relating to appointments and removal of persons referred to in Part I of the Schedule to this Chapter and to review the conduct of such persons:
- Provided that in the case of the appointment or removal of the Chief Justice, the incumbent Chief Justice shall not participate in the decision making of such appointment or removal.
- (b) consisting of two retired Judges of the Supreme Court or Court of Appeal and three retired Public Officers who have held the office of Secretary to a Ministry for appointments and removal of persons to any office referred to in Part II and members of the Commissions and Councils referred to in Part III of the Schedule to this Chapter and to review the conduct of such persons and members.

- (2) The President shall appoint a member as the Chairperson of each such High Posts Committee.
- (3) The President may remove any member of a High Posts Committee other than the Chief Justice with the concurrence of the Council.
- (4) The quorum of each such High Posts Committee shall be three.
- (5) The term of office of each such High Posts Committee shall be three years.
- (6) Each such High Posts Committee shall submit a report of its activities quarterly to the Council.

### **Appointments to High Posts**

122. (1) Where a vacancy occurs due to death, resignation or removal or is due to occur upon the retirement of any person holding office specified in the Schedule to this Chapter, the Secretary to the Legislative Council on the direction of the Legislative Council shall –
  - (a) publish a Notice in relation to such vacancy in the Gazette and in any daily newspaper published in the Sinhala, Tamil and English languages within two weeks of such death, resignation or removal or within a period not less than 3 months and not more than 4 months prior to the occurrence of such retirement, inviting expression of interest from persons qualified to fill such vacancy; and
  - (b) serve a copy of the said Notice referred to in sub paragraph (a) above –
    - i. in the case of any vacancy of any office referred to in Part I of the Schedule to this Article, to the Chief Justice, President of the Court of Appeal, the Attorney General and the President of the Bar Association of Sri Lanka;
    - ii. in the case of any vacancy of any office referred to in Part II of the Schedule to this Article, to the Auditor General, Commissioner General of Elections and the Secretary General of the National State Assembly;
    - iii. in the case of any vacancy of any office of the Chairperson of the Commission or Council referred to in Part III of the Schedule to this Article, to any Commission or Council in respect of which such vacancy has occurred.
- (2) Any qualified person who has an interest to hold any office specified in the Notice, may, within fourteen days from the date of the publication of the Notice under sub paragraph (a) of paragraph (1), communicate his interest in writing addressed to the Legislative Council.
- (3) Any person eligible in terms of paragraph (4), to nominate any other person to any office specified in the Notice may, within fourteen days from the date of the

service of the Notice under sub paragraph (b) of paragraph (1), nominate any qualified person for such vacancy giving reasons for his nomination by written communication addressed to the Legislative Council.

- (4) (a) The Chief Justice, the President of the Court of Appeal, the Attorney General, the Auditor-General, Commissioner General of Elections or the Secretary-General of the National State Assembly may make nominations in respect of any vacancy referred to in Part I or Part II of the Schedule to this Article:

Provided, however, every nomination made under this sub-paragraph shall accompany a report relating to the performance of such nominee.

- (b) The President of the Bar Association of Sri Lanka may make nominations in respect of any vacancy referred to in Part I of the Schedule to this Article.
- (c) Any member of the public may make nominations in respect of any vacancy referred to and any office referred to in the Schedule to this Article,
- (5) Upon the receipt of a communication under paragraph (2) or (3), the Legislative Council shall, within fourteen days from the date of receipt of such communication, refer such communication to the relevant High Posts Committee.

- (6) Upon the reference made under paragraph (5), the relevant High Posts Committee shall, within seven days of the receipt of the last communication, make recommendations of not less than five persons together with the reasons assigned thereto to the President:

Provided however, the relevant High Posts Committee shall publish the names of persons recommended for such vacancy.

- (7) For the purpose of recommending any person, the relevant High Posts Committee may interview any person who has expressed his interest to hold an office specified in the Notice or has been nominated for an office specified in the Notice, if necessary, and if such person agrees to be interviewed. The High Posts Committee may also call for Curriculum-Vitae of such person.
- (8) The President may, after considering the recommendations of the High Posts Committee referred to in paragraph (6), nominate any person from among the persons so recommended and communicate his nomination to the Council within seven days of receipt of the recommendations.
- (9) The Legislative Council shall consider the nomination made by the President and may either approve or disapprove such nomination and convey such decision to the President within seven days of receipt of the nomination. If the Legislative Council approves the nomination, the President shall appoint such person to the vacancy referred to in the Notice.



- (10) Where the Legislative Council disapproves the nomination made under paragraph (8), the President shall convey to the Council an alternative nomination from among the persons recommended by the High Posts Committee within seven days from the date of such disapproval.
- (11) Upon the receipt of an alternate nomination under paragraph (10), the Legislative Council shall consider such alternate nomination and convey its decision to the President within seven days of receipt of the nomination. If the Legislative Council approves the nomination, the President shall appoint the person to the vacancy referred to in the Notice.
- (12) Where the Legislative Council disapproves the alternate nomination made under paragraph (10), the President shall nominate any other person from among the persons recommended under paragraph (6) within seven days from the date of such disapproval.
- (13) Where the Legislative Council approves the nomination made under paragraph (10), the President shall appoint such person to the vacancy referred to in the Notice.
- (14) Where the Legislative Council disapproves the said nomination made under paragraph (12), the President may request the Legislative Council to reconsider his nomination within seven days from the date of receipt of such disapproval.
- (15) Upon receipt of such request under paragraph (14), the Legislative Council may approve or disapprove such nomination and convey its decision to the President within one week of receipt of such request.
- (16) Upon receipt of the decision of the Legislative Council under paragraph (15), the President shall appoint any person duly approved by the Legislative Council or in the event of the Legislative Council having disapproved the nomination made under paragraph (12), the President shall appoint a person nominated within one week from the date of receipt of such disapproval.
- (17) Notwithstanding anything contained in this Chapter, in the event of the Legislative Council failing to comply with any period specified in this Article, the President may make the appointments in respect of any vacancy referred to in the Notice.
- (18) In the event of the President failing to comply with the provisions of this Article, the Legislative Council shall proceed to make such appointments in respect of any vacancy referred to in the Notice.

### Official Affirmation or Oath

123. (1) Every person appointed to any office referred to in the Schedule to this Chapter shall not enter upon the duties of his office until –
- (a) he makes and subscribes the affirmation or takes the oath set out in the Fourth Schedule;
  - (b) he submits, in such form as may be prescribed, a declaration, of all –
    - i. his assets and liabilities;
    - ii. the assets and liabilities of his spouse;
    - iii. the assets and liabilities of each child;
    - iv. the assets and liabilities of any trust of which he or a member of his family is directly or indirectly a beneficiary; and
    - v. transfers of all assets and liabilities made by him in favour of any person during a period of six years immediately prior to the date of such declaration.
- (2) Any member who wilfully makes any false statement in any such declaration shall commit an offence and shall –
- (i) on conviction after trial before the Court of Appeal be liable to a fine not exceeding twenty five million rupees; and to a term of imprisonment not exceeding three years and
  - (ii) be disqualified from holding Public Office.
- (3) For the purpose of this Article,
- (i) “Assets and Liabilities” shall mean assets and liabilities in and outside Sri Lanka and include movable and immovable property.
  - (ii) “Transfer” shall include “gift”.
- (4) A person specified in the Schedule to this Article or a member of the relevant Committee shall not be removed except as provided for in the Constitution or any law and where there is no such provision, such person shall be removed by the President on the advice of the Legislative Council.
- (5) The provisions of this Article shall apply in respect of any person appointed to act for a period exceeding fourteen days, in any office specified in the Schedule to this Article.
- (6) Every person holding office referred to in the Schedule to this Article shall be deemed to be a public officer within the meaning of the Penal Code (Chapter 19) and Bribery Act (Chapter 26).

## **SCHEDULE**

### **PART I**

- (a) The Chief Justice and the Judges of the Supreme Court.
- (b) The President and the Judges of the Court of Appeal.
- (c) The Attorney General and the Solicitor General.
- (d) The Chairman and members of the Law Officers' Commission.

### **PART II**

- (a) The Auditor-General.
- (b) Commissioner General of Elections.
- (c) The Secretary-General of the National State Assembly.

### **PART III**

- (a) The Public Service Commission.
- (b) Public Enterprise Management Commission.
- (c) The National Procurement Oversight Commission.
- (d) The National Advisory Council.
- (e) The Human Rights Commission of Sri Lanka.
- (f) The Finance Commission.
- (g) The Delimitation Commission.
- (h) Monetary Board of the Central Bank.

## CHAPTER XIV

**THE NATIONAL ADVISORY COUNCIL****The National Advisory Council**

124. (1) There shall be a Consultative Assembly known as the National Advisory Council consisting of seven members who shall be citizens of Sri Lanka.
- (2) The members of the National Advisory Council shall be persons having qualifications and experience in the fields of Government activity, including planning, national security, international affairs, education, agriculture and irrigation, industries, trade, engineering and architecture, housing and urban development, environment and transport and highways.
- (3) (a) The President shall appoint members to the National Advisory Council as provided for in Chapter XIII. The members of the National Advisory Council shall hold office for a period of three years:  
 Provided that if the National State Assembly is dissolved at any time the members of the National Advisory Council shall *ipso facto* cease to hold office.
- (b) Every such member shall be eligible for reappointment.
- (c) Any such member of the National Advisory Council may be removed by the President in consultation with the Legislative Council for cause assigned.
- (4) (a) A person who is a member of any political party or who has been a Member of such political party within a periods of 3 years immediately prior to such appointment shall not be a member of the National Advisory Council.
- (b) No member of the National Advisory Council shall be eligible to –
- (i) be elected as a Member of the National State Assembly, a Provincial Council or a Local Authority or to sit and vote in the National State Assembly, a Provincial Council or a Local Authority; and
- (ii) to contest any election whilst being a member of the Council and up to a period of five years from the date such member ceases to be a member of the National Advisory Council.

**Consultative Committees**

125. (1) The National Advisory Council may appoint such number of Consultative Committees consisting of persons having experience and qualifications in the fields of Government activity, including planning, national security, international

affairs, education, agriculture and irrigation, industries, trade, engineering and architecture, housing and urban development, environment and transport and highways as may be necessary.

- (2) The National Advisory Council shall appoint a Chairperson to each Consultative Committee.
- (3) No member of the National Advisory Council or a Consultative Committee shall be entitled to any salary or allowance for the performance of his duties except an honorarium for sittings of the National Advisory Council or for attending meetings of the Consultative Committee.

### **Functions of the National Advisory Council**

126. (1) The functions of the National Advisory Council shall be –
- (a) to express its opinion in relation to proposed legislation, the development of National Policies, in the formulation of international Treaties and Agreements, preparation of National and Provincial Economic, Social and Development Plans, formulation and implementation of development projects of the Government or any other matter referred to by the President, Prime Minister, Speaker, Members of the Cabinet of Ministers, the National State Assembly, Provincial Councils, the National Planning Council, and other public authorities under the provisions of this Chapter or *ex mero moto* in the public interest;
  - (b) to review the prevailing national policies and to make recommendations to revise such policies in the public interest;
  - (c) to examine the performance of all Ministries, Departments and public corporations annually and make their recommendations to improve the performance of such Ministries, Departments and public corporations;
  - (d) to assist in the preparation of legislation if requested by the Government and propose enactment of legislation to the Government in the public interest; and
  - (e) to discharge any other function prescribed by law.
- (2) In this Article “Public Authority” includes the Secretary to the Cabinet of Ministers, Secretaries to Ministries and Heads of Departments.

### **Powers of the National Advisory Council to Express Opinion**

127. (1) The National Advisory Council may express its opinion and make recommendations with regard to any matter relating to any Government activity, referred to in Article 124 and 125 by way of a written report *ex mero*

*motu* or upon any such matter being referred to it in terms of sub paragraph (a) of paragraph (1) if Article 126 or the Council is required to examine or review.

- (2) Notwithstanding anything contained in the Right to Information Act, No. 12 of 2016 or any law, the President, Prime Minister, Speaker, Members of the Cabinet of Ministers, the National State Assembly, Provincial Council, the National Planning Council, Ministers of a Provincial Board of Ministers, Secretary to the Cabinet, Secretaries to Ministries and Heads of Departments and other public authorities shall furnish all necessary information to the Council when requested by the Council in relation to any Government activity unless such disclosure would affect national security.
- (3) In this Article “Public Authority” includes the Secretary to the Cabinet of Ministers, Secretaries to Ministries and Heads of Departments.

### **Reference of Bills, Treaties and Agreements, National Policies Formulated, Development Projects, Economic and Development Plans**

128. (1) The President shall refer to the National Advisory Council, National Policies formulated by the Government before its adoption and implementation.
- (2) (a) The President may refer any draft Treaty or Agreement referred to in Chapter VIII, and
  - (b) any other matter relating to any Government activity which is in his opinion of national importance for obtaining its opinions or recommendations.
- (3) The Speaker shall refer to the National Advisory Council, all Bills published under Article 212 within three days of its publication.
- (4) The Prime Minister or any Provincial Council shall refer to the National Advisory Council, National and Provincial Economic and Development Plans and all development projects initiated by any Ministry which require an Environmental examination report under the National Environmental Act and under any law.

### **Review of National Policies and Performance of Ministries, Departments and Public Corporations**

129. The National Advisory Council shall review annually –
  - (i) the performance of each Ministry, Provincial Ministry, Department, and all public corporations; and
  - (ii) existing policies of the State.

### **National Advisory Council to Express Opinion and make Recommendations**

130. (1) Any matter referred to the National Advisory Council under this Chapter or any other matter the National Advisory Council is required or permitted to review or express any opinion may be considered by the National Advisory Council with the assistance of the relevant Consultative Committee and the National Advisory Council shall submit a report within a period of two weeks containing their observations and recommendations with regard to matters referred to the National Advisory Council, to the President, the Speaker, the Prime Minister, the Provincial Council or any matter reviewed by the National Advisory Council.
- (2) The National Advisory Council may request an extended period for submitting its report under paragraph (1).
- (3) Every report submitted by the National Advisory Council under paragraph (1) shall be published and placed before the National State Assembly within two weeks from the date of such publication.
- (4) The Prime Minister shall annually inform the National State Assembly, the action taken on the opinion expressed or recommendations given by the National Advisory Council.
131. (1) The National Advisory Council may propose to the Government, legislation to be enacted by the National State Assembly.
- (2) Any draft legislation submitted by the National Advisory Council shall be published and placed before the National State Assembly, by the Prime Minister.

### **Submission of Reports**

132. (1) Where the President refers with a certification that any such matter is urgent in the national interest, the relevant Consultative Committee of the National Advisory Council shall submit its report within the period specified in such reference.
- (2) The opinion of the National Advisory Council with regard to any Bill referred to the National Advisory Council under paragraph (2) of Article 128 shall be submitted to the Speaker within two weeks from its publication.
- (3) The opinion with regard to National and Provincial Economic and Development Plans and all development projects referred to it under paragraph (3) of Article 128 shall be submitted within four weeks from the date of such reference or within such extended period.
- (4) Where any other matter is referred to the National Advisory Council for its opinion or recommendation, the National Advisory Council shall submit

its opinion or recommendation within three months from the date of such reference.

- (5) The National Advisory Council shall annually submit its reports with regard to the performance of Ministries, Departments and Public Corporations to the Prime Minister who shall place the same before the National State Assembly.

### **Secretariat of the National Advisory Council**

133. (1) There shall be a Secretary-General of the National Advisory Council who shall be appointed by the National Advisory Council and who shall be the Chief Executive Officer of the Secretariat of the Council.
- (2) The National Advisory Council shall appoint members of the staff of the Secretariat as may be necessary.
- (3) The salary of the Secretary-General and the staff shall be determined by the National State Assembly and shall be charged on the Consolidated Fund.
- (4) The office of the Secretary-General shall become vacant upon reaching the age of 65 or upon his death, resignation or removal.
- (5) Whenever the Secretary-General is unable to discharge the functions of his office, the President may, appoint a person to act in the place of the Secretary-General.

### **National State Assembly to provide by law with regard to certain matters relating to the National Advisory Council.**

134. The National State Assembly may by law make provisions for –
  - (a) the appointment and removal of members of the National Advisory Council and their qualifications;
  - (b) the Constitution of Consultative Committees;
  - (c) the procedure to be followed in the deliberations of matters referred to or considered by the National Advisory Council and the submission of opinion and recommendations of the National Advisory Council; and
  - (d) appointment of staff to the Secretariat of the National Advisory Council.



## CHAPTER XV

**PUBLIC SERVICE****Independence of the Public Service**

135. (1) The State shall ensure the independence of the Public Service, at all times.
- (2) Every public officer, an officer of the Local Government Service or public corporation shall –
- (a) be a citizen of Sri Lanka and shall not be a citizen of any other State;
  - (b) perform his duties in accordance with the Constitution and the law and shall not comply with any direction or order which is inconsistent with the Constitution or any law; and
  - (c) perform his duties in the public and national interest.

**Removal of Public Officers**

136. (1) A public officer shall not be removed from office or reduced in rank, without being a given reasonable opportunity of being heard as prescribed by law.
- (2) No person other than the Head of Department or any other officer authorised by the Head of Department shall give any direction to any subordinate officer of any Government Department.

**Independent Departments**

137. (1) The Attorney General's Department, Auditor-General's Department and the Department of the Commissioner General of Elections shall be independent and shall not be under any Ministry.
- (2) The Attorney General, Solicitor General, Auditor-General or the Commissioner General of Election may be removed from office by the President –
- (a) upon reference being made by the President, the relevant High Posts Committee established under Article 121, after an inquiry being held by the Committee according to the principles of natural justice, recommends the removal; or
  - (b) upon being convicted by a Court of law of any offence involving moral turpitude; or
  - (c) upon a resolution for the imposition of civic disability being passed under Article 216.

### **Appointments by the President and the Cabinet of Ministers**

138. The President shall appoint the Inspector General of Police and the Heads of the Army, the Navy and the Air Force and all officers of the Republic required by the Constitution or other written law to be appointed by the President.

### **Appointment by the Cabinet of Ministers**

139. (1) Subject to the provisions of the Constitution, the appointment, promotion, transfer, disciplinary control and dismissal of all Heads of Department other than those referred to in Article 137 and Article 138 shall vest in the Cabinet of Ministers, in consultation with the Public Service Commission, or the Public Enterprise Management Commission as the case maybe.
- (2) Any appointment made under paragraph (1) shall be for a period of three years and shall be eligible for reappointment.
- (3) In this Article, “Head of Department” shall include Heads of all public corporations.

### **Policy relating to Public Service**

140. (1) Subject to the provisions of the Constitution, the Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers, and officers of the Local Government Service and public corporations including the formulation of policy relating to appointments, promotions, transfers, disciplinary control and dismissal.
- (2) All policy decisions of the Cabinet of Ministers made under paragraph (1) of this Article, shall be published. No policy decision unless published shall be enforced.

### **Establishment of All Island Services**

141. The Cabinet of Ministers may establish such number of All Island Services, as may be required for the maintenance of an efficient Public Service.

### **Public Service Commission**

142. (1) There shall be a Public Service Commission which shall consist of fifteen members appointed by the President, of whom not less than –
- (a) five members shall be persons who have had over fifteen years’ of service as a public officer with senior management experience;
- (b) seven members shall be persons who have academic or professional qualifications with experience as prescribed by law;

- (c) two members shall be persons who have served not less than five years in the Board of Directors of a Public quoted Company; and
  - (d) one member who has served as a Judge of the Supreme Court or of the Court of Appeal who shall be the Chairman of the Commission.
- (2) All appointments under paragraph (1) shall be made as provided for in Chapter XIII.
- (3) No person shall be appointed as a member of the Public Service Commission or continue to hold office as such member –
- (a) if he is or has been or becomes a Member of the National State Assembly, Provincial Council or a Local Authority;
  - (b) if he is or has been or becomes a member of any political party, trade union or association affiliated to a trade union; or
  - (c) if he is a member or employee of any public corporation.
- (4) Every person who immediately before his appointment as a member of the Public Service Commission was a public officer in the service of the State or a judicial officer, shall, upon such appointment taking effect ceases to hold such office and shall be ineligible for further appointment as a public officer or a judicial officer:
- Provided that, any such person shall, until he ceases to be a member of the Public Service Commission, or while continuing to be a member, attains the age at which he would, if he were a public officer or a judicial officer, as the case may be, be required to retire, be deemed to be a public officer or a judicial officer and to hold a pensionable office in the service of the State, for the purpose of any provision relating to the grant of pensions, gratuities and other allowances in respect of such service.
- (5) Every member of the Public Service Commission shall hold office for a period of three years from the date of appointment, unless the member becomes subject to any disqualification under paragraph (3) or earlier resigns from his office by writing addressed to the President or is removed from office by the President on the ground of misbehavior.
- (6) The President shall remove the Chairperson or a member of the Public Service Commission where –
- (a) upon reference being made by the President, the relevant High Posts Committee established under Article 121 recommends his removal, after an inquiry being held by the Committee according to the principles of natural justice;

- (b) the Chairperson or such member is convicted by a Court of law of any offence involving moral turpitude;
  - (c) a resolution for the imposition of civic disability upon the Chairman or such member has been passed under Article 216; or
  - (d) the Chairman or such member is deemed to have vacated his office under paragraph (8).
- (7) A member of the Public Service Commission shall be eligible for reappointment as a member, but shall not be eligible for appointment as a public officer or a judicial officer after the expiry of his term of office as a member. No member shall be eligible to hold office as a member of the Commission for more than two terms.
- (8) A member of the Public Service Commission who without obtaining prior leave of the Commission absents himself from three consecutive meetings of the Commission, shall be deemed to have vacated office with effect from the date of the third of such meetings, and shall not be eligible thereafter to be reappointed as a member of the Commission.
- (9) The President may grant a member, at the request of such member, leave from the performance of his duties relating to the Public Service Commission for a period not exceeding two months and shall, for the duration of such period, in accordance with Chapter XIII, appoint a person qualified to be a member of the Commission, to be a temporary member for the period of such leave.
- (10) A member of the Public Service Commission shall be paid such emoluments as may be determined by the National State Assembly. The emoluments paid to a member of the Public Service Commission shall be charged on the Consolidated Fund and shall not be diminished during the term of office of such member.
- (11) The Public Service Commission shall have the power to act notwithstanding any vacancy in its membership, and no act, proceeding or decision of the Commission shall be or be deemed to be invalid by reason only of such vacancy or any defect in the appointment of a member.
- (12) There shall be a Secretary to the Public Service Commission who shall be appointed by the Commission.
- (13) The members of the Public Service Commission shall be deemed to be public servants within the meaning and for the purposes of Chapter IX of the Penal Code (Chapter 19).

### **Procedure at Meetings**

143. (1) The quorum for a meeting of the Public Service Commission shall be six members.
- (2) All decisions of the Public Service Commission shall be made by a majority of votes of the members present at such meeting. In the event of an equality of votes, the member presiding at the meeting shall have a casting vote.
- (3) The Chairperson of the Public Service Commission shall preside at all meetings of the Public Service Commission and in his absence, a member elected by the members present from amongst themselves, shall preside at such meeting.

### **Public Service Commission to be answerable to the National State Assembly**

144. (1) The Public Service Commission shall be responsible and answerable to the National State Assembly in accordance with the provisions of the Standing Orders of the National State Assembly for the exercise and discharge of its powers and functions.
- (2) The Public Service Commission shall also forward to the National State Assembly in each calendar year, a report of its activities in respect of such year.

### **Powers of the Public Service Commission**

145. (1) Subject to the provisions of the Constitution, and Government Policy made under Articles 139 and 140, the Public Service Commission shall have the power and duty –
- (a) to appoint, promote, transfer, have disciplinary control and to dismiss public officers;
  - (b) to formulate schemes of recruitment, and codes of conduct for Public Officers;
  - (c) to inquire into any grievance of public officers with regard to their terms and conditions of service, and make such direction to the relevant Head of Department as it may be just and equitable; and
  - (d) to inquire into complaints made to the Public Service Commission by any member of the public directly and grant such relief in relation to such complaint by making any direction to the Head of Department concerned.
- (2) The Public Service Commission in the exercise of their powers may –
- (a) summon any public officer or direct the Head of Department or any other public officer to produce before the Commission any document or record; or

- (b) make any order or direction to any Head of Department of any Department for the enforcement of any order or direction made under paragraph (1), subject to any decision of the Administrative Appeals Tribunal under Article 162 or any order of any Court of competent jurisdiction, and every such public officer or Head of Department shall comply with such order or direction.
- (3) Any public officer or Head of Department who –
- (a) fails without cause, which in the opinion of the Public Service Commission is reasonable, to appear before the Commission at the time and place mentioned in the summons; or
  - (b) refuses to be sworn or affirmed or, having been duly sworn or affirmed, refuses or fails without cause, which in the opinion of the Public Service Commission, is reasonable, to answer any question put to him touching the matters directed to be inquired into by the Commission; or
  - (c) refuses or fails without cause, which in the opinion of the Public Service Commission is reasonable, to produce and show to the Public Service Commission any document or other thing which is in his possession or power - and which is in the opinion of the Public Service Commission necessary for arriving at the truth of the Matters to be inquired into; or
  - (d) fails or refuse to comply with any order or direction made under sub paragraph (b) of paragraph (2);  
commits an offence of contempt against or in disrespect of the authority of the Public Service Commission. Every such offence shall be tried by the Supreme Court as though it were an offence of contempt committed against or in disrespect of the authority of the Supreme Court.

### **Delegation of Powers to a Committee**

146. (1) (a) There shall be such number of Committees of the Public Service Commission as determined by the Commission including Committees for the management and administration of services relating to Administration, Education, Health and Police.
- (b) The Public Service Commission shall appoint members of such Committees in consultation with the High Posts Committee for a period determined by the Commission.
- (2) Each such Committee shall consist of not more than five members who in the opinion of the Committee and the High Posts Committee possess sufficient knowledge and experience in the related field specified in paragraph (a).

- (3) The Public Service Commission shall cause the appointment of any such Committee to be published.
- (4) There shall be a Secretary to each Committee, who shall be appointed by the Public Service Commission.
- (5) The Public Service Commission may delegate to such Committee the powers of appointment, promotion, transfer, disciplinary control and dismissal of such categories of public officers as determined by the Commission.
- (6) The procedure and quorum for meetings of any such Committee shall be as determined by the Public Service Commission by rules made in that behalf. The Public Service Commission shall cause such rules to be published.

### **Delegation of Powers to a Head of Department**

147. (1) The Public Service Commission may delegate to any Head of Department, subject to such conditions and procedure as may be determined by the Commission, its powers of appointment, promotion, transfer, disciplinary control and dismissal of such category of public officers as are specified by the Commission.
- (2) The Public Service Commission shall cause any such delegation to be published including the conditions and procedure, determined by the Commission for such purpose.

### **Public Service Commission not to Exercise Power where there is Delegation**

148. Upon delegation of any of its powers to a Committee or a Head of Department under Article 146 or Article 147, as the case may be, the Public Service Commission shall not, while such delegation is in force, exercise or perform its functions or duties in regard to the categories of public officers in respect of which such delegation is made, subject to the provisions contained in paragraphs (1) and (2) of Article 149.

### **Right of Appeal to the Public Service Commission**

149. (1) Any public officer aggrieved by an order relating to a promotion, transfer, dismissal or an order on a disciplinary matter made by a Committee or any Head of Department under Article 146 or Article 147, in respect of the officer so aggrieved, may appeal to the Public Service Commission against such order in accordance with such rules made by the Public Service Commission from time to time, relating to the procedure to be followed in the making, hearing and determination of an appeal made to the Public Service Commission and the period fixed within which an appeal should be heard and concluded.

- (2) The Public Service Commission shall have the power upon such appeal to alter, vary, rescind or confirm an order against which an appeal is made, or to give directions in relation thereto, or to order such further or other inquiry as to the Commission shall seem fit.
- (3) The Public Service Commission shall cause to be published the rules made by it under paragraph (1) of this Article.

### **Salaries and Cadre Commission**

150. (1) (a) There shall be a Salaries and Cadre Commission which shall consist of five members appointed by the President with the concurrence of the Public Service Commission.
- (b) The qualifications, knowledge and experience required to be a member of the Salaries and Cadre Commission shall be determined by the High Posts Committee.
- (c) The President shall appoint one member as its Chairperson.
- (2) Notwithstanding any other provision, the Salaries and Cadre Commission shall perform the following functions –
- (a) formulate a National Policy on Cadres, Salaries and Wages based on a continuous review of salaries and wages including monetary remuneration and various other non-monetary facilities of the Public Service including the Armed Services and employees of special institutions whose salaries are charged on the Consolidated Fund taking into consideration:
    - (i) the need to motivate the employees of the public sector endowed with requisite skills,
    - (ii) the need to enhance the productivity and efficiency in the public sector,
    - (iii) the changes to be made in terms of employment so as to attract competent individuals specialised in the fields of Management, Science and Technology,
    - (iv) the need to rectify any salary anomalies occasioned by salary increases granted from time to time,
    - (v) the limits of the availability of Government Funds,
    - (vi) the need to minimise anomalies that exist between the salaries and wages drawn by professionals having comparable responsibilities or qualifications in the public sector and the semi-government sector, and
    - (vii) optimum use of the manpower resources of the country.



- (b) formulate policies to minimise issues in relation to salaries and wages, terms and conditions of service, schemes of recruitment, and promotion and service minutes;
  - (c) to review the existing systems of payment of incentives and grants in the public sector and recommend appropriate methodologies to be adopted in determining the grant of gratuities, incentives including non-monetary incentives;
  - (d) to assist the Public Service Commission on amendments to be made to or salaries and wages, terms and conditions of service, schemes of recruitment, and promotion and service minutes;
  - (e) to ensure speedy settlement of disputes relating to salaries and conditions of service in the Public Service, Local Government Service and in Public Enterprises;
  - (f) formulate policies for the creation and suppression of posts and systematic distribution of such posts in the Public Service; and
  - (g) formulate policies to encourage talented and competent officers with professional qualifications to join the Public Service and to retain such officers holding permanent posts in the Public Service and prevent them from leaving the Public service;
- (3) The Salaries and Cadre Commission may appoint sub-committees each comprising of not more than three members with knowledge and experience in different fields in the public sector entrusted with specialised tasks in the public and private sector.
- (4) The provisions of paragraphs (2), (3), (4), (5), (6), (7), (8), (9), (10),(11) and (12) of Article 142, Articles 143 and 144 shall *mutatis mutandis* apply to the Salaries and Cadre Commission.

### **Local Government Service**

151. (1) There shall be a Local Government Service (in this Article referred to as the Service).
- (2) The service shall consist of all monthly paid officers and servants of Local Authorities.
- (3) Every member of the service shall be deemed to be a public servant within the meaning and for the purposes of the Penal Code.
- (4) Every member of the service shall be deemed to be a public servant within the meaning and for the purposes of the Public Servants (Liabilities) Ordinance. (Chapter 103)

- (5) Every person who was, on the day immediately preceding the commencement of the Constitution, a member of the Local Government Service constituted by the Local Government Service Law shall, with effect from such date, be deemed to be a member of the service constituted under the Constitution.

### **Local Government Service Commission.**

152. (1) There shall be a Local Government Service Commission.
- (2) The Local Government Service Commission shall consist of five members appointed by the Public Service Commission as follows –
- (a) two members shall be persons who have had over fifteen years' service as a public officer with senior management experience;
  - (b) three members shall be persons who have academic or professional qualifications with experience as prescribed by law; and shall hold office for a period of three years.
- (3) One member shall be appointed by the Public Service Commission as the Chairperson.
- (4) A member of the Local Government Service Commission including the Chairperson may resign from his office by letter to that effect addressed to the Public Service Commission.
- (5) Where the Chairperson is, by reason of illness or other infirmity or absence from Sri Lanka, temporarily unable to perform the duties of his office during any period, the Commission may appoint any other member of the Local Government Service Commission to act in his place during such period.
- (6) The Chairperson and other members of the Local Government Service Commission may be paid such remuneration as may be determined by the Public Service Commission.
- (7) There shall be a Secretary to the Local Government Service Commission who shall be appointed by the Public Service Commission.
- (8). The Provisions of paragraphs (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) of Article 142, Articles 143 and 144 shall apply *mutatis mutandis* to the Local Government Service Commission.

### **Powers of the Local Government Service Commission**

153. (1) Subject to the provisions of this Chapter, the Local Government Service Commission shall be responsible for and have the powers of appointment, transfer, dismissal and exercise disciplinary control over members of the Local Government Service.

- (2) The Local Government Service Commission with the concurrence of the Public Service Commission shall provide for and determine all matters relating to members of the Local Government Service including the formulation of schemes of recruitment and promotion and codes of conduct, the procedure for the exercise and delegation of the powers of appointment, transfer, release, retirement, abolition of posts, dismissal and disciplinary control over the members of the Local Government Service.
- (3) Any member of the service aggrieved by an order made by the Local Government Service Commission, in the exercise of the powers under subsection (1), shall have a right to appeal against such order to the Public Service Commission.

### **Delegation of Powers by the Local Government Service Commission**

154. (1) The Local Government Service Commission may delegate to any public officer, who is a head of a Local Authority, subject to such conditions as may be prescribed by the Commission, its powers of appointment, transfer, dismissal or disciplinary control of any category of members of the service.
- (2) Any member of the service aggrieved by any order of such public officer to whom the Local Government Service Commission has delegated its powers under subsection (1), shall have a right of appeal to the Commission and the Commission shall on any such appeal have the power to alter, vary or rescind such order.

### **Provisions of Law No. 16 of 1974 to apply to the Local Government Service Commission**

155. Subject to the provisions of this Chapter the provisions of Part IV of the Local Government Service Law, No. 16 of 1974 shall *mutatis mutandis* apply to the Local Government Service Commission.

### **Public Enterprise Management Commission**

156. (1) There shall be a Public Enterprise Management Commission consisting of eleven members appointed by the President as follows –
  - (a) six members shall be persons with experience in corporate management as prescribed by law;
  - (b) three members shall be persons with academic or professional qualifications and experience as prescribed by law;
  - (c) Secretary to the Treasury or his representative; and
  - (d) one member who has sufficient experience in Public Administration.
- (2) The President shall appoint one member as the Chairperson of the Management Commission.

- (3) The Chairperson and members of the Management Commission shall hold office for a term not exceeding three years and shall be eligible for reappointment.
- (4) The provisions of paragraphs (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) of Article 142, Articles 143 and 144 shall apply *mutatis mutandis* to this Commission.

### **Powers and Functions of the Public Enterprise Management Commission**

157. (1) The Public Enterprise Management Commission shall have the following powers and functions –
  - (a) to recommend to the President, qualified and suitable persons to be appointed to Boards of Management of Public Enterprises and the President shall appoint suitable persons:  
 Provided that, the President shall appoint any person taking into consideration recommendations so made, irrespective of the provisions of any other law or the Memorandum of Articles of any Government owned company;
  - (b) to prepare in consultation with any Public Enterprise, Schemes of Recruitment and Promotion applicable to the staff of each Public Enterprise or approval of such Scheme prepared by any Public Enterprise;
  - (c) to take such action as may be necessary to advance the skills of the employees of Public Enterprises;
  - (d) to formulate a framework for a sustainable and stable Public Enterprise reform strategy;
  - (e) to advise and assist Public Enterprises to augment their revenue and profits;
  - (f) to monitor the performance of Public Enterprises and to identify deficiencies in their performance and to make recommendations to the Board of Management of Public Enterprises for the correction of the said deficiencies;
  - (g) submit a report annually to the President on the efficiency of Public Enterprises.
- (2) Every Public Enterprise shall comply with advice and directions made by the Public Enterprise Management Commission.

### **Boards of Management of Public Enterprises**

158. (1) The Board of Management (hereinafter referred to as the Board) of every Public Enterprise shall –
  - (a) before the commencement of its financial year, present to the Public Enterprise Management Commission for its approval, the budget for that financial year, together with a declaration by the Board and the Chief Executive Officer of the Public Enterprise whether the budget is likely to

- draw on the reserves which were not accumulated by the Public Enterprise during the current term of its office;
- (b) present to the Public Enterprise Management Commission for its approval, every supplementary budget for its financial year together with a declaration referred to in sub-paragraph (a) of this paragraph, relating to such supplementary budget; and
  - (c) within six months after the close of that financial year, present to the Public Enterprise Management Commission,
    - (i) a full and particular audited profit and loss account showing the revenue collected and expenditure incurred by the Public Enterprise during that financial year and an audited balance sheet showing the assets and liabilities of the Public Enterprise at the end of that financial year, and
    - (ii) a declaration by the Chairman of the Board and the Chief Executive Officer of the Public Enterprise whether the audited profit and loss account and balance sheet of the Public Enterprise show any drawing on the reserves not accumulated by the Public Enterprise during the current term of its office.
- (2) The Public Enterprise Management Commission may disapprove the budget or supplementary budget of any such Public Enterprise, if in its opinion, the budget is likely to draw on reserves not accumulated by such Public Enterprise during the current term of its office, except that if they approve any such budget notwithstanding their opinion that the budget is likely to draw on those reserves, the Public Enterprise Management Commission shall cause their opinion to be published.
- (3) Where, by the first day of the financial year of such Public Enterprise, the Public Enterprise Management Commission has not approved its budget for that financial year, the Public Enterprise –
- (a) shall, within 3 months of the first day of that financial year, present to the Commission a revised budget for that financial year together with the declaration referred to in paragraph (1); and
  - (b) may, pending the decision of the Public Enterprise Management Commission, incur expenditure not exceeding one quarter of the amount provided in the approved budget of the Public Enterprise for the preceding financial year; and if the Public Enterprise Management Commission does not approve the revised budget, the Public Enterprise may during that financial year incur total expenditure not exceeding the amount provided in the approved budget of the Public Enterprise for the preceding financial

year; and the budget for the preceding financial year shall have effect as the approved budget for that financial year.

- (4) Any amount expended during a financial year under sub-paragraph (b) of paragraph (3) shall be included in any revised budget subsequently presented to the Public Enterprise Management Commission in terms of that paragraph for that financial year.
- (5) It shall be the duty of every Public Enterprise and its Chief Executive Officer to which this Article applies, to inform the Public Enterprise Management Commission of any proposed transaction of the Public Enterprise which is likely to draw on the reserves accumulated by the Public Enterprise prior to the current term of office of the Board of Management of a Public Enterprise.
- (6) Where pursuant to paragraph (5), the Public Enterprise Management Commission has been so informed of any such proposed transaction, the Public Enterprise Management Commission, acting in their discretion, may disapprove the proposed transaction, except that if they do not disapprove any such proposed transaction even though they are of the opinion that the proposed transaction is likely to draw on the reserves accumulated by the Public Enterprise prior to the current term of office of the Public Enterprise, the Public Enterprise Management Commission shall cause its decision and opinion to be published.
- (7) Notwithstanding the preceding provisions, if the Cabinet of Ministers is of the opinion that the maintaining of any Public Enterprise is required in the national interest to supplement the national economy or to facilitate the functioning of a public utility and such Enterprise does not have funds accumulated as reserves for such purposes, additional funds may be made available.

### **Appointment of Public Officers, Officers of Local Government Service and of Public Corporations**

159. (1) All appointments and promotions in the Public Service, Local Government Service and in public corporations shall be on qualifications, experience and merit.
- (2) There shall be schemes of recruitment, promotion and transfers in respect of all posts in the Public Service, Local Government Service or in the service of public corporations, and recruitment, promotion or transfers made in violation of such schemes shall not be valid and be given effect to:

Provided that, however an appointment, promotion or transfer made prior to the commencement of this Constitution or within three months of the promulgation of the Constitution in respect of any post where such scheme has not been formulated shall be valid subject to any order that the Supreme

Court, or the Court of Appeal may make in the exercise of its jurisdiction in respect of any pending matter or any matter invoked within three months of the commencement of the Constitution.

- (3) No person shall be appointed or promoted to any post in the Public Service, Local Government Service or in the service of a public corporation without calling for applications by notice duly published in accordance with the Scheme of Recruitment and Promotion relevant to such post:

Provided that, acting appointments in respect of any post may be given for a period not exceeding one year.

- (4) It shall be the duty of the Public Service Commission in respect of any post in the Public Service, Local Government Service or in the service of a public corporation –
- (a) to conduct examinations for the selection of suitable candidates to all posts where the minimum qualification for any such post is the passing of an examination including a viva voce examination;
  - (b) to formulate a method of selection with regard to any such post other than a post referred to in sub-paragraph (a) which shall be specified in a notice calling for applications duly published;
  - (c) to ensure all selections shall be made in accordance with the Scheme of Recruitment or Promotion in the manner as set out in sub-paragraphs (a) and (b).
- (5) No public officer or an officer of the Local Government Service shall be dismissed or reduced in rank without conducting a disciplinary inquiry against such officer in accordance with the law.

### **Oath or Affirmation of Office**

160. (1) A person appointed to any office referred to in this Chapter shall not enter upon the duties of his office unless such person –
- (a) makes and subscribes the affirmation or takes and subscribes the oath set out in the Fourth Schedule as directed; and
  - (b) submits to the appointing authority, in such form as may be prescribed, a declaration, of –
    - (i) his assets and liabilities,
    - (ii) the assets and liabilities of his spouse,
    - (iii) the assets and liabilities of each of his children,
    - (iv) the assets and liabilities of any trust of which he or a member of his family is directly or indirectly a beneficiary, and

- (v) transfers of all assets and liabilities made by him in favour of any person during a period of six years immediately prior to the date of such declaration.
- (2) Any member who wilfully makes any false statement in any such declaration commits an offence and shall –
  - (a) on conviction after trial before the Court of Appeal be liable to a fine not exceeding twenty five million rupees, or to a term of imprisonment not exceeding 3 years, and
  - (b) be disqualified from holding public office.
- (3) For the purpose of this Article,
 

“Asset and Liabilities” shall mean assets and liabilities in and outside Sri Lanka and include movable and immovable property.

### **Protection of Officers**

161. Notwithstanding anything in any other law, no civil or criminal proceedings shall be instituted or continued against any public officer, judicial officer, law officer, officer of Local Government Service in the service of a Public Enterprise for any act or omission done in good faith in the discharge of his official duties provided that such officer has not gained any benefit whether financial or otherwise due to such act or omission.

### **Administrative Appeals Tribunal**

162. (1) There shall be an Administrative Appeals Tribunal appointed by the Judicial Service Commission.
- (2) The Administrative Appeals Tribunal shall have the power to alter, vary or rescind any order or decision made by the Public Service Commission or the Local Government Service Commission.
- (3) The Administrative Appeals Tribunal may direct the Public Service Commission or the Local Government Service Commission to forward any document or record relevant to the proceedings before the Tribunal.
- (4) The Constitution, powers and procedure of such Tribunal, including the time limits for the preferring of appeals, shall be provided for by law.

### **Failure to Comply with Directions or Orders of Administrative Appeals Tribunal**

163. (1) The Public Service Commission or the Local Government Service Commission, as the case may be, shall duly comply with any order or direction made by the Administrative Appeals Tribunal.



- (2) Any member of the Public Service Commission or the Local Government Service Commission failing to comply with such direction or order, commits the offence of contempt against or in disrespect of, the authority of the Administrative Appeals Tribunal.
- (3) Every offence of contempt committed against or in disrespect of, the authority of the Administrative Appeals Tribunal shall be punished by the Supreme Court as though it were an offence of contempt committed against, or in disrespect of, the authority of such Court, and the Supreme Court is hereby vested with jurisdiction to try every such offence.

### **Immunity from Legal Proceedings**

164. Subject to the provisions of Articles 268, 290, and 291, no Court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or any manner call in question, any order or decision made by the Public Service Commission, a Committee thereof or any Head of Department or by the Local Government Service Commission in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or Head of Department or Head of a Local Authority or public officer, or officer of the Local Government Service under this Chapter or under any other law.

### **Savings of Rules and Regulations in Force**

165. Until the Public Service Commission otherwise provides, all rules, regulations and procedures relating to the Public Service as are in force on the date of the coming into operation of this Chapter, shall, *mutatis mutandis*, be deemed to continue in force as rules, regulations and procedures relating to the Public Service, as if they had been made or provided for under this Chapter.

### **Interference with the Public Service Commission**

166. (1) Every person who, otherwise than in the course of such person's lawful duty, directly or indirectly by himself or by or with any other person, in any manner whatsoever influences or attempts to influence or interferes with any decision of the Public Service Commission, or a Committee thereof or a public officer to whom the Public Service Commission has delegated any power under this Chapter, or to so influence any member of the Commission or Committee thereof, commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

The provisions of paragraph (1) shall *mutatis mutandis* apply in respect of the Law Officers' Commission, Local Government Commission and Public Enterprise Management Commission.

- (2) The High Court of the Republic of Sri Lanka shall have jurisdiction to hear and determine any matter referred to in paragraph (1) of this Article.

### **Pensions, Gratuities and Allowances**

167. (1) All pensions, gratuities or other allowances payable to persons who have ceased to be in the service of the Government of Ceylon or ceased to be in the services of the Republic of Sri Lanka, or to widows, children or other dependants of such persons, shall be governed by the written law under which they were granted, or by any subsequent written law which is not less favourable.
- (2) All pensions, gratuities and other allowances referred to in this section shall be a charge on the Consolidated Fund.

### **Meaning of Public Officer for the Purposes of Articles 140, 141, 142, 143, 144, 145, 146, 147, 148, 149 and 150**

168. For the purposes of Articles 140, 141, 142, 143, 144, 145, 146, 147, 148, 149 and 150, "public officer" does not include a member of the Army, Navy, or Air Force, a law officer, a scheduled officer appointed by the Judicial Service Commission, an officer of the Local Authorities Service or an officer of a Public Enterprise.

## CHAPTER XVI

## THE ATTORNEY GENERAL OF THE REPUBLIC AND THE LAW OFFICERS' COMMISSION

### **The Office of Attorney General**

169. (1) There shall be an Attorney General and a Solicitor General who shall be appointed by the President in accordance with Chapter XIII. The Attorney General shall be the Head of the Attorney General's Department.
- (2) The age of retirement of the Attorney General and the Solicitor General shall be sixty years.
- (3) The Attorney General and Solicitor General may at any time resign from his office by writing under his hand addressed to the President.
- (4) The Attorney General and Solicitor General may be removed from office by the President in accordance with paragraph (2) of Article 137.
- (5) The remuneration and other conditions of service of the Attorney General and Solicitor General shall be as determined by law. The remuneration and other terms of service of the Attorney General and Solicitor General shall not be altered to his disadvantage during his continuance in office.

### **Duties of the Attorney General and Law Officers**

170. (1) It shall be the duty of the Attorney General –
- (a) to advise the Government upon such legal matters;
  - (b) to perform such other duties of a legal character as may from time to time be referred or assigned to him by the President or by the Cabinet of Ministers; and
  - (c) to discharge the functions conferred on him by or under this Constitution or by any other written law.
- (2) The Attorney General and the Solicitor General shall always act independently and impartially in the performance of their duties.
- (3) In the performance of his duties, the Attorney General shall have the right of audience in all Courts in the Republic of Sri Lanka.

- (4) The Attorney General may delegate any of his functions, duties and powers to any law officer who shall exercise such function, duty or power subject to any conditions specified by the Attorney General.
- (5) (a) The provision of Article 135 shall *mutatis mutandis* apply to the office of the Attorney General.  
 (b) The provision of Articles 135 and 136 shall *mutatis mutandis* apply to the office of the law officers.
- (6) The Attorney General shall ensure that all advice given to the State and any organ of Government is consistent with due protection and advancement of the fundamental rights of the People as guaranteed by the Constitution.
- (7) (a) In any proceedings instituted under Article 268, where the Attorney General is named, the Attorney General or his nominee shall appear as *amicus curiae*.  
 (b) Where the Attorney General or his nominee in such proceedings represents the President, the Prime Minister, a Minister of the Cabinet of Ministers, a Minister who is not a Member of the Cabinet of Ministers, a Deputy Minister, a public officer or any officer of the State, any other law officer of the Attorney General's Department shall independently appear for the purpose of sub paragraph (a).

### **Law Officers' Commission**

171. (1) There shall be a Law Officers' Commission consisting of the following members appointed by the President:
  - (a) two members who shall be retired Judges of the Supreme Court who were not former officers of the Attorney General's Department,
  - (b) the Attorney General,
  - (c) the Solicitor General,
  - (d) a retired public officer who has held office as a Secretary to a Ministry.
- (2) The President shall appoint one of the members specified in sub-paragraph (a) of paragraph (1) as the Chairman of the Law Officers' Commission.
- (3) The quorum for a meeting of the Commission shall be three members.
- (4) The provisions of paragraphs (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), and (12) of Article 142, Article 143 and Article 144 shall *mutatis mutandis* apply in respect of the Law Officers' Commission.

- (5) Notwithstanding the provisions contained in sub-paragraphs (a) and (b) of paragraph (1) of Article 145, the Law Officers' Commission shall have the power of appointment, promotion, transfer, disciplinary control and dismissal of law officers, including the power to formulate schemes of recruitment, promotion and transfers.
- (6) It shall be the duty of the Law Officers' Commission to adopt a proper method of recruitment and promotion with regard to every post referred to in paragraph (8) taking into consideration seniority and merit.
- (7) Until the Law Officers' Commission otherwise provides, all rules, regulations and procedures relating to the Public Service as are in force on the date of the coming into operation of this Chapter, shall, *mutatis mutandis*, be applicable to law officers.
- (8) In this Chapter "law officer" means a public officer holding the office of Senior Additional Solicitor General, Additional Solicitor General, Senior Deputy Solicitor General, Deputy Solicitor General, Senior State Counsel, State Counsel, Assistant State Counsel, Senior State Attorney, State Attorney, Senior Assistant State Attorney, Assistant State Attorney, and Junior Assistant State Attorney in the Attorney General's Department and a person holding any other office in the said Department for which the entry qualification is not less than the qualifications required to hold the office of State Counsel or State Attorney.

## CHAPTER XVII

**FRANCHISE AND ELECTION****Election to be Free, Equal and Secret**

172. The voting for the election of the President of the Republic and of the Members of the National State Assembly, of the members of Provincial Councils and Local Authorities and at any Referendum shall be free, equal and by secret ballot.

**Right to be an Elector**

173. Every person otherwise not disqualified as hereinafter provided shall be qualified to be an elector at the election of the President, of the Members of the National State Assembly, of the members of a Provincial Council or of a Local Authority or to vote at any Referendum:

Provided that, no such person shall be entitled to vote unless his name is entered in the appropriate register of electors.

**Disqualification to be an Elector**

174. No person shall be qualified to be an elector at an election of the President, or of Members of the National State Assembly, of a Provincial Council or of a Local Authority or to vote at any Referendum, if he is subject to any of the following disqualifications, namely –
- (a) if he is not a citizen of Sri Lanka;
  - (b) if he has not attained the age of eighteen years on the qualifying date specified by law under the provisions of Article 181;
  - (c) if he is under any law in force in Sri Lanka, found or declared to be of unsound mind;
  - (d) if he is convicted of an offence specified in the Constitution;
  - (e) if he is serving or has during the period of seven years immediately preceding, completed serving of a sentence of imprisonment (by whatever name called) for a term not less than six months imposed after conviction by any Court for an offence punishable with imprisonment for a term not less than two years or is under sentence of death or is serving or has during the period of seven years

immediately preceding, completed the serving of a sentence of imprisonment for a term not less than six months awarded in lieu of execution of such sentence:

Provided that, if any person disqualified under this paragraph is granted a free pardon, such disqualification shall cease from the date on which the pardon is granted;

- (f) if a period of seven years has not elapsed since –
  - (i) the last of the dates, if any, of him being convicted of any offence under any law for the time being relating to Referenda or to the election of the President, of Members of the National State Assembly, Provincial Council or Local Authority;
  - (ii) the last of the dates, if any, of him being convicted or found guilty of bribery under the provisions of the Bribery Act (Chapter 26) or of any future law as would correspond to the Bribery Act;
  - (iii) the last of the dates, if any, of him being convicted of an offence under the provisions of sections 2 and 3 of the Public Bodies (Prevention of Corruption) Ordinance (Chapter 258) or of such offence under any future law as would correspond to the said offence;
- (g) if a resolution for the imposition of civic disability upon him has been passed in terms of Article 216, and the period of such civic disability specified in such resolution has not expired;
- (h) if the period of his disqualification imposed under Article 246, as the case may be, has not elapsed;
- (i) if he is a member of any political party or association or organisation that is proscribed.

### **Qualifications for Election**

175. Every person who is qualified to be an elector shall be qualified to be elected as the President, a Member of the National State Assembly or a member of a Provincial Council or a Local Authority unless he is disqualified under Article 176 or Article 177, as the case may be.

### **Disqualification for Election**

176. No person shall be qualified to be elected as a Member of the National State Assembly, or as a member of any Provincial Council or Local Authority or to sit and vote in the National State Assembly or any Provincial Council or Local Authority –

- (a) if he is or becomes subject to any of the disqualifications specified in Articles 84, 174 and 196 or 222;

- (b) if he –
  - (i) stands nominated as a candidate for election for more than one electoral division or electoral unit at any election;
  - (ii) stands nominated as a candidate for election by more than one recognised political party in respect of any electoral division or electoral unit;
  - (iii) stands nominated as a candidate for election for an electoral division or electoral unit and before the conclusion of the election for that electoral division or unit, he stands nominated as a candidate for election for any other electoral division or electoral unit; or
  - (iv) being a Member of the National State Assembly, except in the circumstances referred to in paragraph (8) Article 205 or sub-paragraph (a) of paragraph (5) of 80, stands nominated as a candidate for election for any electoral division;
- (c) if he is the President of the Republic;
- (d) if he is or has been within five years immediately prior to the relevant election–
  - (i) a judicial officer;
  - (ii) any person holding office or a member of any Commission or Council specified in the Schedule to Chapter XIII;
  - (iii) a member of the Local Government Service Commission;
  - (iv) a public officer, law officer, officer of the Local Government Service or an officer in any public corporation disqualified under any law relating to elections;
  - (v) a member of the Regular Force of the Army, Navy or Air Force; or
  - (vi) a police officer or a public officer exercising police function;
- (e) if he is a citizen of any other country other than Sri Lanka;
- (f) if he has any interest in any contract made by or on behalf of the State or a public corporation as the National State Assembly shall by law prescribe;
- (g) if he is an undischarged bankrupt or insolvent, having been declared bankrupt or insolvent;
- (h) if he has been adjudged by a competent Court or by a Special Presidential Commission of Inquiry to have accepted a bribe or gratification offered with a view to influencing his judgment as a Member of the National State Assembly or as a member of the legislature prior to the commencement of the Constitution;
- (i) if he is a member of any political party affiliated to any political party or branch of a foreign State; or
- (j) if he is a member of any political party which has expressly or by implication declared allegiance to any foreign State or to any political party of such State.



### **Additional Disqualifications for Election as President**

177. (1) Every citizen by descent who is qualified to be an elector shall be qualified to be elected to the office of President unless he is subject to any of the following disqualifications –
- (a) if he has not attained the age of thirty five years;
  - (b) if he is not qualified to be elected under paragraphs (d), (e), (f), (g), (h), (i) and (j) of Article 176; and
  - (c) if he has twice contested to the office of President; or
  - (d) if he has been removed from the office of President under the provisions of sub-paragraph (e) of paragraph (2) of Article 90.

### **Delimitation Commission**

178. (1) Within three months of the commencement of the Constitution, the President shall for the delimitation of electoral districts, electoral divisions, electoral areas and electoral units, establish a Delimitation Commission consisting of five persons appointed by him who he is satisfied are not members of any political party, in accordance with the provisions of Chapter XIII. The President shall appoint one of such persons to be the Chairman.
- (2) If any member of the Delimitation Commission shall die or resign or if the President is satisfied that any such member has become incapable of discharging his functions as such, the President shall, in accordance with the provisions of paragraph (1) of this Article and Chapter XIII, appoint another person in his place.

### **Electoral Districts, Electoral Divisions, Electoral Areas and Electoral Units**

179. (1) The Delimitation Commission shall divide Sri Lanka into not less than twenty and not more than twenty five electoral districts.
- (2) Each Province of Sri Lanka may itself constitute an electoral district or may constitute of two or more electoral districts.
- (3) Where the Province is divided into a number of electoral districts, the Delimitation Commission shall have regard to the existing administrative districts so as to ensure as far as is practicable that each electoral district shall be an administrative district or a combination of two or more administrative districts or two or more electoral districts together constitute an administrative district.
- (4) The Delimitation Commission shall,
- (a) divide each electoral District to such number of electoral divisions. (Constituencies). The total number of electoral divisions shall be one hundred and sixty;

- (b) divide each electoral division into several electoral areas (Local Authority areas) or may combine several electoral divisions to constitute one electoral area.
  - (c) divide every electoral area into several electoral units (wards):  
 Provided that, the Delimitation Commission shall, in so dividing or combining, have due regard to the physical features of the area and diversity of interests of its inhabitants.
- (5) In the event of a difference of opinion among the members of the Delimitation Commission, the opinion of the majority thereof shall prevail and shall be deemed to be the decision of the Commission. Where each member of the Commission is of different opinion, the opinion of the Chairman shall be deemed to be the decision of the Commission. Any dissenting member may state his reasons for such dissent.
- (6) The Chairperson of the Delimitation Commission shall communicate the decisions of the Commission together with their reasons including that of any dissenting member to the President.

**Proclamation of names and electoral districts, electoral divisions, electoral areas and electoral units.**

180. (1) The President shall by Proclamation publish,
- (a) the number of electoral districts, the electoral divisions, electoral areas and electoral units in each Province.
  - (b) a name assigned to each such electoral district, electoral division, electoral area and electoral unit,
  - (c) the boundaries of electoral districts, electoral division, electoral areas and electoral units, and
  - (d) the number of members of the National State Assembly which each such electoral district is entitled to return and the number of Local Authority members which each such electoral area is entitled to return.
- (2) The electoral districts, electoral divisions, electoral areas and electoral units specified in the Proclamation referred to paragraph (1) shall come into operation at the next Election of President, Members of the National State Assembly, Provincial Council and Local Authorities and shall thereafter be the electoral districts, electoral divisions, electoral areas and electoral units of Sri Lanka for all the purposes of the Constitution and of any law for the time being in force relating to the Election of President, Members of the National State Assembly, Provincial Councils and Local Authorities.

### **National State Assembly may make provision in respect of elections**

181. (1) The National State Assembly may by law make provision for –
- (a) the registration of electors;
  - (b) the prescribing of a qualifying date on which a person should be resident in any electoral district to be entered in the register of electors of that electoral district and qualifications required for a political party to be recognised;
  - (c) the prescribing of a qualifying date on which a person should have attained the age of eighteen years to qualify for the purposes of registration as an elector;
  - (d) the preparation and revision of registers of electors;
  - (e) the procedure for the Election of President, Members of the National State Assembly, Provincial Councils, Local Authorities and Referenda;
  - (f) the creation of offences relating to such elections and the punishment thereof;
  - (g) the grounds for avoiding such elections, and where an election has been held void, the manner of holding fresh elections;
  - (h) the form and manner in which vacancies shall be filled;
  - (i) the manner of determination of disputed elections and such other matters as are necessary or incidental to the Election of President, Members of the National State Assembly, Provincial Councils, or Local Authorities.
- (2) Any law enacted under the provisions of paragraph (1) shall not add any disqualifications other than the disqualifications specified in Articles 174 and 177.

### **Public Officer or an officer of a Public Corporation not to function during the Period of Election.**

182. (1) When a public officer or an officer of a public corporation who is otherwise not disqualified, is a candidate at any election, he shall be deemed to be on leave from the date on which he stands nominated as a candidate until the conclusion of the election.
- (2) Such a public officer or an officer of a public corporation shall not during such period exercise, perform or discharge any of the powers, duties or functions of his office.

### **Election of the President**

183. (1) At the election of the President every voter while casting his vote for any candidate may –
- (a) where there are three candidates for election, specify his second preference; and

- (b) where there are more than three candidates for election, specify his second and third preferences.
- (2) The candidate, if any, who receives more than one-half of the valid votes cast shall be declared elected as President.
- (3) Where no candidate is declared elected under paragraph (2) of this Article, the candidate or candidates, other than the candidates who received the highest and second highest number of such votes, shall be eliminated from the contest, and –
  - (a) the second preference of each voter whose vote had been for a candidate eliminated from the contest, shall, if it is for one or the other of the remaining two candidates, be counted as a vote for such candidate and be added to the votes counted in his favour under paragraph (2); and
  - (b) the third preference of each voter referred to in sub-paragraph (a) whose second preference is not counted under that sub paragraph shall, if it is for one or the other of the remaining two candidates, be counted as a vote for such candidate and be added to the votes counted in his favour under sub-paragraph (a) and paragraph (2), and the candidate who receives the majority of the votes so counted shall be declared elected as President.
- (4) Where an equality is found to exist between the votes received by two or more candidates and the addition of one vote would determine –
  - (a) which candidate is to be declared elected under this Article; or
  - (b) which candidate is not to be eliminated under this Article, then the determination of the candidate to whom such additional vote shall be deemed to have been given for the purpose of such determination shall be made by lot.

### **General Elections**

184. (1) The several electoral divisions and several electoral districts shall together be entitled to return two hundred and ten Members at any General Election (hereinafter referred to as the “elected members”) as set out below:
- (a) Each electoral division shall be entitled to return one Member of the National State Assembly at such General Election, and the several electoral divisions shall together be entitled to return one hundred and sixty Members of the National State Assembly. Where any elector is qualified to contest under Article 175, he shall be entitled to contest any electoral division upon being nominated by any elector of any electoral division or the Secretary of a recognised political party; and
  - (b) (i) The several electoral districts shall together be entitled to return fifty Members of the National State Assembly from recognised political

parties that contested such General Election, in the same proportion as the proportion which the number of votes secured by each such party at such General Election bears to the total number of votes polled at such Election.

- (ii) In this sub-paragraph, “a recognised political party qualified to return candidates for any electoral district”, means a recognized political party that has nominated women candidates in respect of twenty-one electoral divisions in not less than five Provinces at any General Election (hereinafter in this Article referred to as the “qualified political party”).
- (2) The fifty Members of the National State Assembly referred to in sub-paragraph (b) of paragraph (1) shall be apportioned among the qualified political parties that contested the General Election in the following manner –
- (a) (i) the number of Members of the National State assembly entitled to any recognised political party in any electoral district under subparagraph (b) of paragraph (1) shall be determined by dividing the total number of votes secured by such political party in any electoral district other than the votes obtained by the members of such party elected under sub-paragraph (a) of paragraph (1) in any electoral district divided by the qualifying number;
  - (ii) In this sub-paragraph, “qualifying number” means the votes secured by all candidates in any electoral district other than the candidates declared elected under sub-paragraph (a) of paragraph (1) in any electoral district divided by the number of members allotted to such electoral district;
  - (b) the candidates who have secured the highest percentage of votes in any electoral division but not elected under sub-paragraph (a) of paragraph (1) shall be entitled to be declared elected from among the candidates of such political party under sub-paragraph (b) of paragraph (1).
- (3) Fifteen Members (hereinafter referred to as nominated members) shall be declared elected from among the persons nominated by each recognised political party that contested the General Election in the following manner –
- (i) Five members of the National State Assembly nominated by the recognised political party contesting General Elections, which obtained the highest number of seats in the National State Assembly;
  - (ii) Up to ten Members of the National State Assembly nominated by any political party that had obtained more than one twentieth of the total votes polled at the said election in any electoral district, but failed to obtain any seat at the Election under paragraph (1) of this Article;
  - (iii) After allocating seats under sub-paragraphs (i) and (ii) above, in the event of a balance, such balance number of seats shall be apportioned among

all recognised political parties contesting such General Election in the same proportion as the proportion which the number of votes secured by each such party bears to the total number of votes polled at such General Election, provided such political party has secured in aggregate at least one twentieth of the total votes polled at such election;

- (4) The members nominated by any political party under paragraph (2) shall be persons included in a list (in this Article referred to as the “National List”) submitted by each political party contesting the election during the nomination period who are qualified under Article 175, and possessing an academic or professional qualification prescribed by law.
- (5) Every nomination under sub-paragraphs (a) and (b) of paragraph (2) shall be made within two weeks from the date the results of the election has been declared by the Commissioner General of Elections.
- (6) Where no nomination is made by any political party within the time prescribed under paragraph (5), the Commissioner General of Elections shall declare elect, a candidate from the National List of the respective political party that is entitled to make such nomination.

### **Failure to Enact a Law relating to Election or to declare Electoral Districts or Divisions**

- (7) If at any time after the Constitution comes into force, at the time of dissolution of the National State Assembly the Proclamation as required by Article 180 has not been published or the law relating to the election of Members of the National State Assembly has not been enacted as required by Article 181 for the conduct of any General Election –
  - (a) the number of electoral districts, names of such electoral districts, and the number of members to be returned by each district shall be the number of districts, names, boundaries and number of members of each such district declared in the Proclamation made under section 80 read with section 81 of the First Republican Constitution enacted on the 22<sup>nd</sup> of May in the year 1972 and;
  - (b) the divisions, their boundaries, and the number of Members which each such division shall be entitled to return shall be the polling districts specified in letter or letters assigned to the Notice published under section 10 of the Ceylon (Parliamentary Elections) Order in Council 1946 upon which the Parliamentary Election was held on the 21st day of the month of July held in the year 1977.

- (8) The Commissioner General of Elections shall prepare and certify registers of electors for each such electoral district, on the basis of the register of electors in force immediately before the commencement of the Constitution.
- (9) If any difficulty arises in giving effect to the provisions of the Constitution or any law relating to elections due to the absence of any provision for the due performance of conducting any election, the Commissioner General of Elections may by order published, issue all such directions as he may deem necessary with a view to providing for any such omission, to ensure the due exercise of franchise by the People as guaranteed by Articles 5 and 6.

### **Local Authority Elections**

185. (1) Every electoral area shall be entitled to return such number of members as equivalent to the number of electoral units in such electoral area, at every Local Authority Election conducted.
- (2) Every elector whose name appears in the relevant electoral register in respect of an electoral unit of any electoral area shall be entitled to vote at any Local Authority Election according to law –
  - (a) to elect one member to represent such electoral unit in the relevant Local Authority and,
  - (b) to elect one member to the relevant Provincial Council, from among the candidates contesting any one of the electoral units of the relevant electoral area.
- (3) From among the candidates contesting the several electoral units in any electoral area, the candidate who has secured the highest number of votes from the recognised political party that has secured the highest number of members representing electoral units shall be declared elected as the member of the relevant Provincial Council to represent such Local Authority.
- (4) In this Article, recognised political party shall include an independent group contesting any election.

### **Commissioner General of Elections**

186. (1) There shall be a Commissioner General of Elections (hereinafter referred to as Commissioner-General) who shall be a citizen of Sri Lanka and be appointed by the President on such terms and conditions as may be determined by the Council, in accordance with Chapter XIII.
- (2) The salaries of the Commissioner -General and other officers of the Department of Elections, shall be determined by the Legislative Council subject to the approval of the National State Assembly and shall be charged on the Consolidated Fund.

- (3) The office of the Commissioner-General shall become vacant –
- (a) upon his death;
  - (b) on his resignation in writing addressed to the President;
  - (c) on his attaining the age of sixty five years;
  - (d) on his removal by the President on account of ill health or physical or mental infirmity on the recommendation of the High Posts Committee; or
  - (e) on his removal by an order made by the President in accordance with paragraph (2) of Article 137.
- (4) (a) The address referred to in sub-paragraph (e) of paragraph (3) shall be required to be supported by a majority of the total number of Members of the National State Assembly (including those not present) and no resolution for the presentation of such an address shall be entertained by the Speaker, or placed on the Order Paper of the National State Assembly, unless notice of such resolution is signed by not less than one-third of the total number of Members of the National State Assembly and sets out full particulars of the alleged misbehaviour or incapacity.
- (b) Where notice of such resolution is entertained by the Speaker, he shall refer such resolution to the relevant High Posts Committee constituted to investigate and inquire into the alleged misbehaviour or incapacity.
  - (c) The relevant High Posts Committee shall conduct an investigation and inquiry at which the Commissioner General shall be given an opportunity of being heard adhering to the established principles of natural justice. Upon the conclusion of the aforesaid inquiry the relevant High Posts Committee shall prepare a report assigning reasons for their findings and submit the same to the President.
  - (d) The President shall not make any order under sub paragraph (e) of paragraph (3) for the removal of the Commissioner General if the findings of such High Posts Committee are that the alleged misbehaviour or incapacity of such judge has not been proved.
  - (e) The National State Assembly shall by law or by Standing Orders, provide for all matters relating to the presentation of such an address, including the procedure for the passing of such resolution, the investigation and proof of the alleged misbehaviour or incapacity and the right of the Commissioner General of Elections to appear and to be heard in person or by representatives.

### **Powers and Functions of the Commissioner General of Elections**

187. (1) The Commissioner-General shall exercise, perform or discharge all such powers, duties or functions as may be conferred or imposed on or vested in him by



the Constitution or any law for the time being in force relating to elections to the office of President of the Republic and of Members of the National State Assembly, and of Members of Provincial Councils and Local Authorities and conduct of a Referendum.

### **Prohibition of Use of State Property to Promote or Prevent Election of Candidates**

- (2) (a) The Commissioner-General shall ensure that no movable or immovable property belonging to the State or to any public corporation is used –
  - (i) for the purpose of promoting or preventing the election of any candidate or any political party or independent group contesting at any election;
  - (ii) by any candidate or any political party or any independent group contesting at such election.
- (b) It shall be the duty of every person or officer in whose custody or under whose control such property is for the time being, to ensure compliance with paragraph (2)
- (3) (a) The Commissioner-General shall have the power to issue from time to time, in respect of the holding of any election or the conduct of a Referendum, such guidelines as the Commissioner-General may consider appropriate, to any broadcasting or telecasting operator or any proprietor or publisher of a newspaper, or any person using social media, as the case may be, as the Commissioner-General may consider necessary to ensure a free and fair election.
- (b) It shall be the duty of all persons mentioned in sub paragraph (a) and the State to take all necessary steps to ensure compliance with such guidelines as are issued under sub-paragraph (a).
- (c) (i) The Commissioner-General shall cause the guidelines referred to in Paragraph (3) sub-paragraph (a) to be published in at least one newspaper widely circulated, in the Sinhala, Tamil and English languages.
- (ii) Every such guideline shall be published and shall come into operation on the date of such publication or on such later date as may be specified in such guideline.
- (iii) Every such guideline shall, within three months from the date of publication, be brought before the National State Assembly for approval. Any direction or guideline which is not so approved shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done there under.

### **Deployment of Police**

188. (1) Upon the making of an Order for the holding of an election or the making of a Proclamation requiring the conduct of a Referendum, as the case may be, the Commissioner General shall notify the Inspector-General of Police of the facilities and the number of police officers required by the Commissioner General for the holding or conduct of such election or Referendum, as the case may be.
- (2) The Inspector-General of Police shall make available to the Commissioner the facilities and police officers specified in any notification made under paragraph (1) of this Article.
- (3) The Commissioner General may deploy the police officers and facilities made available to the Commissioner General in such manner as is calculated to promote the conduct of a free and fair election or Referendum, as the case may be.
- (4) Every police officer made available to the Commissioner General under paragraph (3) of this Article, shall be responsible to and act under the direction and control of the Commissioner General during the period of an election.
- (5) No suit, prosecution or other proceedings, shall lie against any police officer made available to the Commissioner General under this Article for any lawful act or thing in good faith done by such police officer, in pursuance of a direction of the Commissioner General.

### **Deployment of Armed Forces during Election**

189. It shall be lawful for the Commissioner General, upon the making of an Order for the holding of an election or the making of a Proclamation requiring the conduct of a Referendum, as the case may be, to make recommendations to the President regarding the deployment of the Armed Forces of the Republic for the prevention or control of any actions or incidents which may be prejudicial to the holding or conducting of a free and fair election or Referendum, as the case may be.

### **Failure to comply with directions to be an offence**

190. (1) Any public officer, any employee of any public corporation, business or other undertaking vested in the Government under any other written law and any company registered or deemed to be registered under the Companies Act, No. 7 of 2007, in which the Government or any public corporation or Local Authority holds fifty per centum or more of the shares of that company, or any person bound to comply with any guidelines referred to above who –

- (a) refuses or fails without a reasonable cause to co-operate with the Commissioner, to secure the enforcement of any law relating to the holding of an election or the conduct of a Referendum; or
  - (b) fails without a reasonable cause to comply with the provisions of this Chapter or any law or guidelines issued by the Commissioner-General under Article 187;  
 commits an offence and shall on conviction be liable to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
- (2) Every High Court of the Republic of Sri Lanka shall have jurisdiction to hear and determine any matter referred to in paragraph (1).
- (3) (a) The jurisdiction conferred on the Court of Appeal under Article 295 of the Constitution shall, in relation to any matter that may arise in the exercise by the Commissioner General of the powers conferred on him by the Constitution or by any other law in relation to the election of the President or the Referendum, be exercised by the Supreme Court.
- (b) Every application invoking the jurisdiction referred to in paragraph (a), shall be made within one month from the date of the commission of the act to which the application relates. The Supreme Court shall hear and finally dispose of the application within two months of the filing of the same.

### **Appointment of Returning Officers**

- 191 (1) (a) The Public Service Commission shall from time to time on the recommendation of the Commissioner General by notice published, appoint by name or by office, a person to be a Returning officer to each electoral district, and may appoint by name or by office, one or more persons to assist the Returning Officer in the performance of his duties.
- (b) Every Officer appointed under paragraph (a) shall in the performance and discharge of such duties and functions as are assigned to him, be subject to such directions as may be issued by the Commissioner General.
- (2) All public officers performing duties and functions at any election or Referenda shall act in the performance and discharge of such duties and functions under the directions of the Commissioner General and shall be responsible and answerable to the Commissioner General.

## CHAPTER XVIII

**THE REFERENDUM****Submission of Bills to People by Referendum**

192. (1) The President shall submit to the People by Referendum, every Bill or any provision in any Bill which the Cabinet of Ministers has certified as being intended to be submitted to the People by Referendum, or which the Supreme Court has determined as requiring the approval of the People at a Referendum if the number of votes cast in favour of such Bill amounts to not less than two-thirds of the whole number of Members (including those not present).
- (2) The President may in his discretion submit to the People by Referendum, any Bill (not being a Bill for the repeal or amendment of any provision of the Constitution, or for the addition of any provision to the Constitution, or for the repeal and replacement of the Constitution, or which is inconsistent with any provision of the Constitution), which has been rejected by the National State Assembly.
- (3) Any Bill or any provision in any Bill submitted to the People by Referendum shall be deemed to be approved by the People if approved by an absolute majority of the valid votes cast at such Referendum:

Provided that, when the total number of valid votes cast does not exceed two-thirds of the whole number of electors entered in the register of electors, such Bill shall be deemed to be approved only if approved by not less than one-third of the whole number of such electors.

**Submission of Matters with National Importance to People by Referendum**

193. (1) The President or the National State Assembly, if supported by a Resolution passed by not less than two thirds of the whole number of Members (including those not present) voting in its favour, may, submit to the People by Referendum any matter which in the opinion of the President is or referred to in such resolution as of national importance. Any matter submitted to the People by Referendum shall be deemed to be approved by the People, if approved by an absolute majority of the valid votes cast at such Referendum:

Provided that, when the total number of valid votes cast does not exceed two third of the whole number of electors entered in the register of electors, such matters shall be deemed to be approved only if approved by not less than one third of the whole number of such electors.

- (2) The State shall not, by legislative or executive action, violate the opinion expressed by the People in respect of any matter placed before the People at a Referendum without holding a fresh Referendum on the same matter and where such matter has been approved by the People.

### **National State Assembly to Provide for Procedure**

194. (1) Every Referendum shall be conducted by the Commissioner General of Elections who shall communicate the result thereof to the President or the National State Assembly, as the case may be.
- (2) The National State Assembly shall by law provide for all matters relating to the procedure for the submission of Bills and of matters of national importance to the People by Referenda, the register of electors to be used at a Referendum, the creation of offences relating thereto and the punishment thereof and, all other matters necessary or incidental thereto.

## CHAPTER XIX

**THE LEGISLATURE****National State Assembly**

195. (1) There shall be a National State Assembly which shall consist of two hundred and twenty-five Members elected in accordance with the provisions of the Constitution.
- (2) Unless the National State Assembly is sooner dissolved, the National State Assembly shall continue for five years from the date appointed for its first meeting and no longer, and upon expiry of the said period of five years, the National State Assembly shall be deemed to have been dissolved.

**Declaration of Assets and Liabilities, Official oath or affirmation**

196. (1) Every Member of the National State Assembly shall submit annually, a declaration of assets and liabilities.
- (2) Except for the purpose of electing the Speaker, no Member shall sit or vote in the National State Assembly until –
- (a) he takes and subscribes the affirmation or makes and subscribes the oath in the Fourth Schedule before the National State Assembly; and
  - (b) he submits, in such form as may be prescribed, a declaration, of all –
    - (i) his assets and liabilities,
    - (ii) the assets and liabilities of his spouse,
    - (iii) the assets and liabilities of each child of such member,
    - (iv) the assets and liabilities of any trust of which he or a member of his family is directly or indirectly a beneficiary, and
    - (v) transfers of all assets and liabilities made by him in favour of any person during a period of six years immediately prior to the date of such declaration.
- (3) Any member who wilfully makes any false statement in any such declaration commits an offence and shall –
- (i) on conviction after trial before the Court of Appeal be liable to a fine not exceeding twenty five million rupees and to imprisonment for a term not exceeding three years; and

- (ii) be disqualified from being elected the President or a Member of the National State Assembly, a Provincial Council, a Local Authority or holding any other public office.
- (4) In this Article,
  - (i) “Assets and Liabilities” means assets and liabilities in and outside Sri Lanka and include movable and immovable property.
  - (ii) ”Transfer” shall include “gift”.

### **Speaker, Deputy Speaker and Deputy Chairman of Committees**

197. (1) (a) The National State Assembly shall, at its first meeting after a General Election, elect three Members to be respectively the Speaker, the Deputy Speaker and Chairman of Committees (hereinafter referred to as the “Deputy Speaker”) and the Deputy Chairman of Committees thereof.
- (b) Immediately after the election of the Speaker, he shall recognise as the Leader of the Opposition, the leader of the political party in the Opposition that has secured the highest number of seats in the National State Assembly.
- (2) A Member holding office as the Speaker or the Deputy Speaker or the Deputy Chairman of Committees shall, unless he earlier resigns from his office by a writing under his hand addressed to the President or ceases to be a Member, vacate his office on the dissolution of the National State Assembly.
- (3) Whenever the office of the Speaker, the Deputy Speaker or the Deputy Chairman of Committees becomes vacant otherwise than as a result of a dissolution of National State Assembly, the National State Assembly shall at its first meeting after the occurrence of the vacancy, elect another Member to be the Speaker, the Deputy Speaker or the Deputy Chairman of Committees, as the case may be.
- (4) If the National State Assembly, after having been dissolved, is summoned under paragraph (9) of Article 205, each of the Members mentioned in paragraph (2) of this Article shall, notwithstanding anything therein, resume and continue to hold his office while that National State Assembly is kept in session.
- (5) The Speaker, or in his absence the Deputy Speaker, or in their absence the Deputy Chairman of Committees, shall preside at sittings of the National State Assembly. If none of them are present, a Member elected by the National State Assembly for the sitting shall preside at the sitting of the National State Assembly.

### **Secretary-General of the National State Assembly**

198. (1) There shall be a Secretary-General of the National State Assembly who shall, subject to Chapter XIII, be appointed by the President and shall hold office during good behaviour.

- (2) The salary of the Secretary-General shall be determined by the National State Assembly, shall be charged on the Consolidated Fund and shall not be diminished during his term of office.
- (3) The members of the staff of the Secretary-General shall be appointed by him with the approval of the Speaker.
- (4) The salaries of the members of the staff of the Secretary-General shall be charged on the Consolidated Fund.
- (5) The office of the Secretary-General shall become vacant –
  - (a) upon his death;
  - (b) on his resignation in writing addressed to the President;
  - (c) on his attaining the age of sixty years, unless the National State Assembly otherwise provides by law;
  - (d) on his removal by the President on account of ill health or physical or mental infirmity on the recommendation of the Legislative Council; or
  - (e) on his removal by the President upon an address of the National State Assembly.
- (6) Whenever the Secretary-General is unable to discharge the functions of his office, the President may, subject to Chapter XIII, appoint a person to act in the place of the Secretary-General.

### **Vacation of Seats**

199. The seat of a Member shall become vacant –
- (a) upon his death;
  - (b) if he ceases to be a citizen of Sri Lanka or becomes a citizen of any other country voluntarily or within two weeks of him becoming so aware, that he is a citizen of any other country, fails to make an irrevocable and irreversible application to renounce his citizenship of such country;
  - (c) if, by a writing under his hand addressed to the Secretary-General of the National State Assembly, he resigns from his seat;
  - (d) upon his assuming the office of President consequent to his election to such office, either by the People or by the National State Assembly;
  - (e) if he becomes subject to any disqualification specified in Articles 174 and 176;
  - (f) if he becomes a member of the Public Service or an employee of a public corporation or, being a member of the Public Service or an employee of a public corporation, does not cease to be a member of such Service or an employee of such corporation, before he sits in the National State Assembly;



- (g) if, without the leave of the National State Assembly first obtained, he absents himself from the sittings of the National State Assembly during a continuous period of three months;
- (h) if he is absent for more than half the number of sittings in any session excluding the number of sittings in respect of which he has obtained leave under paragraph (g);
- (i) if his election as a Member is declared void under the law in force for the time being;
- (j) upon the dissolution of the National State Assembly;
- (k) upon a resolution for his expulsion being passed in terms of Article 246, or
- (l) if he becomes disqualified under the Constitution.

### **Disqualifications on the Grounds of Defection**

200. (1) A Member of the National State Assembly belonging to any political party shall be disqualified from being a member of the National State Assembly –
- (a) if he has voluntarily given up his membership of such political party; or
  - (b) if he votes or abstains from voting in the National State Assembly contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.
- (2) An elected Member of the National State Assembly shall be disqualified from being a Member of the National State Assembly if he, on application made, obtains the membership of any other political party after such election.
- (3) A nominated Member of the National State Assembly shall be disqualified from being a Member of the National State Assembly, if he obtains the membership of any political party after he is nominated.
- (4) Where a Member of the National State Assembly makes a claim that he and any other members of his party constitute a group representing a faction which has arisen as a result of a split in his original, political party and such group consists of not less than one third of the total number of members of such party in the National State Assembly –
- (a) he shall not be disqualified under sub-paragraph (1) on the ground –
    - (i) that he has voluntarily given up his membership of his original political party; or

- (ii) that he has voted or abstained from voting in the National State Assembly contrary to any direction issued by such party or by any person or authority authorised by it on that behalf, without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and
  - (b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) and to be his original political party for the purposes of this paragraph.
- (5) A Member of the National State Assembly shall not be disqualified under subparagraph (1) where his original political party merges with another political party and he claims that he and any other members of his original political party –
  - (a) have become members of such other political party or, of a new political party formed by such merger as the case may be; or
  - (b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) and to be his original political party for the purposes of this sub-paragraph.
- (6) For the purposes of paragraph (6), the merger of the original political party of a member of the National State Assembly shall be deemed to have taken place if, and only if, not less than two-thirds of the members represented in the National State Assembly have agreed to such merger.
- (7) For the purposes of this Article –
  - (a) An elected Member of the National State Assembly shall be deemed to belong to the political party from which he was nominated as a candidate for election as such Member;
  - (b) A nominated Member of the National State Assembly shall be deemed to belong to such political party by which he was nominated.

### **Duty of Secretary General of the National State Assembly**

201. It shall be the duty of the Secretary-General of the National State Assembly –
- (a) whenever the seat of a Member of the National State Assembly elected under sub-paragraph (a) of paragraph (1) of Article 184, falls vacant, except under

the provisions of paragraph (j) of Article 199, to inform the President of such vacancy, and the President shall within one month, by notice published, order the holding of an election to fill such vacancy,

- (b) whenever the seat of a Member of the National State Assembly elected under sub-paragraph (ii) of paragraph (1) of Article 184, from any recognised political party, falls vacant except under provisions of paragraph (J) of Article 199, to inform the Commissioner General of Elections of such vacancy, who shall declare elect, the candidate who secured the next highest percentage of votes in any electoral division from such party and,
- (c) whenever the seat of a Member of the National State Assembly nominated by any political party under paragraph (3) of Article 184, falls vacant except under provisions of paragraph (J) of Article 199, to inform the Secretary of such party who shall within one month, nominate a person qualified in terms of paragraph (4) of the said paragraph for such vacancy, and the Commission General of Elections shall declare elect such person:

Provided that where the Secretary of such political party fails to nominate a person within the prescribed period, the Commission General of Elections shall declare any person included in the list referred to in paragraph (4) of Article 184.

### **Power of the National State Assembly to act Notwithstanding Vacancies**

- 202. The National State Assembly shall have power to act notwithstanding any vacancy in its membership and its proceedings shall be valid notwithstanding that it is discovered subsequently that a person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

### **Privileges, Immunities and Powers of the National State Assembly and Members**

- 203. The privileges, immunities and powers of the National State Assembly and of its Members may be determined and regulated by the National State Assembly by law and until so determined and regulated, the provisions of the Parliament (Powers and Privileges) Act (Chapter 383), shall, *mutatis mutandis*, apply.

### **Allowances and Other Privileges of Members**

- 204. (1) Ministers, Deputy Ministers and Members, including the Speaker, the Deputy Speaker and the Deputy Chairman of Committees, shall be paid such remuneration or allowance as may be provided by law, and the receipt thereof shall not disqualify the recipient from sitting or voting in the National State Assembly.

- (2) Until the National State Assembly so provides, the remuneration payable to Ministers, Deputy Ministers and Members, including the Speaker, the Deputy Speaker and the Deputy Chairman of Committees, shall be the same as the remuneration paid to Ministers, Deputy Ministers and Members including the Speaker, the Deputy Speaker and the Deputy Chairman of Committees of the Parliament immediately prior to the commencement of the Constitution.
- (3) No Minister, Deputy Minister, Speaker, Deputy Speaker, Deputy Chairman of Committees, or Member of the National State Assembly shall be entitled to any exemptions or reductions to any tax, duty or other levy that such Minister, Deputy Minister, Speaker, Deputy Speaker, Deputy Chairman of Committees or Member of the National State Assembly or his property shall be subject to, had he not been a Minister, a Deputy Minister, a Speaker, Deputy Speaker Deputy Chairperson of Committees or Member of the National State Assembly: Provided that, nothing in this paragraph shall prevent the State from granting any exemption or reduction granted to other public officers, to such Minister, Deputy Minister, Speaker, Deputy Speaker, Deputy Chairman of Committees or Member of the National State Assembly.
- (4) (a) No vehicle acquired by such Minister, Deputy Minister, Speaker, Deputy Speaker, Deputy Chairman of Committees or Member taking advantage of any benefit from such a tax exemption or reduction, shall be alienated during his tenure as a Member of the National State Assembly without paying the tax, duty or other levy exempted or reduced by virtue of his office.
- (b) In this paragraph, “alienate” shall include relinquishment either temporarily or permanently of the possession of such vehicle.
- (5) The National State Assembly may provide any Member of the National State Assembly, suitable accommodation and transport facilities as provided by law, for such Member of the National State Assembly only during his term of office and not thereafter.
- (6) (a) Any Member of the National State Assembly who had been given any residence or vehicle shall return the same upon completing his term of office.
- (b) Any Member of the National State Assembly who continues to have the possession of such residence or vehicle for more than one month after he relinquishes his duties commits an offence against public property and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one million rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

CHAPTER XX

**THE LEGISLATURE**

**Procedure and Powers**

**Sessions of the National State Assembly**

205. (1) The President may by Proclamation, summon or prorogue the National State Assembly.
- (2) The National State Assembly shall stand dissolved if the National State Assembly by a resolution by a majority of Members (including those not present) voting in its favour, resolves to dissolve the National State Assembly.
- (3) Where the National State Assembly rejects the Statement of Government Policy or the Appropriation Bill or passes a vote of no confidence in the Government, unless the President in the exercise of his powers under paragraph (2) of Article 102, appoints a Prime Minister and Ministers of the Cabinet of Minister, the National State Assembly shall stand dissolved.
- (4) The National State Assembly shall be summoned to meet once at least in every year.
- (5) A Proclamation proroguing the National State Assembly shall fix a date for the next session, not being more than two months after the date of the Proclamation:  
 Provided that, at any time while the National State Assembly stands prorogued the President may by Proclamation summon the National State Assembly for an earlier date, not being less than three days from the date of such Proclamation.
- (6) All matters which, having been duly brought before the National State Assembly, have not been disposed of at the time of the prorogation of the National State Assembly, may be proceeded with during the next session.
- (7) (a) Upon the dissolution of the National State Assembly by virtue of the provisions of paragraph (2) the President shall forthwith by Proclamation fix a date or dates for the election of Members of the National State Assembly, and shall summon the new National State Assembly to meet on a date not later than three months after the date of such Proclamation.

- (b) The date fixed for the first meeting of the National State Assembly by a Proclamation under sub-paragraph (a) may be varied by a subsequent Proclamation:
- Provided that, the date so fixed by the subsequent Proclamation shall be a date not later than three months after the date of the original Proclamation.
- Provided further, due to any emergency the National State Assembly is unable to assemble, a further Proclamation may be made by the President, extending the date so fixed for the first meeting of the National State Assembly.
- (8) Where the poll for the election of the President is to be taken on a date which falls between the date of dissolution of the National State Assembly and the date before which the National State Assembly is required by paragraph (5) of this Article to be summoned to meet, the National State Assembly shall, notwithstanding anything in that paragraph, be summoned to meet on a date not later than four months after the date of dissolution of the National State Assembly.
- (9) If at any time after the dissolution of the National State Assembly, the President is satisfied that an emergency has arisen of such a nature that an earlier meeting of the National State Assembly is necessary, he may by Proclamation summon the National State Assembly which has been dissolved to meet on a date not less than three days from the date of such Proclamation and as such, the National State Assembly shall stand dissolved upon the revocation of such Proclamation by the President or the conclusion of the General Election, whichever is earlier.

### **Adjournment**

206. The National State Assembly may adjourn from time to time as it may determine by Resolution or Standing Order, until it is prorogued or dissolved.

### **Voting**

207. (1) Save as otherwise provided in the Constitution, any question proposed for decision by the National State Assembly shall be decided by the majority of votes of the Members present and voting.
- (2) The person presiding shall not vote in the first instance but shall have and exercise a casting vote in the event of an equality of votes.

### **Quorum**

208. If at any time during a meeting of the National State Assembly the attention of the person presiding is drawn to the fact that there are fewer than fifty Members present, the person presiding shall, subject to any Standing Order, adjourn the sitting without questions put.

### Standing Orders

209. (1) Subject to the provisions of the Constitution, the National State Assembly may by Resolution or Standing Order provide for –
- (a) the election and retirement of the Speaker, the Deputy Speaker and the Deputy Chairman of Committees; and
  - (b) the regulation of its business, the preservation of order at its sittings and any other matter for which provision is required or authorised to be so made by the Constitution; and
  - (c) a code of conduct for Members of the National State Assembly and sanctions that may be imposed for violating such code of conduct.
- (2) Until the National State Assembly otherwise provides by law or by resolution, the Standing Orders of the Parliament which were operative immediately prior to the commencement of the Constitution, shall, *mutatis mutandis*, be the Standing Orders of the National State Assembly.

### Legislative Power

210. (1) The National State Assembly shall have power to make laws including laws having retrospective effect and repealing or amending any provision of the Constitution, or adding any provision to the Constitution:
- Provided that, the National State Assembly shall not make any law –
- (a) suspending the operation of the Constitution or any part thereof, or
  - (b) repealing the Constitution as a whole unless such law also enacts a new Constitution to replace it.
- (2) Nothing in Chapter XXII shall be read or construed as derogating from the powers conferred on the National State Assembly by the Constitution to make any laws including any subject enumerated in the Schedule to Chapter XXII.
- (3) If any provision of any statute made by a Provincial Council is inconsistent with the provisions of any law, whether enacted before or after the enactment of the statute, the provisions of such law shall prevail and the provisions of such statute shall to the extent of such inconsistency be void.

### Delegation of Legislative Power

211. (1) The National State Assembly shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with any legislative power.

- (2) It shall not be a contravention of the provisions of paragraph (1) of this Article for the National State Assembly to make, in any law relating to public security, provision empowering the President to make emergency regulations in accordance with such law.
- (3) (a) It shall not be a contravention of the provisions of paragraph (1) of this Article for the National State Assembly to make any law containing any provision empowering any person or body to make subordinate legislation for prescribed purposes, including the power –
  - (i) to appoint a date on which any law or any part thereof shall come into effect or cease to have effect;
  - (ii) to make by order, any law or any part thereof applicable to any locality or to any class of persons; and
  - (iii) to create a legal person, by an order or an Act.
 (b) In this paragraph “Law” shall include existing laws.
- (4) Any existing law containing any such provision as aforesaid shall be valid and operative.
- (5) The National State Assembly shall not enact any laws restricting the legislative power of the National State Assembly to enact or repeal any written law.
- (6) In this paragraph, any procedural or other restraint (including specifications of the number of votes required to enact or repeal any law) in relation to the exercise of legislative power by the National State Assembly shall be deemed a restriction of legislative power of the National State Assembly unless specifically provided for by the Constitution.

### **Publication of Bills and passing of Bills and Resolution**

212. (1) Every Bill shall be published at least two weeks before it is placed on the Order Paper of the National State Assembly.
- (2) When a Bill is placed on the Order Paper of the National State Assembly, the Secretary-General of the National State Assembly shall by public notice published in at least three daily newspapers in Sinhala, Tamil and English give notice of such Bill being placed on the Order Paper of the National State Assembly.
- (3) The passing of a Bill or a Resolution by the National State Assembly shall be in accordance with the Constitution and the Standing Orders of the National State Assembly. Any one or more of the Standing Orders may be suspended by the National State Assembly in the circumstances and in the manner prescribed by the Standing Orders.



### **Duties of Attorney-General in regard to published Bills.**

213. (1) It shall be the duty of the Attorney General to examine every Bill for any contravention of the requirements of paragraphs (1) and (2) of Article 217 and for any provision which cannot be validly passed except by the special majority of the National State Assembly or without being placed before the People at a Referendum as prescribed by the Constitution.
- (2) If the Attorney-General is of the opinion that a Bill published under Article 212 contravenes any of the requirements of paragraphs (1) and (2) of Article 217 or that any provision in a Bill cannot be validly passed except by the special majority of the National State Assembly or approved by the People at a Referendum as prescribed by the Constitution, he shall communicate such opinion to the President and the President shall invoke the jurisdiction of the Supreme Court in terms of Article 262.
- (3) In the case of an amendment proposed to a Bill in the National State Assembly, the Attorney-General shall communicate his opinion to the Speaker at the stage when the amendment of the Bill is ready to be put to the National State Assembly for its acceptance, and if the Attorney General is of the opinion that the amendment proposed to the Bill cannot be validly passed without the special majority of the National State Assembly or being placed before the People at a Referendum, it shall be the duty of the Speaker to refer the proposed amendment to the Supreme Court under Article 262.
- (4) The Attorney-General or any officer assisting the Attorney-General in the performance of his duties under this Article shall be afforded all facilities necessary for the performance of such duties.

### **Certificate of Speaker**

214. (1) The Speaker shall endorse on every Bill passed by the National State Assembly a certificate in the following form –
- “This Bill (here state the short title of the Bill) has been duly passed by the National State Assembly.”
- (2) Such certificate may also state the majority by which such Bill was passed:
- Provided that, where by virtue of the provisions of Article 217 or Article 218 or paragraph (2) of Article 263, a special majority is required for the passing of a Bill, the Speaker shall certify such Bill only if such Bill has been passed with such special majority:

Provided further, that where by virtue of Article 218, the Bill or any provision thereof requires the approval of the People at a Referendum, such certificate shall further state that the Bill or such provision shall not become law until approved by the People at a Referendum.

### **When Bill Becomes Law**

215. (1) Subject to the provisions of paragraph (2) of this Article, a Bill passed by the National State Assembly shall become law when the certificate of the Speaker is endorsed thereon.

(2) Where the Cabinet of Ministers has certified that any Bill or any provision thereof is intended to be submitted for approval by the People at a Referendum or where the Supreme Court has determined that a Bill or any provision thereof required the approval of the People at a Referendum or where any Bill is submitted to the People by Referendum under paragraph (2) of Article 192, such Bill or such provision shall become law upon being approved by the People at a Referendum in accordance with paragraph (3) of Article 192 only when the President certifies that the Bill or provision thereof has been so approved. The President shall endorse on every Bill so approved a certificate in the following form:

“This Bill/provision has been duly approved by the People at a Referendum.”

- (3) Such certificate shall not be endorsed by the President on a Bill –
- (a) in any case where no petition is filed challenging the validity of the Referendum at which such Bill was approved by the People, until after the expiration of the period within which a petition may be filed, under the law applicable in that behalf, challenging the validity of such Referendum;
  - (b) in any case where a petition is filed challenging the validity of the Referendum at which such Bill was approved by the People, until after the Supreme Court determines that such Referendum was valid.
- (4) Every such certificate shall be final and conclusive and shall not be called in question in any Court.
- (5) Where a Bill becomes law upon the certificate of the President or Speaker, as the case may be, being endorsed thereon, no Court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such law:

Provided that, where any amendment is made in the National State Assembly in respect of such Bill, the Supreme Court may examine the constitutionality of any such amendment notwithstanding the certificate of the President or Speaker endorsed in respect of such Bill if such amendment had not been referred to the Supreme Court by the Speaker and a determination made by the Supreme Court.

### **Expulsion of Members and imposition of civic disability**

216. (1) Where a Special Presidential Commission of Inquiry established under the Special Presidential Commissions of Inquiry Law, No. 07 of 1978 and consisting of a member each of whom is a Judge of the Supreme Court, Court of Appeal, High Court or the District Court, recommends that any person should be made subject to civic disability by reason of any act done or omitted to be done by such person before or after the commencement of the Constitution, the National State Assembly may by resolution passed by not less than two-thirds of the whole number of Members (including those not present) voting in its favour –
- (a) impose civic disability on such person for a period not exceeding seven years, and
  - (b) expel such person from the National State Assembly, if he is a Member of the National State Assembly.
- (2) Where a Special Presidential Commission of Inquiry consists of more than one member, a recommendation made by the majority of such members, in case of any difference of opinion, shall be, and shall be deemed for all purposes to be, the recommendation of such Commission of Inquiry.
- (3) No such resolution shall be entertained by the Speaker or placed on the Order Paper of the National State Assembly unless introduced by the Prime Minister with the approval of the Cabinet of Ministers.
- (4) The Speaker shall endorse on every resolution passed in accordance with the preceding provisions of this Article, a certificate in the following form –
- “This resolution has been duly passed by the National State Assembly in accordance with the provisions of Article 216 of the Constitution.”
- (5) Every certificate made under paragraph (4) shall be conclusive for all purposes and shall not be questioned in any Court, and no Court or tribunal shall inquire into, or pronounce upon or in any manner call in question, the validity of such resolution on any ground whatsoever.
- (6) In this Article, “District Court” means a District Court created and established by existing law and includes a Court that may be created by the National State Assembly to exercise and perform powers and functions corresponding or substantially similar to the powers and functions exercised and performed by the District Court.

## CHAPTER XXI

# THE LEGISLATURE

## Amendment to the Constitution

### Amendment or repeal of the Constitution must be expressed

217. (1) No Bill for the amendment of any provision of the Constitution shall be placed on the Order Paper of the National State Assembly, unless the provision to be repealed, altered or added, and consequential amendments, if any, are expressly specified in the Bill and is described in the long title thereof as being an Act for the amendment of the Constitution.
- (2) No Bill for the repeal of the Constitution shall be placed on the Order Paper of the National State Assembly unless the Bill contains provisions replacing the Constitution and is described in the long title thereof as being an Act for the repeal and replacement of the Constitution.
- (3) If in the opinion of the Speaker, a Bill does not comply with the requirements of paragraph (1) or paragraph (2) of this Article, he shall direct that such Bill be not proceeded with unless it is amended so as to comply with those requirements.
- (4) Notwithstanding anything in the preceding provisions of this Article, it shall be lawful for a Bill which complies with the requirements of paragraph (1) or paragraph (2) of this Article to be amended by the National State Assembly provided that the Bill so amended shall comply with those requirements.
- (5) A Bill for the amendment of any provision of the Constitution or for the repeal and replacement of the Constitution, shall become law if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present) and upon a certificate by the President or the Speaker, as the case may be, being endorsed thereon in accordance with the provisions of Articles 214 and 215.
- (6) Notwithstanding the certificate of the President or the Speaker made under Article 214 or 215 in relation to any law, as the case may be, no provision in such law shall, or shall be deemed to, amend, repeal or replace the Constitution or any provision thereof, or be so interpreted or construed, unless enacted in accordance with the requirements of the preceding provisions of this Article.
- (7) In this Chapter, “amendment” includes repeal, alteration and addition.

### **Approval of certain Bills at a Referendum**

218. Notwithstanding anything to the contrary in the provisions of Article 217—
- (a) a Bill for the amendment or for the repeal and replacement of or which is inconsistent with Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 72, 73, 77, 78, 183, 184, 210, 211 and 221 (2) or of this Article; and
  - (b) a Bill for the amendment or for the repeal and replacement of or which is inconsistent with the provisions of paragraph (2) of Article 81 or of, paragraph (2) of Article 195 which would extend the term of office of the President, or the duration of the National State Assembly, as the case may be, to over five years, shall become law if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present), is approved by the People at a Referendum and a certificate is endorsed thereon by the President in accordance with Article 215.

### **Bills inconsistent with the Constitution**

219. (1) A Bill which is not for the amendment of any provision of the Constitution or for the repeal and replacement of the Constitution, but which is inconsistent with any provision of the Constitution may be placed on the Order Paper of the National State Assembly without complying with the requirements of paragraph (1) or paragraph (2) of Article 217.
- (2) Where the Cabinet of Ministers has certified that a Bill is intended to be passed by the special majority required by this Article or where the Supreme Court has determined that a Bill is required to be passed by such special majority, such Bill shall become law only if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present) and a certificate by the President or the Speaker, as the case may be, is endorsed thereon in accordance with the provisions of Articles 215 or 214.
- (3) Such a Bill when enacted into law shall not, and shall not be deemed to, amend, repeal or replace the Constitution or any provision thereof, and shall not be so interpreted or construed, and may thereafter be repealed by a majority of the votes of the Members present and voting.

## CHAPTER XXII

**LOCAL AUTHORITIES AND PROVINCIAL COUNCILS****Local Authority**

220. (1) There shall be a Local Authority established in every electoral area.
- (2) Every Local Authority shall consist of such number of elected members equal to the number of electoral units in any Local Authority area as determined by the Delimitation Commission.
- (3) A Local Authority shall be constituted in every Local Authority area upon the conclusion of a Local Authority Election conducted in accordance with the Constitution and the law relating to Local Authority Elections.

**Establishment of Provincial Council**

221. (1) There shall be one Provincial Council established for every Province. Every Province shall consist of two or more administrative districts and the respective provinces and administrative districts of each Province are set out in the First Schedule. The limits of every such Province shall be the limits as it exists at the time of the commencement of the Constitution.
- (2) No two or more provinces shall be amalgamated, or the area of any existing Province be reduced or sub divided in any manner.
- (3) Every Provincial Council established under paragraph (1) shall be constituted within one month;
- (i) upon every Local Authority Election being held, by the election of not more than one member (in this Chapter referred as “elected members”) from each Local Authority area within a Province at such election held as provided for in sub paragraph (b) of paragraph (2) of Article 185, and
- (ii) upon the appointment of such number of members nominated (in this Chapter referred to as “nominated members”) by each political party that contested any Local Authority Election conducted in any Local Authority area within the Province in accordance with paragraph (4) of this Article: Provided however that within one month upon the commencement of the Constitution, until Local Authority elections are next held Provincial Councils shall be constituted as an interim measure,

- (a) by the election of not more than one member (in this chapter referred to as “elected members”) from each Local Authority constituted within the Province at a sitting of the Local Authority by majority vote, and
  - (b) by the nomination of members (in this chapter referred to as “nominated members”) on the results of the Local Authority Election held before the commencement of the Constitution.
- (4) For the purpose of paragraph (3) of this Article, the elected members of Local Authority in the Provincial Council shall constitute seventy per centum of its membership.
- (5) For the purpose of paragraph (3) of this Article, the nominated members of any Provincial Council shall constitute thirty per centum of its membership and shall be determined subject to the provisions of paragraphs (6) and (7),
- (6) The nominated members of the Provincial Council, shall be appointed from among persons included in a list submitted by every recognised political party that contested one or more Local Authority areas at any Local Government Election in any province.
- (7)
  - (a) The percentage of the nominated members referred to in paragraph (5) shall be apportioned among the recognised political parties that contested any Local Authority Election conducted in any Local Authority area within the Province as hereinafter provided for in this paragraph.
  - (b) The votes secured by all candidates of recognised political parties contesting such Local Authority Election in all electoral areas of such Province divided by the number of members allotted to such Province shall be referred to in as the “qualifying number”.
  - (c) The number of nominated members entitled to any political party that contested the Local Authority Election conducted in the Local Authority area within the Province referred to in paragraph (3) shall be determined by the total number of votes secured by all the candidates of such political party in such Local Authority Election being divided by the qualifying number.
- (8) Every recognised political party contesting a Local Authority Election shall submit to the Commissioner General of Elections within the nomination period specified for such election, a list of persons qualified to be elected under paragraph (9) from which it may nominate persons to fill the seats if any, which such party may be entitled to, on such apportionment. The Commissioner General of Elections shall cause every list submitted to him under this Article to be published forthwith upon the expiry of the nomination period.

- (9) (a) The list referred to in paragraph (8) shall consist of persons with academic or professional qualifications as prescribed by law.
  - (b) Every political party shall, together with such list provide to the Commissioner General of Elections, proof of such academic or professional qualifications of such persons.
  - (c) The Commissioner General of Elections shall, determine whether in his opinion, the persons included in the list submitted by such political party possess the said qualifications referred to in sub-paragraph (a) of this paragraph and if the list so submitted does not satisfy the said requirements, shall reject the list and require the Secretary of such political party to submit a fresh list within one week thereof in compliance with that sub paragraph.
  - (d) If any political party fails to comply with such requirement within the time period specified by the Commissioner General of Elections, such party shall not be entitled to nominate members under paragraph (3).
  - (e) The decision made by the Commissioner General of Elections under sub-paragraph (c) of this paragraph shall be final and conclusive and shall not be questioned in any Court or tribunal.
- (10) Where a recognised political party is entitled to a seat under the apportionment referred to in paragraph (7), the Commissioner General of Elections shall by a notice, require the Secretary of such recognised political party to nominate within one week of such notice such number of persons qualified to be elected as nominated members of Provincial Council from among persons whose names are included in the List submitted to the Commissioner General of Elections under paragraph (8), to fill such seats and shall declare elected as members of the Provincial Council the persons so nominated.
- (11) For the purpose of nominating members under sub paragraph (b) of the proviso to paragraph (3) the Commissioner General of Elections shall notwithstanding paragraph (8) of this Article, request the Secretary of every political party entitled to nominate members to the Provincial Council to nominate such number of nominated members having the qualifications specified in (9) of this Article within fourteen days of such request.
- (12) For the purpose of this Article, the number of votes polled at such election shall be deemed to be the number of votes actually counted and shall not include any votes rejected as void.



### **Assumption of Office by Members of Provincial Council**

222. (1) Every member, Chairperson and Provincial Minister of the Provincial Council shall not enter upon the duties of his office,
- (a) until he makes and subscribes the affirmation or takes and subscribes the oath set out in the Fourth Schedule; and
  - (b) until he submits, in such form as provided by law, a declaration, of all –
    - (i) his assets and liabilities;
    - (ii) the assets and liabilities of his spouse;
    - (iii) the assets and liabilities of each child of such member, Chairperson or Provincial Minister;
    - (iv) the assets and liabilities of any trust of which he or a member of his family is directly or indirectly a beneficiary, and
    - (v) the assets and liabilities transferred by him in favour of any person during a period of six years immediately prior to the date of such declaration.
- (2) Any member who wilfully makes any false statement in any such declaration commits an offence and shall –
- (i) on conviction after trial before the Court of Appeal be liable to a term of imprisonment not exceeding three years and to a fine not exceeding twenty-five million rupees, and
  - (ii) be disqualified from being a Member of the National State Assembly, any Provincial Council or any Local Authority or to hold any Public Office.
- (3) A Provincial Council shall, unless sooner dissolved, continue for a period of five years from the date appointed for its first meeting and the expiration of such period of five years shall operate as a dissolution of such Provincial Council.
- (4) A Member of the National State Assembly elected for an electoral district, within a Province shall have the right, during the term of office of that Provincial Council, to speak in and otherwise take part in, the proceedings of the Provincial Council and to speak and otherwise take part in, any committee of the Provincial Council of which he may be named a member but shall not be entitled to vote.
- (5) A member of any Provincial Council or Local Authority or any Provincial Minister shall not be entitled to any exemption or reduction, in relation to any tax, duty or other levy that such member or Minister or his property shall be subject to, had he not been a member of such Provincial Council or Local Authority or Provincial Minister of any Provincial Council.

- (6) For the purpose of this Article –
- (i) “asset and liabilities” mean assets and liabilities in and outside Sri Lanka and include movable and immovable property;
  - (ii) “transfer” includes “gift”.

### **Chairperson of a Provincial Council**

223. The Chairperson of a Provincial Council shall be elected by the majority votes of the members of such Provincial Council at its first meeting. The Chairperson shall preside at all meetings of the Provincial Council.

### **District Executive Committees**

224. (1) There shall be such number of District Executive Committees in every Provincial Council of a Province equal in number to the districts within such Provinces.
- (2) All elected members of the Provincial Council representing a Local Authority within any district in any Province shall be members of the District Executive Committee of that district.
- (3) A nominated member of the Council shall be a member of the district Executive Committee of his choice.
- (4) A minister of the Provincial Board of Ministers representing a District shall be the Chairperson of the relevant District Executive Committee.
- (5) It shall be the responsibility of the District Executive Committee to assist the Provincial Council in the formulation of the District Economic and Development Plan for the district and oversee its implementation.

### **The Functions of the Provincial Council**

225. (1) The functions of a Provincial Council shall include;
- (a) constituting the Board of Ministers and District Executive Committees of the Provincial Council as provided by Articles 224 and 229;
  - (b) the approval of the annual Provincial Economic and Development Plan or any supplement Provincial Economic and Development Plan and estimates relating to subjects set out in the Schedule to this Chapter prepared and submitted to it by the Provincial Board of Ministers referred to in Article 227. Every Provincial Economic and Development Plan shall include separate economic and development plans for each district within the Province;

- (c) the approval of every development proposal in respect of any subject not being a provincial council subject; and
  - (d) the approval of the Annual Budget of the Provincial Council.
- (2)
- (a) All Provincial Economic and Development Plans and estimates of a Provincial Council shall be circulated among the members at least three weeks prior to the date of the meeting of the Council before which they are laid before the Provincial Council, and shall simultaneously submit such plans and estimates to the National Advisory Council.
  - (b) A Provincial Council shall after due consideration of such plan and estimates placed before the Provincial Council together with the opinion of the National Advisory Council if any may approve such Plans, and estimates. Upon such approval such plans and estimates shall constitute the Annual Development Plan and estimates of the relevant Province for that year.
  - (c) All Provincial Economic and Development Plans prepared by the Board of Ministers shall be in accordance with the National Development Plan and National Policy.
  - (d) Every Provincial Council or any Committee thereof, the Provincial Board of Ministers and every Minister of such Board shall always comply with any direction given by the President, the Cabinet of Ministers or any Minister of the Cabinet with the concurrence of the President with regard to the exercise of executive power by the Provincial Council in relation to any subject included in the Schedule to this Chapter to ensure compliance with the provisions of the Constitution, Laws and National Policy.

### **Powers of the Provincial Council**

- 226.
- (1) Every Provincial Council may, in accordance with the provisions of the Constitution, enact statutes applicable to each such province with regard to subjects set out in the Schedule to this Chapter.
  - (2) Every statute made by a Provincial Council shall be published.
  - (3) The Provincial Council shall exercise its powers in conducting the affairs of the Council in accordance with the provisions of the Constitution, laws and National Policy formulated under Chapter XII.
  - (4) Where any Provincial Council laws any statute under paragraph (1), or exercises its powers by any act or omission in violation of paragraph (3), the President may give any direction to the Provincial Council to rectify such statute or such act or omission to ensure compliance with the provisions of the Constitution, laws and National policy so formulated within a time period specified by the President.

### **Provincial Board of Ministers**

227. (1) There shall be a Board of Ministers consisting of five Provincial Ministers for every Provincial Council.
- (2) Any Provincial Minister elected by the Board of Ministers shall preside at every meeting of the Provincial Board of Ministers.
- (3) Any Provincial Council shall at its first meeting, or at any subsequent meeting held within one month of the first meeting thereof elect the Board of Ministers from among members of such Provincial Council. Every Minister of the Board of Ministers (hereinafter referred to as the “Provincial Minister”) shall be assigned one or more subjects and functions enumerated in the Schedule to this Chapter.
- (4) Any Provincial Council may by the majority votes of its members remove any Provincial Minister of its Board of Ministers and elect in his place any other member of such Provincial Council.
- (5) There shall be at least one Provincial Minister appointed from among the members representing Local Authorities in any district within such Province to represent such district.
- (6) Where in any Province there is more than one Provincial Minister representing any district, any one of such Provincial Ministers shall be elected to be the Chairperson of the District Executive Committee by the majority votes of the elected members of such Committee.
- (7) Where there is only one Provincial Minister from any district in any Province, such Minister shall be the Chairman of the District Executive Committee of such district.
- (8) Every Provincial Minister of any Provincial Council shall be answerable and responsible to such Provincial Council.
- (9) There shall be a Secretary to the Provincial Board of Ministers appointed by the President.

### **Powers and Functions of the Provincial Board of Ministers**

228. (1) (a) The Board of Ministers of a Provincial Council of a Province and every Provincial Minister shall exercise executive power within such Province in respect of the subjects enumerated in the Schedule to this Chapter in accordance with the provisions of the Constitution and in compliance with the law and national policy.
- (b) In the event the Board of Ministers of the Provincial Council or any Provincial Minister exercises executive power by any act or omission in

violation of sub paragraph (a) the President or the Cabinet of Ministers or any member of the Cabinet of Ministers with the concurrence of the President may give any direction to the Board of Ministers of the Provincial Council or any Provincial Minister to rectify such violation within a time and in the manner prescribed by the President.

- (2) Every Provincial Board of Ministers constituted for every Provincial Council shall,
  - (a) prepare an Annual Economic and Development Plan for the respective Province including separate Economic and Development Plans for each District within such Province and any supplementary Economic and Development plans together with relevant estimates that may be necessary in respect thereof relating to the provincial council subjects;
  - (b) submit the Economic and Development Plans and the estimates referred to in sub-paragraph (a) of this paragraph to such Provincial Council for its approval;
  - (c) prepare any proposal in respect of any subject not enumerated in the Schedule to this Chapter to be considered by any Minister of the Cabinet;
  - (d) prepare the annual budget containing an estimate of the available income and the details of the proposed expenditure for the ensuing financial year;
  - (e) implement the Annual Economic and Development Plan of each district with the concurrence of the relevant District Executive Committee through the relevant Provincial Ministries;
 

Provided that, any development activity within any district shall be carried out in consultation with the relevant Local Authority within which such development activity is carried out;
  - (f) exercise, discharge and perform any other functions and duties as are delegated to it by any Minister of the Cabinet of Ministers with the concurrence of the President; and
  - (g) carry out the functions of the Provincial Councils and conduct the administration of such Council.
- (3) All development activities in any District in relation to the functions of any Ministry of any Provincial Minister shall be carried out on the advice of the District Executive Committee and in accordance with the approved District Economic and Development Plan and National Policy relating to such activity.
- (4) A Local Authority may exercise all powers entrusted to such Local Authority by law or such powers delegated by the respective Provincial Minister.

### **Ministerial Executive Committees of Provincial Councils**

229. (1) There shall be a Ministerial Executive Committee for the Ministry of every Provincial Minister, elected by the Provincial Council at a meeting of the Provincial Council.
- (2) Each Provincial Minister shall be the head of the Ministerial Executive Committee of his Ministry.
- (3) The Ministerial Executive Committee shall consist of such number of elected and nominated members of the Provincial Council who has sufficient knowledge or experience in respect of any subject assigned to the relevant Provincial Minister. Any member of the Council shall not be elected to more than one Ministerial Executive Committee.
- (4) When appointing members to the Ministerial Executive Committee the Provincial Council shall ensure that there is adequate women and youth representation as provided by law.
- (5) Every Provincial Minister shall exercise executive power in relation to the subjects and functions assigned to him in relation to any matter within the district with the concurrence of the relevant District Executive Committee of the Province in consultation with the Ministerial Executive Committee of which he is the Head.
- (6) A Provincial Minister may delegate to any member of the Ministerial Executive Committee any matter within the scope of any subject assigned to him.
- (7) Where the relevant Inter-Ministerial Executive Council requires a Provincial Minister to submit a report of the Ministerial Executive Committee, it shall be the responsibility of such Provincial Minister to comply with such requirement.

### **Inter-Ministerial Executive Council**

230. (1) There shall be an Inter-Ministerial Executive Council in respect of every subject assigned to any Ministry as determined by the President under paragraph (1) of Article 95. The relevant Cabinet Minister shall be the head of the Inter-Ministerial Executive Council.
- (2) An Inter-Ministerial Executive Council in respect of any Ministry shall consist of,
- (a) the relevant Minister of the Cabinet of Ministers;
  - (b) the relevant Deputy Ministers and Ministers who are not members of the Cabinet of Ministers if any;
  - (c) the relevant Provincial Minister of every Province in charge of any one or more of the subjects allocated to the relevant Minister;
  - (d) not more than five Members of the National State Assembly appointed by the President who possess the knowledge and expertise in the relevant field.

- (3) The Inter-Ministerial Executive Council shall meet at least once in every two months.
- (4) The Inter-Ministerial Executive Council shall,
  - (a) make its recommendations for the formulation of National Policies; and
  - (b) ensure that the National Provincial and District Economic and Development Plans are implemented in respect of the subjects assigned to the relevant Minister of the Cabinet of Ministers in accordance with the National Policy and any direction given by the President and the Cabinet of Ministers.
- (5) The relevant Minister of the Cabinet of Ministers may, with the concurrence of the relevant Provincial Minister by Order published, transfer to a Provincial Council, the implementation of any development scheme or work as shall be specified in such Order, being a scheme or work relating to any subject other than a Provincial Council, subject to such terms and conditions as may be specified in such Order.

### **Failure to Comply with Direction**

231. (1) Where any Provincial Council, a Committee thereof, the Provincial Board of Ministers of such Council or any Provincial Minister of such Board fail to comply with, or give effect to any direction given to such Council, Committee, Board of Ministers or Provincial Minister under Article 226 or 228, it shall be lawful for the President by Proclamation to –
  - (a) dissolve such Provincial Council;
  - (b) assume to himself or vest in the Cabinet of Ministers or any Minister of the Cabinet of Ministers, all or any of the functions of the administration of the Province and all or any of the powers vested in, or exercisable by any of the Provincial Ministers or Provincial Board of Ministers;
  - (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation.
- (2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

### **Relief against any Direction or Proclamation**

232. Any member of a Provincial Council or any member of a Committee of a Provincial Council or any Provincial Minister of any Provincial Council may invoke the jurisdiction of the Supreme Court under Article 268 or of the jurisdiction of the Court of Appeal under Article 290 or 291 seeking relief against such direction or proclamation made by the President if such a direction has been made in violation of Article 226 or 228.

### **Transitional Measures**

233. The President may by Order published, take such action, or give such directions, not inconsistent with the provisions of the Constitution, as appears to him to be necessary or expedient, for the purpose of giving effect to the provisions of this Chapter; or for the administrative changes necessary therefor, or for the purpose of removing any difficulties.

### **National State Assembly to provide by Law for certain matters on Provincial Councils and Local Authorities**

234. The National State Assembly may by law provide for –
- (a) the salaries and allowances of members of the Local Authorities and Provincial Councils;
  - (b) coordination between Local Authorities and Provincial Departments and Ministries in the implementation of the respective District Economic and Development Plans of the Province;
  - (c) as to which extent the Provincial Councils may vest in the Local Authorities, any of the subjects included in the Provincial Council List;
  - (d) the procedure relating to the resolution of disputes between
    - (i) Provincial Councils,
    - (ii) Local Authorities,
    - (iii) Local Authorities and Provincial Councils,
    - (iv) Ministries of Provincial Ministers and Ministries of other Ministers.
  - (e) Any other matter necessary for the purpose of giving effect to the provisions of this Chapter, and for any matters connected with or incidental to the provisions of this Chapter.

### **Provincial List**

- 1 Provincial planning at the Provincial level and plan implementation.
- 2 Supervision of Local Authorities.
- 3 Adult and non-formal education.
- 4 Provincial vocational education and technical training, provincial libraries.
- 5 Solid waste management and environmental pollution at Provincial level, drainage and rain water management.
- 6 Minor irrigation and animal husbandry, dairy and poultry within the Province.



- 7 Cooperatives, food supply, markets and fairs.
- 8 Small Scale Industries including cottage industries and food processing industries, self-employment promotion.
- 9 Facilities to preserve, store and market local products.
- 10 Provincial housing and town improvements.
- 11 Housing, other than national housing programmes.
- 12 Urban planning and implementation within the Province in accordance with national plans.
- 13 Employment and labour including manpower planning and employment data bank.
- 14 Promotion of cultural activity within the Province
- 15 Community health and preventing spread of contagious and vector borne diseases as prescribed by Director General of Health Services.
- 16 Building approval to the extent prescribe by law.
- 17 “Drinking-water wells,” small scale water purification plants and prevention of water pollution.
- 18 Non-conventional energy sources prescribed by law including wind and solar power generation at Provincial level.
- 19 Poverty alleviation programs as prescribed by law.
- 20 Relief of distress due to floods, droughts, epidemics or other exceptional causes and rehabilitation and resettlement of those affected.
- 21 Fire services.
- 22 Preservation of trees and promotion of urban cultivation including domestic cultivation.
- 23 Development of green cities in urban areas and promotion of aesthetics including control of erection of bill boards, obstruction of scenic views as prescribed by law.
- 24 Public amenities such as rural street lighting, bus stops and public conveniences.
- 25 Promotion of provincial tourism including regulation of rest homes.
- 26 Nutrition.
- 27 Prevention of adulteration of food and other goods.

- 28 Agriculture and agrarian services, agricultural research, extension, promotion and education within the Province, promotion of agro-based industries within the Province, provincial institutions for education and training of auxiliary agricultural personnel.
- 29 Palmyrah development and cashew development.
- 30 Coconut small holdings.
- 31 Animal husbandry, provincial institutions for education and training of auxiliary veterinary personnel, establishment and upkeep of pasture land.
- 32 Protection against pests and prevention of plant diseases in keeping with National Policy.
- 33 Irrigation within the Province, groundwater irrigation; salt water exclusion schemes.
- 34 Protection of the environment in conformity with National Policy on conservation of the environment.
- 35 Conservation of fauna and flora in keeping with National Policy.
- 36 Water supply and sanitation other than national water supply and sanitation projects.
- 37 Drainage and waterways within the Province.
- 38 Generation, supply and distribution of electricity other than national projects.
- 39 Provincial projects in non-conventional energy.
- 40 Roads excluding highways and those maintained by the Road Development Authority.
- 41 Local road maintenance and internal road construction.
- 42 Transport excluding national railways and transport between provinces.
- 43 Development and exploitation of mines and minerals other than national projects and production and supply of salt.
- 44 Development and exploitation of sand and rock quarries.
- 45 Promotion of investments within the Province.
- 46 Trade and commerce within the Province.
- 47 Promotion and development of provincial products.
- 48 Establishment of commercial enterprises.

- 49 Cooperatives and Cooperative Banks as prescribed by law.
- 50 Supply and distribution of food, rationing of food and maintenance of food stocks in keeping with national policy on food security.
- 51 Social Services within the Province, but not including social security and social insurance.
- 52 Welfare of the elders including regulation and maintenance of elders' homes, special modes of transport required by elders.
- 53 Development and empowerment of women.
- 54 Promotion of the rights and development of the child.
- 55 Prevention of cruelty to animals and animal welfare and regulation of slaughter houses.
- 56 Promotion of sports within the Province.
- 57 Providing gymnasium walking paths, open spaces and local play grounds for general health.
- 58 Promotion of local sports.
- 59 Poverty alleviation in line with National Policy.
- 60 Relief, rehabilitation and reconstruction to natural or man-made disaster, disaster management at the provincial level.
- 61 Taxes within such limits and subject to such exemption as provided by law, made by the National State Assembly which may include:
  - (a) excise duties to be specified by law;
  - (b) betting and gaming taxes, taxes on prize competitions and on lotteries, other than national lotteries and lotteries organized by the National Government;
  - (c) turnover taxes on wholesale and retail sales;
  - (d) liquor rentals, toddy tapping license fees;
  - (e) licensing fees for the possession, transport, purchase and sale of intoxicating liquors;
  - (f) motor vehicle license fees and other fees charged under the Motor Traffic Act;
  - (g) fees on lands alienated under the Land Development Ordinance and Crown Lands Ordinance;
  - (h) fees under the Fauna and Flora Ordinance;
  - (i) stamp duties on transfer of immovable properties and motor vehicles;

- (j) taxes on mineral rights subject to limitations imposed by law;
  - (k) taxes on products of agriculture, animal husbandry and fisheries;
  - (l) imposition, collection and utilization of fines, other than court fines, in respect of the matters in the Provincial List;
  - (m) imposition of levies relating to any of the subjects or functions under the purview of the Province;
  - (n) any other tax relating to any matter in the provincial list;
- 62 Provincial lotteries and their conduct.
- 63 Provincial certificates for public performances.
- 64 Provincial botanical gardens.
- 65 Provision of facilities for festivals within the province, pilgrimages within the Province.
- 66 Consumer protection.
- 67 Weights and measures except establishment of standards.

## CHAPTER XXIII

## THE JUDICIARY

**Establishment of Courts**

235. (1) Subject to the provisions of the Constitution, the institutions for the exercise of the judicial power of the People under paragraph (c) of Article 6 and the administration of justice which protect, advance, vindicate and enforce the rights of the People shall be –
- (a) the Supreme Court of the Republic of Sri Lanka,
  - (b) the Court of Appeal of the Republic of Sri Lanka, and
  - (c) the Courts of first instance, tribunals or such institutions as the National State Assembly may from time to time ordain and establish.
- (2) All Courts, tribunals and institutions created and established by the Constitution or by written law for the administration of justice and for the adjudication and settlement of industrial and other disputes, shall be deemed to be Courts, tribunals and institutions created and established by the National State Assembly. The National State Assembly may replace, abolish, or amend the powers, duties, jurisdiction and procedure of such Courts, tribunals and institutions in conformity with paragraphs (3), (4) and (5).
- (3) No Court of First Instance, tribunal or other institution established or deemed to have been established under sub-paragraph (c) of paragraph (1) and constituted in any judicial zone or district in any Province shall be conferred exclusive jurisdiction in respect of any category of cases which is not conferred to such Court constituted in other judicial zones or districts unless at least one such Court is established in every Province:
- Provided that, Admiralty Jurisdiction may be conferred on any Court in any one or several Provinces only as determined by the Chief Justice.
- (4) Notwithstanding the provisions of paragraph (3), the National State Assembly may by law provide for the following –
- (a) the creation and establishment of courts, tribunals or institutions for the adjudication and settlement of matters relating to –
    - (i) temples;

- (ii) any disputes between Bhikkus;
  - (iii) any disputes relating to the performance of services or payment of commuted dues payable in relation to any temple;
  - (iv) any dispute claimed to be in relation to Buddhist temporalities by any Bhikku to which such Bhikku is a party;
  - (b) registration of Samanera and Upasampada Bhikkus;
  - (c) recognition of Nikayas;
  - (d) registration of Temples of each Nikaya;
  - (e) the enforcement of disciplinary orders made in relation to a Bhikku of any Nikaya by the disciplinary authority of such Nikaya.
- (5) Such law may, notwithstanding anything to the contrary in this Chapter or Chapters XXIV and XXV make provision –
- (a) for the appointment, transfer, dismissal and disciplinary control of the member or members of such Courts, tribunals or institutions by the President or such other person or body of persons as may be provided for in such law;
  - (b) for the exclusion of the jurisdiction of any other institution referred to in paragraph (1) of this Article in relation to such matters and disputes.
- (6) In this Article “Bhikku” and “Temple” shall have the same meanings as in the Buddhist Temporalities Ordinance, (Chapter 318) as at the commencement of the Constitution.
- (7) Until the National State Assembly by law makes provisions for the matters referred to in paragraphs (4) and (5) of this Article, the Chief Justice shall within three months of the commencement of the Constitution designate such number of District Courts for the adjudication and settlement of such matters referred to in sub-paragraph (a) of paragraph (4) exclusively by such Court in any District.

### **Powers relating to Contempt of Court**

236. (1) The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior Court of record and shall have all the powers of such Court, including the power to punish for contempt of itself, whether committed in the Court itself or elsewhere, with imprisonment or fine or both which is proportionate to and commensurate with the gravity of the offence: Provided that, the punishment for any such offence shall be a fine not exceeding ten million rupees or rigorous imprisonment for a term not exceeding two years or both such fine and imprisonment.

- (2) The power of the Court of Appeal shall include the power to punish for contempt of any other Court, tribunal or institution referred to in sub-paragraph (c) of paragraph (1) of this Article, whether committed in the presence of such Court or elsewhere:

Provided that, the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other Court, tribunal or institution to punish for contempt of itself.

- (3) No charge of contempt shall be made or maintained against any person who objectively and in good faith critiques or comments on any Judgment or Order:

Provided that no improper motive is attributed to any Judge or officer of Court without justifiable reason, in the course of such critique or comment.

### **Public Sitings**

237. (1) The sittings of every Court, tribunal or other institution, established under the Constitution or ordained and established by the National State Assembly shall subject to the provisions of the Constitution, be held in public and all persons shall be entitled freely to attend or view such sittings, either in person or by the use of technology if available.
- (2) A Judge or presiding officer of any such court, tribunal or other institution may, in his discretion, whenever he considers it desirable –
- (a) in proceedings relating to family relations,
  - (b) in proceedings relating to sexual matters,
  - (c) in the interests of minors
  - (d) in the interests of national security or public safety,
  - (e) in the interests of order and security within the precincts of such Court, tribunal or other institution,
  - (f) for reasons of public health, or
  - (g) for any other grave reason.
- exclude there from, such persons whose presence is not necessary for the adjudication of the dispute.

## INDEPENDENCE OF THE JUDICIARY

### **Appointment and removal of Judges of the Supreme Court and Court of Appeal**

238. (1) The Chief Justice, the President of the Court of Appeal and every other Judge of the Supreme Court and of the Court of Appeal shall be citizens of Sri Lanka and shall, subject to Chapter XIII of the Constitution, be appointed by the President by warrant under his hand.
- (2) The President may appoint as a Judge of the Supreme Court or of the Court of Appeal any member of the Judiciary or any Attorney at Law who had been enrolled at least twenty years prior to his appointment.
- (3) Every person who shall be a citizen of Sri Lanka, appointed to be or to act as the Chief Justice, the President of the Court of Appeal or a Judge of the Supreme Court or Court of Appeal shall not enter upon the duties of his office until he takes and subscribes or makes and subscribes before the President, the affirmation or oath set out in Part I of the Fourth Schedule.
- (4) Every such Judge shall hold office during good behaviour and shall not be removed except on the ground of proved misbehavior or incapacity. Any such Judge shall only be removed by an Order of the President made after an address of the National State Assembly upon a resolution supported by a majority of the total number of Members of the National State Assembly (including those not present) has been presented to the President for such removal on the ground of proved misbehavior or incapacity:
- Provided that, no resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order Paper of the National State Assembly, unless notice of such resolution is signed by not less than one-third of the total number of Members of the National State Assembly and such notice of resolution sets out full particulars of the alleged misbehavior or incapacity.
- (5) Where notice of such resolution is entertained by the Speaker, he shall refer such resolution to the High Posts Committee referred to in sub-paragraph (a) of paragraph (1) of Article 121. Such High Posts Committee shall conduct a due inquiry at which such Judge shall be given a full hearing adhering to established principles of natural justice. Upon the conclusion of the aforesaid inquiry the High Posts Committee shall compile a report giving reasons for their findings and submit such report to the Speaker and the President.
- (6) (a) Upon such resolution being entertained by the Speaker, such Judge shall cease to function.



- (b) Where the High Posts Committee finds that the allegations of misbehavior or incapacity against such Judge has not been proved, no further proceedings shall be taken place against such Judge in the National State Assembly.
- (c) Where the High Posts Committee finds that the allegations of misbehavior or incapacity against such Judge has been proved, such judge may be removed from office in accordance with paragraph (4).
- (d) In the event of such Judge not being removed from office within one month of the submission of the report of the High Post Committee such Judge shall resume to function.

### **Retirement of Judges**

239. (1) (a) The age of retirement of Judges of the Supreme Court shall be sixty-five years.
- (b) the office of Chief Justice may be held up to a maximum of three years and the Chief Justice shall retire either at the age of retirement or upon the completion of three years as Chief Justice, whichever event occurs first.
  - (c) Every Judge of the Supreme Court shall retire upon completing the age of retirement or twelve years as a Judge of the Supreme Court, including of any period where any such Judge may have functioned as the Chief Justice whichever occurs first.
- (2) (a) The age of retirement of Judges of the Court of Appeal shall be sixty-three years.
- (b) A Judge of the Appeal Court may serve for a maximum of seven years and shall retire upon the expiration of seven years in office or upon reaching the age of sixty-three years, whichever occurs first.
- (3) Upon a direction of the Chief Justice or the President of the Court of Appeal, as the case may be, any Judgment reserved by any Judge prior to his retirement be written and signed by such Judge notwithstanding his retirement, within such time as prescribed by the Chief Justice but shall be delivered by any other sitting judge of the Court in which such Judge was functioning at the time of his retirement.

### **Salaries of the Judges of the Supreme Court and Court of Appeal**

240. (1) The salaries of the Judges of the Supreme Court and of the Court of Appeal shall be determined by the National State Assembly and shall be charged on the Consolidated Fund.
- (2) The salary payable to, and the pension entitlement of a Judge of the Supreme Court and a Judge of the Court of Appeal shall not be reduced after his appointment.

- (3) A Judge of the Supreme Court or a Judge of the Court of Appeal shall receive as pension, a sum equivalent to the salary drawn by such Judge together with the perquisites he received at the time of his retirement for a period of two years from the date of retirement and thereafter the pension entitled to such Judge, shall be paid according to law.

### **Acting Appointment**

241. (1) If the Chief Justice or the President of the Court of Appeal is temporarily unable to exercise, perform and discharge the powers, duties and functions of his office, by reason of illness, absence from Sri Lanka or any other cause, the President shall, in accordance with the provisions of Chapter XIII appoint another Judge of the Supreme Court, or of the Court of Appeal, as the case may be, to act in the office of Chief Justice, or President of the Court of Appeal, during such period.
- (2) If any Judge of the Supreme Court or of the Court of Appeal is temporarily unable to exercise, perform and discharge the powers, duties and functions of his office, by reason of illness, absence from Sri Lanka or any other cause, the President may, in accordance with the provisions of Chapter XIII, appoint a Judge of the Court of Appeal to act as a Judge of the Supreme Court or a Judge of the High Court as a Judge of the Court of Appeal, during such period.

### **Performance or discharge of other duties or functions by Judges**

242. (1) A Judge of the Supreme Court or Court of Appeal may be required by the President of the Republic to perform or discharge any other appropriate duties or functions under any written law. Provided that no additional remuneration shall be paid to such Judge for the performance or discharge of such duties and functions.
- (2) Subject to paragraph (1), no Judge of the Supreme Court or Court of Appeal shall during his tenure of office or within two years of his retirement perform or discharge the functions relating to any other remunerated office or accept any place of profit or emolument, within or outside Sri Lanka except as authorised by the Constitution.
- (3) No person who has held office as a permanent Judge of the Supreme Court or of the Court of Appeal may appear, plead, act or practise in any Court, tribunal or institution as an Attorney-at-Law at any time.

### **Appointment, Removal, Disciplinary Control and Retirement of Judges of the High Court**

243. (1) There shall be a High Court of Sri Lanka, which shall exercise such jurisdiction and powers as the National State Assembly may by law vest or ordain.
- (2) The Judges of the High Court shall be citizens of Sri Lanka and shall –
- (a) on the recommendation of the Judicial Service Commission, be appointed by the President by warrant under his hand;
  - (b) be removable and be subject to the disciplinary control of the President on the recommendation of the Judicial Service Commission.
- (3) Every person who shall be a citizen of Sri Lanka, appointed to be or to act as a Judge of the High Court shall not enter upon the duties of his office until he takes and subscribes or makes and subscribes before the President, the affirmation or oath set out in the Fourth Schedule.
- (4) Subject to the provisions of paragraph (2) of this Article, the National State Assembly may by law provide for matters relating to the retirement of the Judges of such High Court.
- (5) Any Judge of the High Court may resign his office by writing under his hand addressed to the President.

### **Commissioners of the High Court**

244. (1) Where the Minister in charge of the subject of Justice represents to the President that it is expedient that the number of the Judges exercising the jurisdiction and powers of the High Court in any judicial zone should be temporarily increased the President may, on the recommendation of the Judicial Service Commission, by warrant, appoint, one or more Commissioners of the High Court to exercise the jurisdiction and powers of the High Court within such judicial zone as is specified in the warrant of appointment of such Commissioner of the High Court.
- (2) Every Commissioner of the High Court appointed under paragraph (1) shall hold office for the period specified in his warrant of appointment and shall be removable, and be subject to disciplinary control, by the President, on the recommendation of the Judicial Service Commission.
- (3) Every Commissioner of the High Court appointed under paragraph (1) may, during his tenure of office, exercise, according to law, such jurisdiction and powers as is, or are, vested or ordained in the High Court by the National State Assembly and shall be invested with all the rights, powers privileges and immunities (except

such rights and privileges as relating to tenure of office) of a Judge of the High Court, and for this purpose, a reference to a “Judge of the High Court” in the Constitution or other written law shall, unless the context otherwise requires, be deemed to include a reference to a “Commissioner of the High Court”.

### **Fiscal for the whole Island**

245. (1) There shall be a Fiscal appointed by the Judicial Service Commission who shall be the Fiscal for the whole Island and who shall exercise supervision and control over Deputy Fiscals attached to all Courts of First Instance.
- (2) The Fiscal and Deputy Fiscals shall be Attorneys-at-Law.
- (3) The Fiscal shall be appointed for a period not more than three years and shall be eligible for reappointment. No Deputy Fiscal shall serve any Court in any judicial district, division or zone for a period exceeding three years continuously.

### **Interference with judiciary an offence**

246. (1) Every Judge, presiding officer, public officer or other person entrusted by law with judicial powers or functions or with functions under this Chapter or with similar functions under any law enacted by the National State Assembly shall exercise and perform such powers and functions without being subject to any direction or other interference proceeding from any other person except a superior Court, tribunal, institution or other person entitled under law to direct or supervise such Judge, presiding officer, public officer or such other person in the exercise or performance of such powers or functions.
- (2) Every person who, without legal authority, interferes or attempts to interfere with the exercise or performance of the judicial powers or functions of any Judge, presiding officer, public officer or such other person as is referred to in paragraph (1) of this Article, commits an offence and shall on conviction by the High Court after trial without a jury be liable to a fine or to imprisonment of either description for a term not exceeding one year or with both such fine and imprisonment may, in addition, be disqualified for a period not exceeding seven years from the date of such conviction from being an elector and from voting at a Referendum or at any election of the President of the Republic or at any election of a Member of National State Assembly, Provincial Council or any Local Authority or from holding any public office and from being employed as a public officer.
- (3) In this article “interference” include the publication whether by words, spoken or written, or by signs, or by visible representation, or otherwise, of any matter, or the doing of any other act whatsoever which prejudices, or interferes or tends

to interfere with, the due course of any judicial proceedings, or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other matter.

### **Communication to be through the Chief Justice**

- 247 (1) All official communications by or to any Judge of any Court to or from the executive organ of Government shall be made only through the Chief Justice in writing.
- (2) (a) The Chief Justice may refer any such communication received by him from any Judge to the President at his discretion.
- (b) Any official communication in relation to infrastructure of Courts may be made directly to the Ministry of Justice.

### **Officers of Court to be Citizens of Sri Lanka**

248. No person shall be appointed as a Judge, a presiding officer, public officer or to such other office entrusted with judicial power or as a member of a Commission established under the Constitution or as a Commissioner of Inquiry, a Juror, a Public Prosecutor or any other officer of any Court or tribunal if such person is not a citizen of Sri Lanka or is a citizen of any other country.

### **Judicial Service Commission**

249. (1) There shall be a Judicial Service Commission (in this Chapter referred to as the “Commission”) consisting of the Chief Justice and the four most senior Judges of the Supreme Court appointed by the President, subject to paragraph (2).
- (2) Where the Chief Justice and the four most senior Judges of the Supreme Court are Judges who have not had any judicial experience serving as a Judge of a Court of First Instance, the Commission shall consist of the Chief Justice, the two senior most Judges of the Supreme Court and the next most two senior Judges of such Court, who has had experience as a Judge of a Court of First Instance.
- (3) The Chief Justice shall be the Chairperson of the Commission.

### **Meetings of the Commission**

250. (1) The quorum for any meeting of the Commission shall be three members.
- (2) A Judge of the Supreme Court appointed as a member of the Commission shall, unless he earlier resigns or ceases to be a Judge of the Supreme Court, hold office until his retirement as a Judge of the Supreme Court.

- (3) All decisions of the Commission shall be made by a majority of the members present, and in the event of an equality of votes, the Chairperson of the meeting shall have a casting vote.
- (4) The Commission shall have power to act notwithstanding any vacancy in its membership and no act or proceeding of the Commission shall be, or be deemed to be invalid by reason only of such vacancy or any defect in the appointment of a member.
- (5) The President may grant to any member of the Commission, leave from duties and may appoint the next most senior Judge of the Supreme Court to be a temporary member for the period of such leave.

### **Allowances of Members of the Commission**

251. A member of the Commission shall be paid such allowances as may be determined by the National State Assembly. Such allowances shall be charged on the Consolidated Fund and shall not be reduced during the period of office of a member and shall be in addition to the salary and other allowances attached to and received from the substantive appointment:

Provided that, until the amount to be paid as allowances is determined under the provisions of this Article, the members of the Commission shall continue to receive as allowances, such amount as they were receiving on the day immediately preceding the date on which this Chapter comes into operation.

### **Secretary to the Commission**

252. There shall be a Secretary to the Commission who shall be appointed by the Commission from among the senior judicial officers of the Courts of First Instance.

### **Powers of the Commission**

253. (1) The Judicial Service Commission is hereby vested with the power to –
- (a) transfer Judges of the High Court;
  - (b) appoint, promote, transfer, exercise disciplinary control and dismiss judicial officers and scheduled public officers; and
  - (c) receive and inquire into any complaint made against any judicial officer by any member of the public.
- (2) The Commission may make –
- (a) rules regarding training of Judges of the High Court, the schemes for recruitment and training, appointment, promotion and transfer of judicial officers and scheduled public officers;

- (b) provision for such matters as are necessary or expedient for the exercise, performance and discharge of the powers, duties and functions of the Commission.
- (3) The Chairperson of the Commission or any Judge of the Supreme Court or Judge of the Court of Appeal, as the case may be, authorised by the Commission, shall have power and authority to inspect any Court of First Instance, or the records, registers and other documents maintained in such Court, or hold such inquiry as may be necessary.
- (4) The Commission may by Order published, delegate to the Secretary to the Commission, the power to make transfers in respect of scheduled public officers, other than transfers involving increase of salary, or to make acting appointments in such cases and subject to such limitations as may be specified in the Order.

### **Power to decide whether a Judicial Officer**

254. (1) No Court, tribunal or institution shall have jurisdiction to entertain or to determine the question whether or not a person is a judicial officer within the meaning of the Constitution, but such question shall be determined solely by the Commission, whose decision thereon shall be final and conclusive.
- (2) No act of such person or proceeding held before such person, prior to such determination as is referred to in sub-paragraph (1), shall be deemed to be invalid by reason of such determination.

### **Immunity from legal Proceedings**

255. (1) No suit or proceeding shall lie against the Chairperson, Member or Secretary or Officer of the Commission for any lawful act done in the performance of his duties or functions as such Chairman, Member, Secretary or Officer of the Commission unless done in bad faith.
- (2) No Court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, in pursuance of any power or duty conferred or imposed on such Commission, or under this Chapter or under any other law.

### **Judicial Officers and Scheduled Public Officers may Resign**

256. Any judicial officer or scheduled public officer may resign from his office by writing under his hand addressed to the Chairperson of the Commission.

### **Interference with the Commission an Offence**

257. (1) Every person who otherwise than in the course of such person's lawful duty, directly or indirectly, alone or by or with any other person, in any manner whatsoever, influences or attempts to influence any decision or order made by the Commission or to so influence any member thereof, commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding three years or to both such fine and imprisonment:

Provided that, the giving of a certificate or testimonial to any applicant or candidate for any judicial office or scheduled public office shall not be an offence.

(2) The High Court of the Republic of Sri Lanka shall have jurisdiction to hear and determine any matter referred to in paragraph (1).

### **Interpretation**

258. (1) In this Chapter –

“Appointment” includes the appointment to act in any office referred to in this Chapter.

“Court of First Instance” shall mean every Magistrate's Court, Primary Court, District Court, Family Court, High Court or any other Court established by law which is not a Superior Court of Record established by the Constitution.

“Judicial officer” means any person who holds office as Judge, presiding officer or member of any Court of First Instance, tribunal or institution created and established for the administration of justice or for the adjudication of any labour or other dispute, but does not include a Judge of the Supreme Court or of the Court of Appeal or of the High Court or a person who performs arbitral functions or a public officer whose principal duty is not the performance of functions of a judicial nature; and

“Scheduled public officer” means the Registrar of the Supreme Court, the Registrar of the Court of Appeal, the Registrar, Deputy Registrar or Assistant Registrar of the High Court, District Court, Magistrate Court or any other Court of First Instance, the Fiscal, the Deputy Fiscal of the Court of Appeal, or High Court, District Court, Magistrate Court or of any other Court of First Instance, any public officer employed in the Registry of the Supreme Court, Court of Appeal, High Court or any other Court of First Instance who is engaged as a clerk, deputy fiscal, interpreter, stenographer, typist, binder or such other category as may be specified by Order made by the Minister in charge of the subject of Justice and approved by the National State Assembly and published.



## CHAPTER XXIV

**THE SUPERIOR COURTS**

## The Supreme Court

**General Jurisdiction of Supreme Court**

259. (1) The Supreme Court of the Republic of Sri Lanka shall be the highest and final superior Court of record in the Republic and subject to the provisions of the Constitution, the jurisdiction of the Supreme Court shall include the exercise of –
- (a) jurisdiction in respect of constitutional matters;
  - (b) jurisdiction for the protection of fundamental rights, language rights and the enforcement of constitutional duties referred to in Chapter V;
  - (c) jurisdiction in respect of treaties and agreements referred to in Chapter VIII;
  - (d) final appellate jurisdiction;
  - (e) revisionary jurisdiction;
  - (f) consultative jurisdiction;
  - (g) jurisdiction in election petitions;
  - (h) jurisdiction in respect of any breach of the privileges of the National State Assembly; and
  - (i) jurisdiction in respect of such other matter vested in the Supreme Court by the Constitution or any law.
- (2) The Supreme Court may at anytime exercise its inherent jurisdiction in the interests of justice or to prevent the abuse of the process of court.

**Constitution of the Supreme Court**

260. (1) The Supreme Court shall consist of the Chief Justice and of not less than ten and not more than twenty-five other Judges who shall be appointed as provided in Article 238.
- (2) The Supreme Court shall have power to act notwithstanding any vacancy in its membership and no act or proceeding of the Court shall be, or shall be deemed to be, invalid by reason only of any such vacancy or any defect in the appointment of a Judge.

### **Constitutional jurisdiction of the Supreme Court**

261. (1) The Supreme Court shall have sole and exclusive jurisdiction to determine any question as to whether any Bill or any provision thereof or any law or any provision thereof to the extent provided for in paragraph (5) of Article 215 is inconsistent with the Constitution:

Provided that –

- (a) in the case of a Bill described in its long title as being for the amendment of any provision of the Constitution, or for the repeal and replacement of the Constitution, the only question which the Supreme Court may determine is whether such Bill requires approval by the People at a Referendum by virtue of the provisions of Article 218;
  - (b) where the Cabinet of Ministers certifies that a Bill, which is described in its long title as being for the amendment of any provisions of the Constitution or for the repeal and replacement of the Constitution, intended to be passed with the special majority required by Article 218 and submitted to the People by Referendum, the Supreme Court shall have and exercise no jurisdiction in respect of such Bill;
  - (c) where the Cabinet of Ministers certifies that a Bill which is not described in its long title as being for the amendment of any provision of the Constitution, or for the repeal and replacement of the Constitution, is intended to be passed with the special majority as required by Article 219, the only question which the Supreme Court may determine is whether such Bill requires approval by the People at a Referendum by virtue of the provisions of Article 218 or whether such Bill is required to comply with paragraphs (1) and (2) of Article 217; or
  - (d) where the Cabinet of Ministers certifies that any provision of any Bill which is not described in its long title as being for the amendment of any provision of the Constitution or for the repeal and replacement of the Constitution is intended to be passed with the special majority required by Article 219, the only question which the Supreme Court may determine is whether any other provision of such Bill requires to be passed with the special majority required by Article 219 or whether any provision of such Bill requires the approval by the People at a Referendum by virtue of the provisions of Article 218 or whether such Bill is required to comply with the provisions of paragraphs (1) and (2) of Article 217.
- (2) The Supreme Court shall have the sole and exclusive jurisdiction to determine any question as to whether any treaty or agreement or any provision thereof referred to in Chapter VIII is inconsistent with the Constitution or any law.

### **Ordinary exercise of constitutional jurisdiction in respect of Bills**

262. (1) The jurisdiction of the Supreme Court to ordinarily determine any question as specified in Article 261 may be invoked by –
- (a) the President or by the Speaker under Article 213 by a written reference addressed to the Chief Justice, or
  - (b) by any citizen by a petition in writing addressed to the Supreme Court, within a period of two weeks of the Bill being placed on the Order Paper of the National State Assembly, a copy of which shall at the same time be delivered to the Speaker.
- (2) For the purpose of paragraph (1) the period of two weeks shall commence on the day notice referred to in sub-paragraph (2) of Article 212 was published.
- (3) Where the jurisdiction of the Supreme Court has been so invoked no proceedings shall be held in the National State Assembly in relation to such Bill until the determination of the Supreme Court has been made, or the expiration of a period of five weeks from the time the Bill is placed on the Order Paper of the National State Assembly whichever occurs first.
- (4) Upon the expiry of two weeks of the Bill being placed on the Order Paper, the Supreme Court shall consider such reference or petition after giving notice to the Attorney General, Bar Association of Sri Lanka and any Petitioner by the Supreme Court, before making any determination.
- (5) The Supreme Court shall hear the petitioners, Attorney General, the Bar Association if they so wish before making any determination.
- (6) The Supreme Court shall make and communicate its determination to the President and to the Speaker within five weeks of the Bill being placed on the Order Paper of the National State Assembly.
- (7) In this Article paragraph, “citizen” includes a body, whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens of Sri Lanka.

### **Determination of the Supreme Court in respect of Bills**

263. (1) The determination of the Supreme Court shall be accompanied by reasons and shall state whether the Bill or any provision thereof is inconsistent with the Constitution and if so, which provision or provisions of the Constitution.
- (2) Where the Supreme Court determines that the Bill or any provision thereof is inconsistent with the Constitution, it shall also state –
- (a) whether such Bill is required to comply with the provisions of paragraphs (1) and (2) of Article 215;

- (b) whether such Bill or any provision thereof may only be passed by the special majority required under the provisions of paragraph (2) of Article 219; or
  - (c) whether such Bill or any provision thereof Required to be passed by the special majority required under the provisions of paragraph (2) of Article 219 and approved by the People at a Referendum by virtue of the provisions of Article 218, and may specify the nature of the amendments which would make the Bill or such provision cease to be inconsistent.
- (3) Where any Bill, or the provision of any Bill, has been determined or is deemed to have been determined to be inconsistent with the Constitution, such Bill or such provision shall not be passed except in the manner stated in the determination of the Supreme Court:

Provided that, it shall be lawful for such Bill to be passed after such amendment as would make the Bill cease to be inconsistent with the Constitution.

### **Exercise of Constitutional Jurisdiction in respect of Amendments to Bills**

264. (1) Notwithstanding anything to the contrary in Article 214, the constitutionality of any amendment moved in the National State Assembly to any provision of a Bill published under paragraph (1) of Article 212, may be challenged in any proceeding and the Supreme Court shall determine whether such provision is consistent with the Constitution if the amendment to such Bill being referred to under sub-paragraph (4) of Article 213 and no determination had been made by the Supreme Court in respect of such amendment. Upon such challenge the Supreme Court shall determine whether such provisions of the amendment are consistent with the Constitution.
- (2) Where such a challenge is made in any proceeding in any other Court or tribunal or other institutions empowered by law to administer justice or to exercise judicial or quasi-judicial functions, such challenge shall forthwith be referred to the Supreme Court for the determination of the constitutionality of any provision in such amendment not examined by the Supreme Court previously.
- (3) Where the Supreme Court determines that the amendment referred to in paragraph (1) is inconsistent with the Constitution, such amendment shall be null and void and shall have no force or effect in law.

### **Jurisdiction of the Supreme Court to be exercised by at least three Judges**

265. The jurisdiction of the Supreme Court under Article 262 and 264 shall be exercised by at least three Judges of the Supreme Court.

### **Validity of Bills and legislative process not to be questioned**

266. Save as otherwise provided in Articles 261, 262 and 264, no Court or tribunal created and established for the administration of justice or other institution, person or body of persons shall in relation to any Bill, have power or jurisdiction to inquire into, or pronounce upon the constitutionality of such Bill or its due compliance with the legislative process, on any ground whatsoever.

### **Constitutional Jurisdiction in the Interpretation of the Constitution**

267. (1) The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the interpretation of the Constitution and accordingly, whenever any such question arises in the course of any proceedings in any other Court or tribunal or other institution empowered by law to administer justice or to exercise judicial or quasi-judicial functions, such question shall forthwith be referred to the Supreme Court for determination. The Supreme Court may direct that further proceedings be stayed pending the determination of such question.
- (2) The Supreme Court shall determine such question within two months of the date of reference and make any such consequential order as the circumstances of the case may require.

### **Fundamental Rights Jurisdiction and its Exercise**

268. (1) The Supreme Court shall have sole and exclusive jurisdiction to hear and determine as provided for in Article 52 any question relating to the infringement or imminent infringement by executive and administrative action of any right declared and recognised by Chapters V and VI, or any failure or refusal to carry out or perform any duty set out in Articles 10, 66, 68 or 77.
- (2) Where –
- (a) any person alleges that any fundamental right or language right such person is entitled to has been infringed or is about to be infringed or,
  - (b) the State has failed to carry out or perform any duty,
    - (i) any *Viharadhipathi* of any temple who alleges that the State has failed or refused to carry out or perform the duty referred to in Article 10 or,
    - (ii) any citizen alleges that the State has failed to perform or carry out any duty referred to in Articles 66 and 68 or 77 of Chapter IX,
- by executive or administrative action, he may himself or by an Attorney-at-Law on his behalf, within two months thereof, in accordance with such rules of Court as may be in force, apply to the Supreme Court by way of petition in

writing addressed to such Court praying for relief or redress in respect of such infringement or failure.

Provided that the Supreme Court may entertain any such application after the lapse of two months if it is in the opinion of the Supreme Court, necessitated in the interest of justice.

- (3) Such application may be proceeded only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by not less than two Judges. The Attorney General shall be named as a respondent to such application.
- (4) Where in the course of hearing in the Court of Appeal into an application for orders in the nature of a writ of *habeas corpus*, *certiorari*, *prohibition*, *procedendo*, *mandamus* or *quo warranto*, it appears to such Court that there is prima facie evidence of an infringement or imminent infringement of the provisions of Chapters II, V, VI, VII and IX by a party to such application, such Court shall forthwith refer such matter for determination by the Supreme Court.
- (5) The Supreme Court shall have power to grant such relief or make all such directions as it may deem just and equitable in the circumstances in respect of any petition or reference referred to in paragraphs (2) or (4) of this Article or refer the matter back to the Court of Appeal if in its opinion there is no infringement of a fundamental right or language right.
- (6) In the exercise of the just and equitable jurisdiction of the Supreme Court referred to in paragraphs (2) and (4), the Supreme Court shall have power to entertain any fresh or additional evidence or material which the Supreme Court deems, will serve the interests of justice.
- (7) The Supreme Court may, in the interests of justice, entertain an application in appropriate circumstances notwithstanding any failure to comply with any rule of procedure.

### **Appellate Jurisdiction**

269. (1) The Supreme Court shall, subject to the Constitution, be the final Court of civil and criminal appellate jurisdiction for and within the Republic of Sri Lanka for the correction of all errors in fact or in law which shall be committed by the Court of Appeal or any Court of First Instance, tribunal or other institution and the Judgments and orders of the Supreme Court shall in all cases be final and conclusive in all such matters.

- (2) The Supreme Court shall, in the exercise of its jurisdiction, have sole and exclusive cognizance by way of appeal from any order, Judgment, decree, or sentence made by the Court of Appeal, where any appeal lies in law to the Supreme Court and it may affirm, reverse or vary any such order, Judgement, decree or sentence of the Court of Appeal and may issue such directions to any Court of First Instance or order a new trial or further hearing in any proceedings as the justice of the case may require and may also call for and admit fresh or additional evidence if the interests of justice so demands and may in such event, direct that such evidence be recorded by the Court of Appeal or any Court of First Instance.

### **Right of Appeal**

270. (1) An appeal shall lie to the Supreme Court from any final order, Judgment, decree or sentence of the Court of Appeal in any matter or proceedings, whether civil or criminal.
- (2) The Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any interlocutory order made by the Court of Appeal in any matter or proceedings, whether civil or criminal, where the Court of Appeal has refused to grant leave to appeal to the Supreme Court or where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court:
- Provided that, the Supreme Court shall grant leave to appeal in every matter or proceedings in which it is satisfied that the question to be decided involves a substantial question of law.
- (3) Any appeal from an order or Judgment of the Court of Appeal, made or given in the exercise of its jurisdiction under Articles 288, 291, 292, 293 and 294, to which the President, a Minister, a Deputy Minister or a public officer in his official capacity is a party, shall be heard and determined within two months of the date of filing thereof.
- (4) An appeal shall lie directly to the Supreme Court on any matter and in the manner specifically provided for by any other law passed by the National State Assembly.
- (5) The Supreme Court may of its own motion or on the application of a party concerned and with reasonable notice to the parties, expedite the hearing of the appeal.

### **Revisionary Jurisdiction**

271. The Supreme Court shall be vested with a revisionary jurisdiction in respect of any order, Judgment, decree, or sentence made by the Court of Appeal or the High Court of Sri Lanka or any other Court of First Instance, where the interests of justice so demand.

### **Inspection of Records**

272. The Supreme Court may, *ex meromotu* or on any application made, call for, inspect and examine any record of the Court of Appeal or High Court or any other Court of First Instance, tribunal or other institution and in the exercise of its revisionary powers may make any order thereon as the interests of justice may require.

### **Consultative Jurisdiction**

273. (1) If at any time it appears to the President that a question of law or fact has arisen or is likely to arise which is of such nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer that question to that Court for consideration and the Court may, after such hearing as it thinks fit, within the period specified in such reference or within such time as may be extended by the President, report to the President its opinion thereon:

Provided that, the Supreme Court shall not be required to express its opinion within a period of less than seven working days from the date of such reference.

- (2) Where the Speaker refers to the Supreme Court for inquiry and report all or any of the allegation or allegations, as the case may be, contained in any such resolution as is referred to in sub paragraph (a) of paragraph (2) Article 90, the Supreme Court shall in accordance with sub paragraph (d) of paragraph (2) of Article 90, inquire into such allegation or allegations and shall report its determination to the Speaker within two months of the date of reference.
- (3) Such opinion, determination and report shall be expressed after consideration by at least five Judges of the Supreme Court, of whom, unless he otherwise directs, the Chief Justice shall be one.
- (4) Every proceeding under paragraph (1) of this Article shall be held in private unless the Court for special reasons otherwise directs.



### **Jurisdiction in election and referendum petitions**

274. The Supreme Court shall have the power to hear and determine and make such orders as provided for by law on –
- (a) any legal proceeding relating to election of the President or the validity of a Referendum;
  - (b) any appeal from an order or Judgment of the Court of Appeal in an election petition case:

Provided that, the hearing and determination of a proceeding relating to the election of the President or the validity of a Referendum shall be by at least five Judges of the Supreme Court of whom, unless he otherwise directs, the Chief Justice shall be one.

### **Jurisdiction in respect of the breaches of Privileges of the National State Assembly**

275. The Supreme Court shall have according to law, the power to take Cognisance of and punish any person for the breach of the privileges of the National State Assembly.

### **Sittings of the Supreme Court**

276. (1) The several jurisdictions of the Supreme Court shall be ordinarily exercised in Colombo unless the Chief Justice otherwise directs.
- (2) The jurisdiction of the Supreme Court may be exercised in different matters at the same time by the several Judges of that Court sitting apart:

Provided that, its jurisdiction shall, subject to the provisions of the Constitution, be ordinarily exercised at all times by not less than three Judges of the Court sitting together as the Supreme Court.

- (3) The Chief Justice may –
- (i) of his own motion;
  - (ii) at the request of two or more Judges hearing any matter; or
  - (iii) on the application of a party to any appeal, proceeding or matter,
- if the question involved is, in the opinion of the Chief Justice, one of general and public importance, direct that such appeal, proceeding or matter be heard by a Bench comprising five or more Judges of the Supreme Court.
- (4) Judgments and orders of the Supreme Court shall, when it is not a unanimous decision, be the decision of the majority.

### **Judgment to Contain Reasons**

277. (1) Every Judgment and final order given by the Supreme Court shall contain reasons for their decisions.
- (2) In this Article “Final order” includes refusal of notice, refusal of leave to proceed or refusal of Special Leave to appeal as the case may be.

### **Appointment of Ad Hoc Judge**

278. (1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any sittings of the Court, the Chief Justice may with the previous consent of the President request in writing the attendance at the sittings of the Court as an ad hoc Judge, for such period as may be necessary, of the President of the Court of Appeal or any Judge of the Court of Appeal.
- (2) It shall be the duty of such a Judge who had been so requested, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required and while so attending he shall have all the jurisdictions, powers and privileges and shall perform the duties of a Judge of the Supreme Court

### **Right to be heard by the Supreme Court**

279. (1) The Attorney-General shall be noticed and have the right to be heard in all proceedings in the Supreme Court in the exercise of its jurisdiction under Articles 261, 262, 264, 267, 268, paragraph (1) of Article 273 and Article 275.
- (2) Any party to any proceedings in the Supreme Court in the exercise of its jurisdiction shall have the right to be heard in such proceedings either in person or by representation by an Attorney-at-Law.
- (3) The Supreme Court, in the exercise of any of the jurisdictions vested in it by the Constitution, may grant in its discretion, to any person other than a party to any proceedings before the court, or to his legal representative, such hearing as may appear to the Court to be necessary or fit, in the exercise of its jurisdiction under this Chapter.

### **Registry of the Supreme Court and office of Registrar**

280. The Registry of the Supreme Court shall be in charge of an officer designated the Registrar of the Supreme Court who shall be subjected to the supervision, direction and control of the Chief Justice.

### **Suspension or removal of Attorney-at-Law**

281. (1) Every person admitted and enrolled as an Attorney-at-law who shall be guilty of any deceit, malpractice or crime may be suspended from practice or removed from office by any three Judges of the Supreme Court sitting together on the recommendation of a Disciplinary Committee of the Bar Association constituted under the provisions of the Judicature Act.
- (2) The Disciplinary Committee of the Bar Association of Sri Lanka shall consist of President's Counsels who functioned in such capacity for not less than fifteen years or Attorneys-at-Law of not less than thirty-five years at the Bar.

### **Rules of the Supreme Court**

282. (1) Subject to the provisions of the Constitution and of any law, the Chief Justice with any three Judges of the Supreme Court nominated by him, may, from time to time, make rules regulating generally the practice and procedure of the Court including –
- (a) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the terms under which appeals to the Supreme Court and the Court of Appeal are to be entertained and provision for the dismissal of such appeals for non-compliance with such rules;
  - (b) rules as to the proceedings in the Supreme Court and the Court of Appeal in the exercise of the several jurisdictions conferred on such Courts by the Constitution or by any law, including the time within which such matters may be instituted or brought before such Courts and the dismissal of such matters for non-compliance with such rules;
  - (c) rules as to the granting of bail;
  - (d) rules as to the stay of proceedings;
  - (e) rules providing for the summary determination of any appeal or any other matter before such Court by petition or otherwise, which appears to the Court to be frivolous and vexatious or brought for the purpose of delay;
  - (f) the preparation of copies of records for the purpose of appeal or other proceedings in the Supreme Court and Court of Appeal;
  - (g) the admission and enrolment, suspension and removal of Attorneys-at-Law and the rules of conduct and etiquette for such Attorneys-at-Law;
  - (h) the attire of Judges, President's Counsels and Attorneys-at-Law, officers of Court and persons attending the Courts in Sri Lanka whether established by the Constitution, or by the National State Assembly or by existing law;

- (i) the procedure and qualifications for the appointment of Attorneys-at-Law as Presidents' Counsel;
  - (j) the manner in which panels of jurors may be prepared and the mode of summoning, empanelling and challenging of jurors;
  - (k) proceedings of Fiscals and other ministerial officers of such Courts and the process of such Courts and the mode of executing the same;
  - (l) the binding effect of the decisions of the Supreme Court;
  - (m) all matters of practice and procedure including the nature and extent of costs that may be awarded, the manner in which such costs may be taxed and the stamping of documents in the Supreme Court, Court of Appeal, High Court and Courts of First Instance not specially provided by or under any law.
- (2) The Supreme Court shall in making rules under paragraph (1) regulate the practice and procedure of the court, shall also ensure as far as practicable, that the formulation and application of such rules would also serve the interests of justice.
- (3) Every rule made under this Article shall be published and shall come into operation on the date of such publication or on such later date as may be specified in such rule.
- (4) All rules made under this Article shall as soon as convenient after their publication be brought before the National State Assembly for approval. Any such rule which is not so approved shall be deemed to be rescinded as from the date it was not so approved, but without prejudice to anything previously done thereunder.
- (5) The Chief Justice and any three Judges of the Supreme Court nominated by him may amend, alter or revoke any such rules of court and such amendment, alteration or revocation of the rules will operate in the like manner as set out in the preceding paragraph with reference to the making of the rules of court.

## CHAPTER XXV

**THE COURT OF APPEAL****The Court of Appeal**

283. (1) The Court of Appeal shall consist of the President of the Court of Appeal and not less than ten and not more than forty-five other Judges who shall be appointed as provided in Article 238.
- (2). There shall be several divisions of the Court of Appeal as follows;
- (a) the civil appellate division,
  - (b) the criminal appellate division, and
  - (c) any other division as determined by the President of the Court of Appeal.

**Sittings of the Court of Appeal**

284. (1) A Bench consisting of the President of the Court of Appeal shall ordinarily exercise its jurisdiction in Colombo:
- Provided that, the President of the Court of Appeal may from time to time when he deems it so expedient, direct that the civil and criminal appellate divisions of the Court of Appeal shall hold its sittings and exercise its jurisdiction in any judicial zone or district, specified in the direction:
- Provided further, that there shall be at least one division of the Court of Appeal sitting in every Province.
- (2) The jurisdiction of the Court of Appeal may be exercised in different matters at the same time by the several Judges of the Court sitting apart in different judicial zones:
- Provided that its jurisdiction in respect of –
- (a) Judgments and orders of the High Court pronounced at a Trial-at-Bar, shall be exercised by at least three Judges of the Court; and
  - (b) other Judgment and orders of the High Court and the District Court shall be exercised by at least two Judges of the Court;
  - (c) appeals and applications made under Article 293 shall be exercised by at least two judges of the Court;

- (d) its powers under Article 294 shall be exercised by the President of the Court of Appeal or any Judge of that Court nominated by the President or one or more of such Judges nominated by the President of whom such President may be one;
  - (e) all other matters shall be exercised by a single Judge of the Court, unless the President of the Court of Appeal by general or special order otherwise directs.
- (3) In the event of any difference of opinion between two Judges constituting the Bench, the decision of the Court shall be suspended until three Judges shall be present to review such matter.
  - (4) Judgments and orders of the Court of Appeal, shall when it is not a unanimous decision, be the decision of the majority.

### **Requirement to give reasons**

- 285. (1) The Court of Appeal shall give reasons in every Judgment and final order.
- (2) In this Article “Final order” includes refusal of notice and summons.

### **Registry of the Court of Appeal and office of Registrar**

- 286. The Registry of the Court of Appeal shall be in charge of an officer designated as the Registrar of the Court of Appeal who shall be Subjected to the supervision, direction and control of the President of the Court of Appeal.

### **Appellate and Revisionary Jurisdiction of Court of Appeal**

- 287. (1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, or by other Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and *restitutio in integrum*, of all causes, suits, actions, prosecutions, matters and things of which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance:  
 Provided that, no Judgment, decree or order of any Court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.
- (2) The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, or otherwise, as the National State Assembly has by law, vested or ordained.
- (3). In this Article, “appellate jurisdiction” means and includes revisionary jurisdiction and powers of *restitutio in integrum*.

### **Powers in Appeal**

288. (1) The Court of Appeal may in the exercise of its jurisdiction, affirm, reverse, correct or modify any order, Judgment, decree or sentence according to law or it may give directions to such Court of First Instance, tribunal or other institution or order a new trial or further hearing upon such terms as the Court of Appeal shall think fit.
- (2) The Court of Appeal may further receive and admit new evidence additional to, or supplementary of, the evidence already taken in the Court of First Instance touching the matters at issue in any original case, suit, prosecution or action, as the justice of the case may require.

### **Right to be heard by the Court of Appeal**

289. (1) Any party to any proceedings in the Court of Appeal in the exercise of its jurisdiction shall have the right to be heard in such proceedings either in person or by representation by an Attorney-at-Law.
- (2) The Court of Appeal may in its discretion grant to any other person or his legal representative such hearing as may appear to the Court to be necessary in the exercise of its jurisdiction under this Chapter.

### **Power to issue writs, other than writs of habeas corpus**

290. (1) Subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of First Instance or other institution and grant and issue, according to law, orders in the nature of writs of *certiorari*, *prohibition*, *mandamus procedendo*, and *quo warranto* against the Judge of any Court of First Instance or tribunal, any other institution or person:

Provided that, the National State Assembly may by law provide that in any such category of cases as may be specified in such law, the jurisdiction conferred on the Court of Appeal by the preceding provisions of this Article shall be exercised by the Supreme Court and not by the Court of Appeal.

- (2) The Court of Appeal may grant and issue orders in the nature of writs of *habeas corpus* to bring up before such Court –
- (a) the body of any person to be dealt with according to law; or
  - (b) the body of any person unlawfully, illegally or improperly detained in public or private custody, and to discharge or remand any person so brought up or otherwise deal with such person according to law:

Provided that, it shall be lawful for the Court of Appeal to require the body of such person to be brought up before the most convenient Court of First Instance and to direct the Judge of such Court to inquire into and report upon the acts of the alleged imprisonment or detention and to make such provision for the interim custody of the body produced as to such Court shall seem right; and the Court of Appeal shall upon the receipt of such report, make order to discharge or remand the person so alleged to be imprisoned or detained or otherwise deal with such person according to law and the Court of First Instance shall conform to and carry into immediate effect, the order so pronounced or made by the Court of Appeal:

Provided further, that if provision be made by law for the exercise by any Court, of jurisdiction in respect of the custody and control of minor children, then the Court of Appeal, if satisfied that any dispute regarding the custody of any such minor child may more properly be dealt with by such Court, direct the parties to make application in that Court in respect of the custody of such minor child.

### **Power to issue declarations**

291. (1) The Court of Appeal may grant a declaration in any matter in respect of which relief may be granted by way of *certiorari*, *mandamus* or *prohibition* either as an alternative or in addition to such relief.
- (2) In the exercise of its jurisdiction under paragraph (1), the Court of Appeal shall have the power to include an award of compensation, or such other directions, as it may deem just and equitable.

### **Fundamental Rights Jurisdiction of the Court of Appeal**

292. (1) The Court of Appeal shall have jurisdiction to hear and determine any question relating to the infringement or imminent infringement of any fundamental rights guaranteed to the extent applicable under Article 22, 23, 24, 25, paragraph (2) of Article 31, Article 35, 38, 39, 41, paragraph (2) of Article 42, paragraph (3) of Article 42, paragraph (5) of Article 42 and Article 46 other than by executive or administrative action as provided for in Article 52.

### **Power to bring up and remove prisoners**

293. The Court of Appeal may direct –
- (a) that a prisoner detained in any prison be brought before a Court-Martial or any Commissioner acting under the authority of any Commission of the President of the Republic, for trial or to be examined in relation to any matters pending before any such Court-Martial or Commissioner respectively; or



- (b) that a prisoner detained in prison be removed from one place of custody to another for purposes of trial.

### **Power to Grant Injunctions**

294. The Court of Appeal shall have the power to grant and issue injunctions to prevent any irremediable mischief which might ensue before a party making an application for such injunction could prevent the same by bringing an action in any Court of First Instance:

Provided that, it shall not be lawful for the Court of Appeal to grant an injunction to prevent a party to any action in any Court from appealing to or prosecuting an appeal to the Court of Appeal or to prevent any party to any action in any court from insisting upon any ground of action, defense or appeal, or to prevent any person from suing or prosecuting in any Court, except where such person has instituted two separate actions in two different Courts for and in respect of the same cause of action, in which case, the Court of Appeal shall have the power to intervene by restraining him from prosecuting one or other of such actions as to it may seem fit.

### **Election petitions**

295. The Court of Appeal shall have and exercise jurisdiction to try election petitions in respect of the election to the members of National State Assembly, Provincial Council and Local Authorities in terms of any law.

### **Inspection of Records**

296. The Court of Appeal may, *ex meromotu* or on any application made, call for, inspect and examine any record of any Court of First Instance or tribunal and other institutions and in the exercise of its revisionary powers may make any order thereon as the interests of justice may require.

## CHAPTER XXVI

**FINANCE****Control of National State Assembly over Public Finance**

297. The National State Assembly shall have full control over public finance. No tax, rate or any other levy shall be imposed by any Local Authority, Provincial Council or any other public authority, except by or under the authority of a law passed by the National State Assembly or of any existing law.

**Consolidated Fund**

298. (1) The funds of the Republic not allocated by law to specific purposes shall form one Consolidated Fund into which shall be paid the produce of all taxes, imposts, rates, duties, fines, debts raised by the Government through local or international sources, grants received by the Government, deposits that needs to be kept as securities for different purposes and all other revenues and receipts of the Republic not allocated to specific purposes.
- (2) Debt service expenses of the Government including payment of interest on public debt, repayment of debt, and expenses relating to raising of debts, sinking fund payments, the costs, charges and expenses incidental to the collection, management and receipts of the Consolidated Fund and such other expenditure as the National State Assembly may determine shall be charged on the Consolidated Fund.
- (3) All borrowings of the Government of Sri Lanka upon the security of the Consolidated Fund or guarantees given by the Government shall be within the limits prescribed by law.

**Withdrawal of sums from Consolidated Fund**

299. (1) Save as otherwise expressly provided in paragraphs (3), (4) and (5) of this Article, no sum shall be withdrawn from the Consolidated Fund except under the authority of a warrant under the hand of the Minister in charge of the subject of Finance.
- (2) No such warrant shall be issued unless the sum has by resolution of the National State Assembly or by any law been granted for specified Public Services for the financial year during which the withdrawal is to take place or is otherwise lawfully charged on the Consolidated Fund.

- (3) Where the National State Assembly stands dissolved or is deemed to have been dissolved before the Appropriation Bill for the financial year has passed into law, he may, unless the National State Assembly shall have already made provision, authorise the issue from the Consolidated Fund and the expenditure of such sums as he may consider necessary for the purpose of maintaining Public Services or to continue with the ongoing activities of the Government or to fulfil any obligation of the Republic during the period commencing from the date, immediately after the date on which the authorisation of the National State Assembly comes to an end until the expiry of a period of three months from the date on which the new the National State Assembly is summoned to meet.
- (4) Where the National State Assembly stands dissolved or the National State Assembly is deemed to have been dissolved and the President fixes a date or dates for a General Election, the President may, unless the National State Assembly has already made provision in that behalf, authorise the issue from the Consolidated Fund and the expenditure of such sums as he may, after consultation with the Commissioner of Elections, consider necessary for such elections.
- (5) Where the Appropriation Bill for the relevant financial year has not been passed, the National State Assembly shall have the power to pass a vote on account allowing the withdrawal of funds from the Consolidated Fund as an advance for the purpose of maintaining Public Services and to continue the ongoing activities of the Government or to fulfill any obligation of the Republic for a period of four months at a time, subject to a deduction from the estimated expenditure to be included in the Appropriation Bill.

### **Contingencies Fund**

300. (1) Notwithstanding any of the provisions of Article 297, the National State Assembly may by law create a Contingencies Fund for the purpose of providing for urgent and unforeseen expenditure.
- (2) The Minister in charge of the subject of Finance, if satisfied –
  - (a) that there is need for any such expenditure; and
  - (b) that no provision for such expenditure exists, may with the consent of the President, authorise provision to be made thereof by an advance from the Contingencies Fund.
- (3) As soon as possible after every such advance, a Supplementary Estimate shall be presented to the National State Assembly for the purpose of replacing the amount so advanced and the amount so advanced shall be replaced forthwith.

### **Special provisions as to Bills affecting public revenue**

301. No Bill or motion, authorising the disposal of, or the imposition of charges upon, the Consolidated Fund or other funds of the Republic, or the imposition of any tax or the repeal, augmentation or reduction of any tax for the time being in force shall be introduced in the National State Assembly except by a Minister, and unless such Bill or motion has been approved either by the Cabinet of Ministers or in such manner as the Cabinet of Ministers may authorise.

### **Central Bank of Sri Lanka**

302. (1) The Central Bank of Sri Lanka (in this Chapter referred to as “the Central Bank”), shall be the authority responsible for the administration, supervision and regulation of the monetary, financial and payments system of Sri Lanka.
- (2) The Central Bank shall have the following objectives –
- (a) Economic and price stability and;
  - (b) Financial system stability, with a view to encouraging and promoting the development of the productive resources of Sri Lanka.

### **Monetary Board**

303. (1) The Monetary Board of the Central Bank, shall, in addition to exercising the powers, determining the policies or measures authorised to be adopted or taken in terms of the applicable laws, be also vested with and exercise the powers, duties and functions of the Central Bank, and shall be generally responsible for the management, operations and administration of the Bank.
- (2) Subject to the provisions of the Constitution, and of any applicable laws, the Monetary Board of the Central Bank of Sri Lanka, shall be vested with administrative, operational and financial autonomy, in the course of the attainment of its specific designated aims and objectives, as well as in the discharge of its prescribed powers, functions, duties and obligations, and shall, in the course thereof, duly take cognizance and consideration, of the larger interests of the economy of Sri Lanka, together with the national interest.
- (3) Subject to the provisions of the Constitution, and of any applicable laws, the Monetary Board of the Central Bank of Sri Lanka, shall act with independence at all times, together with the Central Bank of Sri Lanka:
- Provided however, that it shall be lawful for the Minister in charge of the subject of Finance, to have consultations with the Monetary Board.

- (4) The Monetary Board shall consist of –
  - (a) the Governor of the Central Bank, who shall be the Chairman of the board;
  - (b) the person holding office for the time being as Secretary to the Ministry of the Minister in charge of the subject of Finance; and
  - (c) three members appointed by the President, on the recommendation of the Minister of Finance, with the concurrence of the Legislative Council, who shall be known as the “appointed members”.
- (5) The three appointed members shall be appointed by the President, from and amongst persons who have reached pre-eminence in the fields of Economics, Finance, Business Management, Law, Banking, Accounting or entrepreneurial endeavour.
- (6) A person shall be disqualified for appointment as the Governor or as a member of the Monetary Board of the Central Bank if –
  - (a) he is a Member of Parliament, or a member of any Provincial Council or any local authority; or
  - (b) he is a public officer or judicial officer, or holds any office or position (other than an academic position) either by election or appointment, for which salary or other remuneration is payable out of public funds or the funds of any local authority; or
  - (c) he is a director, officer, employee or shareholder of any banking institution other than the Central Bank; or
  - (d) in the case of an appointed member, if he is a director, officer, employee or shareholder, of any other institution supervised by the Central Bank.
- (7) Where the Monetary Board considers it appropriate, it may delegate to the Governor, or to any officer of the Central Bank or to a Committee of such officers, any power, duty or function conferred or imposed on, or assigned to the Board, as provided by law.
- (8) Meetings of the board shall be
  - (i) convened by the Governor.
  - (ii) held at least once in every two weeks and, in addition, as frequently as is necessary for the purpose of the discharge of its responsibilities under this Act.
- (9) At any meeting of the board, three members shall constitute a quorum.
- (10) No decision taken at any meeting of the board shall be deemed to be a decision of the board, unless it has the concurrence of at least three members, or, in any case where any other provision of any Law requires an unanimous decision, the concurrence of all five members.

## Governor

304. (1) The Governor of the Central Bank shall be appointed by the President on the recommendation of the Minister in charge of the subject of Finance.
- (2) The Governor shall devote his full professional time to the business of the bank; and accordingly the Governor shall not accept or hold any other office or employment whatsoever, whether public or private, and whether remunerated or not.
- (3) The remuneration and other conditions of service of the Governor shall be as determined by law.
- (4) The term of office of the Governor and of any appointed member, shall be for a period of 6 years, commencing on the date of his appointment.
- (5) Any person vacating office as Governor or as appointed member by effluxion of time, shall be eligible for re-appointment.
- (6) In the event of a member who vacates or is removed from office prior to the expiration of his designated term, another person shall be appointed in his place, to hold office during the unexpired part of the term of office of the Governor or member so vacating office, as the case may be.
- (7) (1) The Governor or an appointed member shall be deemed to vacate office, in the event of;
- (i) Death,
  - (ii) Resignation,
  - (iii) Conviction by a Court of Law of any offence involving moral turpitude, or if a resolution for the imposition of civic disability upon the Governor or such member has been passed in terms of Article 216, or
  - (iv) Removal,
  - (v) in the case of the member who is the Secretary to the Ministry of the Minister in charge of the subject of Finance, in addition to the above, if such person, resigns or vacates or is removed from the office of Secretary to the Ministry of the Minister in charge of the subject of finance.
- (8) (i) The President may, on the recommendation of the Minister in charge of the subject of Finance and with the prior approval of the Legislative Council, remove the Governor or any appointed member,
- (a) if he becomes subject to any disqualification mentioned in paragraph (5) of Article 303; or
  - (b) if he becomes permanently incapable of performing his duties; or

- (c) if he has done any act or thing, which in the opinion of the President is of a fraudulent or illegal character or is manifestly opposed to the objects and interests of the Central Bank; or
- (d) in the case of the Governor, if he acts in contravention of subsection (2) of Article 304.

### **Responsible Fiscal Management**

305. (1) In the course of the prudential financial management of the country and the fiscal management of the economy, otherwise than in the case of a national emergency, a pandemic, or a natural catastrophe, the State, the Parliament, the President and the Cabinet of Ministers, shall at all times, be governed by and uphold the Fiscal Rules and shall be guided by the objectives of achieving and maintaining fiscal consolidation, through responsible fiscal management, achieving and maintaining the sustainability of debt and the balance of payments, the advancement of the economy and the general upliftment of the economic condition of the people.
- (2) For the purpose of paragraph (1) above the Minister in charge of the subject of Finance, shall, in prior consultation with the Monetary Board of the Central Bank of Sri Lanka, formulate the Fiscal Rules, having regard to fundamental norms of responsible fiscal management.
- (3) Notwithstanding anything contained herein, the Minister shall publish the said Rules, the Gazette, within a period of six months from the date of the promulgation of the Constitution and the same shall come into operation on the date of such publication.
- (4) The Fiscal Rules made by the Minister, shall not later than three months after its publication in the Gazette, be brought before Parliament, for approval.
- (5) Any fiscal rule which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder. The notification of the date of such disapproval shall also be published in the Gazette.

### **Auditor-General**

306. (1) There shall be an Auditor-General who shall be a qualified Auditor, and be appointed by the President in accordance with Chapter XIII and shall hold office during good behaviour.
- (2) The salary of the Auditor-General shall be determined by the National State Assembly, shall be charged on the Consolidated Fund and shall not be diminished during his term of office.

- (3) The office of the Auditor-General shall become vacant –
  - (a) upon his death;
  - (b) on his resignation in writing addressed to the President;
  - (c) on his attaining the age of sixty years or upon completing a period of seven years as Auditor General whichever occurs first;
  - (d) on his removal by the President on the ground of ill health or physical or mental infirmity;
  - (e) on his removal by the President on the ground of proven misbehaviour or incapacity, where a reference has been made to the Supreme court by the President and upon an inquiry being held by such court in accordance with the procedure prescribed by law, be removed from office;
  - (f) on his removal by the President on the recommendations of the Legislative Council made after due inquiry as prescribed by law.
- (4) Whenever the Auditor-General is unable to discharge the functions of his office, the President may, subject to the approval of the Constitutional Council, appoint a person to act in the place of the Auditor-General.

### **Duties and Functions of Auditor-General**

307. (1) The Auditor-General shall audit all departments of the Government, the Office of the Secretary to the President, the Office of the Secretary to the Prime Minister, the Offices of the Cabinet of Ministers, the Judicial Services Commission the Legislative Council, the Commissions and Councils referred to in the Schedule to Chapter XIII, the Parliamentary Commissioner for Administration, Provincial Councils, Local Authorities and public corporations.
- (2) Notwithstanding the provisions of paragraph (1) of this Article, the Minister in charge of any such public corporation, may, with the concurrence of the Minister in charge of the subject of Finance and in consultation with the Auditor-General, appoint a qualified auditor or auditors to audit the accounts of such public corporation. Where such appointment has been made by the Minister, the Auditor-General may, in writing, inform such auditor or auditors that he proposes to utilise his or their services for the performance and discharge of the Auditor-General's duties and functions in relation to such public corporation, and thereupon such auditor or auditors shall act under the direction and control of the Auditor-General.
  - (3) The Auditor-General shall also perform and discharge such duties and functions as may be prescribed by the National State Assembly by law.



- (4) (a) The Auditor-General may for the purpose of the performance and discharge of his duties and functions, engage the services of a qualified auditor or auditors who shall act under his direction and control.
- (b) If the Auditor-General is of the opinion that it is necessary to obtain assistance in the examination of any technical, professional or scientific problem relevant to the audit, he may engage the services of –
- (i) a person not being an employee of the department, body or authority the accounts of which are being audited, or
- (ii) any technical or professional or scientific institution not being an institution which has any interest in the management of the affairs of such department, body or authority and such person or institution shall act under his direction and control.
- (5) (a) The Auditor-General or any person authorised by him shall in the performance and discharge of his duties and functions be entitled –
- (i) to have access to all books, records, returns and other documents;
- (ii) to have access to stores and other property; and
- (iii) to be furnished with such information and explanations as may be necessary for the performance of such duties and functions.
- (b) Every qualified auditor appointed to audit the accounts of any public corporation, business or other undertaking or a company referred to in paragraph (1), or any person authorised by such auditor shall be entitled to like access, information and explanations in relation to such public corporation, or business or other undertaking.
- (6) The Auditor-General shall within ten months after the close of each financial year and as and when he deems it necessary, report to the National State Assembly on the performance and discharge of his duties and functions under the Constitution.
- (7) Every qualified auditor appointed under the provisions of paragraph (2) of this Article shall submit his report to the Minister and also submit a copy thereof to the Auditor-General.
- (8) In this Article, “qualified auditor” means –
- (a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka, or of any other Institute established by law, possesses a certificate to practise as an Accountant issued by the Council of such Institute; or
- (b) a firm of Accountants each of the resident partners of which, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practise as an Accountant issued by the Council of such Institute.

### **Finance Commission**

308. (1) There shall be a Finance Commission consisting of
- (a) the Governor of the Central Bank of Sri Lanka;
  - (b) the Secretary to the Treasury; and
  - (c) three other members appointed by the President in accordance with Chapter XIII, each of whom shall be a person who has distinguished himself or held high office, in the field of finance, law, administration, business or learning.
- (2) Every member of the Commission shall, unless he earlier dies, resigns or is removed from office, hold office for a period of three years.

### **Provincial Finance**

309. (1) The Government shall, on the recommendation of, and in consultation with the Finance Commission, allocate from the Annual Budget, such funds as are adequate for the purpose of meeting the needs of the Province, taking into consideration the functions of the Provincial Council set out in the Schedule to Chapter XXII and availability of resources.
- (2) It shall be the duty of the Finance Commission to make recommendations to the Minister assigned the subject of Finance as to,
- (a) the principles on which such funds as are granted annually by the Government for the use of provinces, should be apportioned between the various provinces;
  - (b) the principles on which funds need to be allocated to Provincial Ministries and Departments to each District Committees and Local Authorities within a Province; and
  - (c) any other matter referred to the Finance Commission by the President relating to Provincial Finance.
- (3) The Finance Commission shall formulate such principles with the objective of achieving balanced regional development in the country, and shall accordingly take into account inter alia –
- (a) the population of each district and in every Local Authority area within a Province;
  - (b) the per capita income of each district;
  - (c) the need, progressively, to reduce social and economic disparities;
  - (d) the need, progressively, to reduce the difference between the per capita income of each Province and of each district;

- (e) the needs of the respective Local Authorities to provide basic services and perform the functions allocated to them;
  - (f) the Fiscal capacity and efficiency of the respective districts; and
  - (g) development and other needs of provinces, districts and Local Authority areas.
- (4) The disbursement of funds to each Provincial Council shall be in accordance with the principles recommended by the Finance Commission.
  - (5) Every Provincial Council shall ensure that in the disbursement of funds to the respective Provincial Ministries and Departments that the utilization of such funds by the Ministries and Departments are done according to principles formulated under sub-paragraph (b) of paragraph (2).
  - (6) The Minister of Finance shall cause every recommendation made by the Finance Commission under this Article to be laid before the National State Assembly, and shall notify the National State Assembly as to the action taken thereon.
  - (7) Each Provincial Council shall disburse the equitable share of each respective District Committee and Local Authority in accordance with the guidelines and criteria or directives specified by the Finance Commission.
  - (8) No Court or tribunal shall inquire into, or pronounce on, or in any manner entertain, determine or rule upon, any question relating to the adequacy of such funds, provided by the Government or any recommendation made, or principle formulated by, the Commission.
  - (9) If any Provincial Council, District Committee or Local Authority is denied equal protection of the law or is willfully discriminated **in violation of** Article 29 of the Constitution, any member of Each Provincial Council, District Committee or Local Authority may invoke the jurisdiction of the Supreme Court in terms of Article 276 of the Constitution.

### **Provincial Development Fund**

310. (1) There shall be a Fund called the Provincial Development Fund (hereinafter referred to as the "Fund ") for every Province for its general financial purposes.
- (2). The fund shall be audited by the Auditor-General of the Republic.
- (3) There shall be payable into the Fund –
  - (a) all sums and all sources of revenue from time to time appropriated or made over to the Provincial Council by the National State Assembly, whether by resolution or otherwise;
  - (b) all rates, taxes, duties, fees and other charges levied by the Provincial Council by virtue of any law;

- (c) all fines levied and penalties recovered under the authority of any law the administration of which may be vested in the Provincial Council;
  - (d) all sums realised by sale, leases or other transactions of the Provincial Council;
  - (e) all revenue derived by the Provincial Council from any property vested in the Provincial Council or by the administration of any Public Service;
  - (f) the sum of money raised as loans by the Provincial Council with the prior approval of the Minister in charge of the subject of Finance;
  - (g) any donations or other assistance made generally or for any specified project with the approval of the appropriate Minister;
  - (h) all sums otherwise accruing to the Council in the course of the exercise of its powers and duties.
- (4) The Fund shall be audited by the Auditor General of the Republic.

### **Receiving Fund from Local or Foreign Sources**

311. (1) No Provincial Council shall receive any funds from any foreign source directly or indirectly or otherwise without the written authority of the Cabinet Minister of Finance who may grant such permission subject to the approval of the Cabinet. Every such authority shall be placed before the National State Assembly.
- (2) A Provincial Council or any District Committee or Local Authority shall not without the consent of the Minister assigned the subject of Finance raise any loan or receive any grant from any local source.
- (3) A consent under paragraph (2) may be granted subject to such conditions, if any as the Government of Sri Lanka may think fit to impose.

### **Not to seek any assistance except through the Government**

312. No member of any organ of Government whether Executive, Legislative or Judicial shall communicate with any foreign State or any agency of such State or any individual or association of such State or any international organisation seeking assistance including any form of financial assistance except through the Ministry of Finance.

## CHAPTER XXVII

## NATIONAL PROCUREMENT OVERSIGHT COMMISSION

### National Procurement Oversight Commission

313. (1) There shall be a National Procurement Oversight Commission (in this Chapter referred to as the “Commission”) consisting of five members appointed by the President, in accordance with Chapter XIII of whom at least three members shall be persons who have had proven experience in procurement, accountancy, law or public administration. The President shall appoint one member as the Chairperson of the Commission.
- (2) Every member of the Commission shall hold office for a period of three years from the date of appointment, unless such member –
- (a) earlier resigns from office by writing addressed to the President,
  - (b) is removed from office by the President in accordance with Chapter XIII,
  - (c) is convicted by a Court of law for an offence involving moral turpitude, or
  - (d) is made subject to civic disability by a resolution passed by the National state Assembly in terms of Article 216.
- (3) The Chairperson and every member of the Commission shall be paid such allowances as may be determined by a resolution of the National State Assembly. Such allowances shall be charged on the Consolidated Fund and shall not be diminished during the term of office of such Chairperson or the member.
- (4) The Chairperson and members of the Commission shall be responsible to the National State Assembly.

### Meetings of the Commission

314. (1) The Commission shall meet as often as may be necessary for the discharge of its functions.
- (2) The Chairperson shall preside at all meetings of the Commission. In the absence of the Chairman from any meeting of the Commission, the members present shall elect a Chairperson for that meeting, from among themselves.
- (3) The quorum for any meeting of the Commission shall be three.

- (4) Decisions of the Commission shall be by the majority vote of the members present and voting at the meeting at which the decision is taken, and in the event of an equality of votes, the Chairperson or member presiding at the meeting shall have a casting vote.
- (5) Subject to the preceding provisions of this Article, the Commission may determine the procedure with regard to its meetings and the transaction of business at such meetings.
- (6) The Commission shall have the power to act notwithstanding any vacancy in the membership of the Commission, and no act, proceeding or decision of such Commission shall be invalid or deemed to be invalid, by reason only of such vacancy or defect in the appointment of a member.

### **Staff of the Commission**

315. (1) The President shall appoint a Secretary-General for the Commission. The Commission shall appoint such other officers as it may consider necessary for the proper discharge of its functions, on such terms and conditions as may be determined by such Commission.
- (2) All members and officers of the Commission shall be deemed to be public servants within the meaning, and for the purposes of Chapter IX of the Penal Code (Chapter 19).
- (3) No suit, prosecution or other proceeding shall lie against any member or officer of the Commission for any act or thing which in good faith is done or purported to be done by him in the performance of his duties or the discharge of his functions, under the Constitution.

### **Expenses of the National Procurement Oversight Commission to be charged on the Consolidated Fund**

316. The expenses of the Commission shall be charged on the Consolidated Fund.

### **Powers and Functions of the Commission**

317. (1) The Commission shall subject to any law formulate or adopt and approve where formulated and submitted by any Government institution fair, equitable, transparent, competitive and cost effective procedures and guidelines, for the procurement of goods and services, works, consultancy services, information systems and investments by Government institutions, which shall include –
  - (a) procedures for the preparation, approval and monitoring of procurement plans of government institutions.
  - (b) appointment of Procurement Committees and Bid Evaluation Committees.

- (2) The Commission may make rules for the following:
- (a) to receive complaints against any procurement or any matter connected with any procurement;
  - (b) to provide for decisions of Bid Evaluation Committees, and Procurement Committees to be published and made known to the public and to respective bidders, prior to the award of the tenders;
  - (c) to provide for appeals from any decision of the Procurement Committee or Bid Evaluation Committee, or against the terms and conditions formulated by any Procurement Agency to the Commission;
  - (d) to provide for procedures with regard to the lodging and hearing of appeals against any decision of the Procurement Committee or Bid Evaluation Committee, or against the terms and conditions formulated by any Procurement Agency to the Commission;
  - (e) to provide for the making of interim and final orders by the Commission;
  - (f) to provide for appropriate measures to ensure that procurement procedure and appeal proceedings are carried out within the prescribed time period.

### **Powers of the Commission**

318. (1) The Commission shall have the power –
- (i) to monitor every government institution for the purpose of ascertaining, –
    - (a) whether all procurement of goods and services, works, consultancy services information systems and investments by Government institutions are based on duly approved procurement plans;
    - (b) whether terms and conditions relating to every procurement including the formulation of specifications for purchase of goods and services, works, consultancy services information systems and investments are in the interest of the relevant Government institution and are reasonable and fair;
    - (c) whether all qualified bidders for the provision of goods and services, works, consultancy services, information systems and investments relating to procurements by a government institution are afforded an equal opportunity to participate in the bidding process for procurement of such goods and services, works, consultancy services, information systems and investment;
    - (d) whether the procedures followed in the selection of contractors, supplies or investors and the award of contracts for the procurement of goods and services, works, consultancy services, information systems and investments relating to a Government institution is fair and transparent;

- (e) whether members of Procurement Committees and Bid Evaluation Committees relating to procurements appointed by government institution are suitably qualified; and
  - (f) whether the decisions, recommendations and awards made by such committees have been just and equitable and according to law;
  - (ii) to give such directions both interim and final as may be necessary in the event the procurement process is being conducted in violation of the provisions of the Constitution or any law,
  - (iii) to issue any order as and when necessary, restraining any Government institution from proceeding with any procurement, if the Government institution has wilfully violated any direction or failed to comply with the law or to prescribed guideline or procedure, and may give any further direction to forthwith comply with such law, procedures and guidelines,
  - (iv) to investigate decisions made and procedures adopted relating to procurements by Government institutions made in violation of the law and prescribed procedures and guidelines, and to report the officers responsible for such procurements to the appropriate authority for necessary action.
  - (v) to require by notice in writing, any person to –
    - a) present before the Commission, to be questioned by the Commission;
    - b) produce to the Commission, any document or thing in the possession or control of that person and specified in such notice, in relation to any procurement by a Government institution.
- (2) Every person who –
- (a) fails, without reasonable cause to appear before the Commission when required to do so by a notice sent to him under sub-paragraph (v) of paragraph (1);
  - (b) appears before the Commission in compliance with such a notice, but refuses without reasonable cause, to answer any questions put to him by the Commission; or
  - (c) fails or refuses, without reasonable cause, to produce any document or thing which he was required to produce by a notice sent to him under sub-paragraph (v) of paragraph (1),
- commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.
- (3) Every High Court of Sri Lanka shall have jurisdiction to hear and determine any matter referred to in paragraph (2).



### **Duties of Government Institution**

319. (1) No Government institution shall engage in any procurement without complying with the provisions of this Chapter or the procedures and guidelines formulated under the provisions of this Chapter or any law.
- (2) Every Government institution shall submit to the Commission within the time period prescribed by the Commission,
- (a) the Annual Procurement Plan of the Government institution for the succeeding year; and procurements made by such Government Institution;
  - (b) all notices inviting bids published by such Government institution;
  - (c) the names of the members of Procurement Committees and Bid Evaluation Committees and their qualifications appointed for the evaluation of each procurement;
  - (d) the number of bids received by the Government institution in respect of each procurement initiated by the Government institution;
  - (e) decisions of the Bid Evaluation Committees or the Procurement Committees constituted for the evaluation of bids.

### **Procurement Appeals Tribunals**

320. There shall be a procurement Appeals tribunal for the hearing and disposal of appeals in relation to procurements. The Commission may constitute such number of Tribunals as maybe necessary.

### **Appeals**

321. (1) Any person aggrieved by,
- (a) the terms and conditions including specifications relating to any procurement or
  - (b) any decision of the Bid Evaluation Committee or Procurement Committee, may appeal to the Commission within the prescribed time period, specified by rules after the pronouncement of the decision of the Procurement Committee.
- (2) The Commission may hear the Appeal or refer the Appeal to be heard by the Procurement Appeals Tribunal constituted under Article 320.
- (3) Every such Appeal shall be heard either by way of oral or written submissions by the Commission or the Procurement Appeals Tribunals:
- Provided that, it shall be lawful for the Commission or such Tribunal as the case may be to admit and receive evidence as it may seem fit.

- (4) Every decision of the Commission or Tribunal shall be duly notified to the respective parties to the Appeal.
- (5) The Commission or the Tribunal shall give reason for their decisions.
- (6) All decisions made in respect of any appeal shall be subject to Articles 268, 290 and 291.

### **Compliance with Procurement Guidelines and Directions**

322. (1) If any Government institution due to any unforeseen circumstance is unable to comply with any provision of this Chapter or procedure or guideline formulated under this Chapter or any law or comply with any direction of the Commission, shall forthwith inform such inability to the Commission and seek an exemption or any further directions with regard to compliance with such procedure, guideline or directions and it shall be lawful for the Commission to grant such exemption or direction in exceptional circumstances for reasons recorded.

In this paragraph “exceptional circumstance” includes a situation where the public or the Government institution will be greatly prejudiced if such exemption is not granted or further direction is not made.

- (2) Every principal officer acting in willful violation of the provisions of this Chapter or procedure and guidelines referred to in paragraph (1) or any law or direction without the approval of the Commission commits an offence and upon conviction be liable to a fine not exceeding one million rupees or to imprisonment for a term not exceeding fifteen years or both such fine and imprisonment.

### **A report to be lodge by the National Procurement Oversight Commission**

323. It shall be the duty of the Commission to lodge a report with the Appropriate Authority with regard to any such principal officer of any governmental institution and the Appropriate Authority shall institute criminal proceedings against such officer in a competent Court:

Provided that, that the Commission shall not lodge any report against any officer who has acted bona fide and in any event, unless such officer had been given an opportunity to comply with any procedure or guidelines or with any directions.

### **Rules**

324. The Commission may make rules to give effect to the provisions of this Chapter and shall be published and approved by the National State Assembly.

## Interpretation

325. In this Chapter,

- (i) “**Appropriate authority**” shall mean the Attorney General or any other body established by law.
- (ii) “**Government institution**” includes the Government of Sri Lanka Cabinet of Ministers a Ministry, a Government department, a public corporation, Provincial Council or a Local Authority.
- (iii) “**Principal officer**” shall include a Secretary to any Ministry, Head of Department, Head or member of a public corporation, Chairman or member of any Procurement Committee and Bid Evaluation Committee of any Government institution.

## CHAPTER XXVIII

**TRANSITIONAL PROVISIONS****First President**

326. Notwithstanding anything to the contrary in any other provision of the Constitution, the person holding the office of President immediately before the commencement of the Constitution shall be the first President under the Constitution and shall be deemed for all purposes to have been elected as the President of the Republic, and shall, hold office for a period of five years from 5<sup>th</sup> November 2019 and shall be entitled to exercise, perform and discharge all the powers, duties and functions conferred or imposed on, or assigned to, the President by the Constitution or otherwise. The President shall as soon as possible thereafter but not later than three months of the commencement of the Constitution at a sitting of the National State Assembly make and subscribe the affirmation or take and subscribe the oath set out in the Fourth Schedule.

**First National State Assembly**

327. Notwithstanding anything to the contrary in any other provision of the Constitution—

- (a) the first National State Assembly shall consist, of two hundred and twenty-five members and subject to the succeeding provisions of this Article, all persons who immediately before the commencement of the Constitution were members of the Parliament shall be deemed to have been elected as Members of the first National State Assembly upon such Member having subscribed the affirmation or taken and subscribed the oath set out in the Fourth Schedule before the Speaker;
- (b) if the election, as a Member of Parliament, of a person deemed to have been elected to the first National State Assembly is declared void under the law for the time being in force and no other person is determined to have been duly returned or elected, the seat of such Member shall be vacant. Such seat shall be filled in accordance with paragraph (13) Articles 99 and Article 99A of the Constitution that existed at the time such Member had been elected and in accordance with section 64 of the Parliamentary Elections Act No. 1 of 1981;

- (c) if the election as a Member of the Parliament of a person who is deemed to have been elected to the first National State Assembly is declared void or undue and any other person is determined to have been duly returned or elected such other person shall be deemed to have been duly elected as a Member of the first National State Assembly;
- (d) (i) where immediately before the commencement of the Constitution there was a vacancy in the membership of the Parliament or due to the failure of any political party to nominate any candidate as required by the Constitution or by law, such vacancy shall be filled by the Commissioner General of Elections by declaring elected a person included in the List referred to in Article 99A of the Constitution which was in force immediately prior to this Constitution coming into force;
- (ii) where during the duration of the First National State Assembly, a Member ceases, by resignation, expulsion or otherwise, to be a member of the recognised political party to which he belonged after the commencement of the Constitution, the vacancy thus created shall be filled in accordance with the paragraph (13) of Article 99 of Constitution which was in force immediately before the commencement of this Constitution and section 64 of the Parliamentary Elections Act No. 1 of 1981.
- (e) for the purpose of sub-paragraph (i) “relevant nomination paper”, “nomination paper” or “nomination period” and “List” shall be read and construed to mean the relevant “nomination paper”, “nomination paper” “nomination period” and “List” referable to the election of such member as a Member of Parliament immediately prior to such member being deemed to have been elected to the National State Assembly.
- (f) Provisions of Article 184 relating to the General Election shall not come into operation until the dissolution of the First National State Assembly.

### **Continuation of Office of Judges, Public Officers and Others**

328. Every person who immediately before the commencement of the Constitution—
- (a) was a Judge of the Supreme Court, Court of Appeal and High Court of the Republic, District Court, Magistrate’s Court or any other Court of First Instance or,
  - (b) held office in any other Court, tribunal or institution deemed, by virtue of the provisions of paragraph (2) of Article 235 to be a Court, tribunal or institution created and established by the National State Assembly,
  - (c) a public officer,

- (d) held office in any local authority or public Corporation, or
  - (e) held any appointment under the Constitution or any existing law,
- shall continue in such service or hold such office or appointment under the same terms and conditions subject to the provisions of the Constitution.

### **Affirmation or Oath to be taken or made by Public Officers and Others**

329. (1) Every public officer, judicial officer and every other person as is required by the Constitution to make an affirmation or take an oath on entering upon the duties of his office, every holder of an office required under the existing law to take an official oath and every person in the service of every local authority and of every Public Corporation shall make and subscribe the affirmation or take and subscribe the oath set out in the Fourth Schedule. Any such public officer, judicial officer, person or holder of such office failing to make and subscribe such affirmation or take and subscribe such oath after the commencement of the Constitution on or before such date as may be prescribed by the President by Order published shall cease to be in service or hold office.
- (2) The Minister assigned the subject of Public Administration may, in his sole discretion, permit any public officer, judicial officer, person or holder of an office referred to in paragraph (1) of this Article, make the affirmation or to take the oath referred to in that paragraph after the prescribed date if he is satisfied that the failure to take the oath or make the affirmation within the time prescribed was occasioned by illness or some other unavoidable cause. On his making such affirmation or taking such oath, he shall continue in service or hold office as if he had made such affirmation or taken such oath or made such affirmation within the time prescribed under paragraph (1) of this Article.
- (3) The President may by Proclamation prescribe the persons or categories of persons who may administer such affirmation or oath in addition to the persons who are empowered under the existing law to administer affirmation or oath.

### **Powers, Privileges, Immunities and Rights of the Republic**

330. Unless the National State Assembly otherwise provides, the Republic shall continue to possess and exercise all powers, privileges, immunities and rights whatsoever possessed, exercised or exercisable immediately prior to the commencement of the Constitution.

### **Rights, Duties and Obligations of the Republic**

331. Subject to the provisions of the Constitution all rights and all duties or obligations, however arising, of the Government of Sri Lanka and subsisting immediately prior to the commencement of the Constitution shall be the rights, duties and obligations of the Government of the Republic under the Constitution.

### **Past Operations of Law, Previous Acts, Offences and Pending Actions & c.**

332. (1) Unless the National State Assembly otherwise provides, all laws, unwritten laws, written laws other than provincial statutes in force immediately before the commencement of the Constitution, shall, *mutatis mutandis* and except as otherwise expressly provided in the Constitution, continue in force.
- (2) Save as otherwise provided in the Constitution, existing laws, written laws and unwritten laws are not and shall not in any manner be deemed to be provisions of the Constitution.
- (3) Wherever the Constitution provides that any law, written law or unwritten law or any provision of the Constitution shall continue in force until or unless the National State Assembly otherwise provides, any law enacted by the National State Assembly so providing may be passed by a majority of the Member present and voting.
- (4) Whenever the Constitution provides that any provision of any existing written law shall continue in force until or unless the National State Assembly otherwise provides and the existing written law referred to subordinate legislation, the provision that such existing written law shall continue in force until or unless the National State Assembly otherwise provides shall not in any manner be deemed to derogate from the power of the person or body on whom the power to make and when made, to amend, vary, rescind or revoke such subordinate legislation is conferred, to exercise the power so conferred until or unless the National State Assembly otherwise provides.
- (5) Unless the Constitution otherwise provides, the past operation of any law in force prior to the commencement of the Constitution or anything duly done or suffered or any offence committed or any right, liberty, obligation or penalty acquired or incurred under any law in force prior to the commencement of the Constitution shall not in any manner be affected or be deemed to be affected by the Constitution coming into force.
- (6) All actions, prosecutions, proceedings, matters or things, including proceedings of Commissions appointed or established by or under any existing written law, pending or uncompleted on the commencement of the Constitution shall, subject to the provisions of the Constitution and *mutatis mutandis*, be deemed to continue and may be carried on and completed after the commencement of the Constitution.

### Provisions relating to Judiciary

333. (1) Subject to sub paragraph (3) the several High Courts of Provinces established under Chapter XVIIIA of the Constitution which prevailed immediately prior to the enactment of this Constitution, shall be deemed for all purposes to be the Court of Appeal of the Republic having jurisdiction throughout the Republic to be exercised in the several Zones in accordance with the Constitution. Accordingly, subject to the provisions of the Constitution, and of any existing written law, all provisions relating to the Provincial High Courts contained in such law shall, *mutatis mutandis*, be a reference to the Court of Appeal of the Republic;
- (2) Subject to paragraph (3) cases, proceedings or matters, pending in the Provincial High Courts established under Chapter XVIIIA of the Constitution which prevailed immediately prior to the enactment of this Constitution, on the day preceding the commencement of the Constitution shall stand removed to the Court of Appeal of the Republic of Sri Lanka and such Court shall have jurisdiction to take cognizance of, hear and determine or to continue and complete the same and the Judgments and orders of the aforesaid High Courts delivered or made before the commencement of the Constitution shall have the same force and effect as if they had been delivered or made by the Provincial High Court of the Republic of Sri Lanka ;
- (3) Any reference to the High Court established by Article 154P of the Constitution in High Court of Provinces (Special Provisions) Act No. 10 of 1996 shall deemed to be a reference to the High Court of Sri Lanka referred to in Article 243.
- (4) All Attorneys-at-Law admitted and enrolled or deemed to have been admitted and enrolled as Attorneys-at-Law immediately prior to the enactment of this Constitution shall be deemed to have been admitted and enrolled as President's Counsels and Attorneys-at-Law of the Supreme Court created and established by the Constitution;
- (5) After the date fixed by the Minister assigned the subject of Justice, by Order published, no Attorney-at-Law shall be entitled to represent any party to a proceeding or be given the right of audience in any Court, tribunal or other institution until and unless he has made and subscribed the affirmation or taken and subscribed the oath set out in the Fourth Schedule before a Judge of the Supreme Court, Court of Appeal, High Court or any other judicial officer; and it shall be the duty of any such Judge or judicial officer, as the case may be, to forward such affirmation or oath so made and subscribed or taken and subscribed to the Registrar of the Supreme Court who shall cause the same to be



entered in the rolls of such Court. Such entry shall be the only proof that such Attorneys-at-Law have taken and subscribed or made and subscribed such oath or affirmation;

- (6) Sub-paragraph (b) and (c) of paragraph (1) and sub-paragraph (b) of paragraph (2) of Article 239 shall not apply to any judge in office at the commencement of the Constitution;
- (7) If any matter or question arises with regard to any procedure or practice to be followed in any Court in consequence of the coming into operation of the Constitution, not provided for in the Constitution or any written law, the Chief Justice shall have the power to give such directions as he may consider necessary to prevent injustice or as the justice of the case may require and to ensure that the provisions of Chapters XXIII, XXIV and XXV of the Constitution are given full and complete effect;
- (8) Any reference in section 2 of the Special Presidential Commissions of Inquiry;
- (9) (a) Any breach of the privileges of the Parliament functioning immediately prior to the commencement of the Constitution, shall be deemed to be a breach of the privileges of the National State Assembly and accordingly, the National State Assembly and the Supreme Court, shall have the power to take cognizance of and punish any person for such breach of privileges of the National State Assembly;
- (b) Where prior to the commencement of the Constitution, any step required or authorised by the Parliament (Powers and Privileges) Act has been taken in respect of, or in relation to, any act or omission alleged to constitute such a breach of the privileges of the National State Assembly as is referred to in sub-paragraph (a), such step shall be deemed to have been validly taken and any further steps as are required or authorised under such Act, may be taken, in respect of or, in relation to, such alleged breach of the privileges of the National State Assembly, as if the act or omission alleged to constitute such breach of privileges of the National State Assembly had been committed or had occurred after the commencement of the Constitution.

### **Provision relating to Queen’s Counsel and Senior Attorney-at-Law**

- 334. Every reference in any written law to “Senior Attorney-at-Law” or Queen’s Counsel shall, from the date on which this Constitution comes into force, be deemed to include a reference to “President’s Counsel”.

**Application of or Validity of certain Existing Laws and Statutes**

335. All statutes enacted by any Provincial Council prior to the commencement of the Constitution shall be null and void, and be of no force or effect in law
336. (1) The following Acts inclusive of all amendments made thereto are deemed to have been repealed.
- (a) The Provincial Councils Act No. 42 of 1987,
  - (b) The Provincial Councils Election Act No. 2 of 1988,
  - (c) Parliamentary Elections Act No. 1 of 1981,
  - (d) Presidential Elections Act No. 15 of 1981,
  - (e) Elections (Special Provisions) Act No. 35 of 1988,
  - (f) Provincial Councils (Payment of Salaries and Allowances) Act No. 37 of 1988.
  - (g) High Court of the Provinces (Special Provinces) Act No. 19 of 1990
337. The Provincial Council List referred to in Provincial Councils (Consequential Provisions) Act No. 12 of 1989 mean the Provincial Council List referred to in the Schedule to Chapter XXII.
338. Where there is any reference to a Provincial Minister or a Provincial Council in any law, such reference shall be;
- (a) a reference to a Provincial Minister appointed or Provincial Council established under the Constitution as the case may be provided that, the law relates to any subject and to that extent referred to in the Schedule to Chapter XXII.
  - (b) a reference to the Government or National State Assembly or a Cabinet Minister as the case may be if the said law is not in relation to any subject and to that extent referred to in the Schedule to the Chapter XXII.
339. In this Article “Government” shall include a reference to the President, and the Cabinet of Ministers.

## CHAPTER XXIX

## INTERPRETATION

340. Unless the context otherwise requires –

“ancient monuments” “antiquity” and “archaeological heritage” shall have the same meaning as in the Antiquities Ordinance (Chapter 188).

“ancient temples” shall mean any temple that have been in existence or believed to have been in existence for a period not less than hundred years as at the commencement of the Constitution and includes all temporalities of such temples.

“agreements of treaty status” shall include any Agreement or arrangement entered with any other State or international or regional organisation accepted by the community of nations which is not a Treaty and shall include any informal Agreement or Resolution to which Sri Lanka is a party.

“appropriate minister”, unless the context otherwise requires in relation to any matter or thing, means the Minister to whom the subject or function of that matter or thing has been assigned under Article 95.

“Buddha Sasana” shall mean and include.

“The Buddha, The Nine Super-Mundane (Navalokuttara) Dhamma, The Sanga, The Sacred Tooth Relic and other Relics, The Historical Buddha Temples (Viharas) with their ancillary structures, Viharas, Forest Hermitages (Aranya Senasana) and Meditation Centres, Stupas, Images and Image Houses, Relic Chambers, Ancient Buddhist Places of worship, Buddhist Antiquities, Buddhist Cultural Heritage, Dhamma Books, Buddhist records and Documents and Buddhist Libraries, Designated Buildings for Performance of Vinya acts by the Sanga (Uposathagahara), Buddhist Literature, Buddhist Symbols, Buddhist Culture and Civilisation, Buddhist Education, Buddhist festivals and Processions (Peraharas), Buddhist Deities, Nuns and Nunneries, the Laity who had taken refuge in the Triple Gem, Buddhist Customs and Traditions, Buddhist Principles and Values and all that are required for its perpetuity”.

“civic disability” shall have the same meaning as in the Special Presidential Commissions of Inquiry Law, No. 7 of 1978, as on the commencement of the Constitution.

“citizen” shall mean a citizen of Sri Lanka.

“citizen by descent” shall mean a person born in Sri Lanka on or after the appointed date within the meaning of the Citizenship Act and at the time of his birth, either

of his parents is or was a citizen domiciled in Sri Lanka provided that, a person born in Sri Lanka shall include a person born to a mother who is temporarily a resident outside Sri Lanka at the time of the birth of such person.

“child” shall mean a person who is below the age of eighteen.

“commencement of the constitution” means the date appointed by the Proclamation made under Article 342.

“conclusion of the General Election” means the time at which Members of the National State Assembly for all the electoral districts in respect of which a poll has been taken upon the dissolution of the National State Assembly have been declared, elected by the respective returning officers, or when on the results declared more than half the total membership of the National State Assembly consists of Members belonging to any single recognised political party whichever event occurs earlier.

“existing law” and “existing written law” mean any law and written law, respectively, in force immediately before the commencement of the Constitution which under the Constitution continue in force.

“government school” means a school maintained entirely from State funds.

“General Election” shall mean an election relating to the election of Members to the National State Assembly.

“historical record of ancient origin” shall mean any record of history that originated prior to the 2<sup>nd</sup> day of March 1815.

“judicial officer”, other than in Article 219, 220 and 221, means any person who holds office as –

- (a) a Judge of the Supreme Court or a Judge of the Court of Appeal;
- (b) any Judge of the High Court or any Judge, presiding officer or member of any other Court of First Instance, tribunal or institution created and established for the administration of justice or for the adjudication of any labour or other dispute but does not include a person who performs arbitral functions or a public officer whose principal duty or duties is or are not the performance of functions of a judicial nature.

No Court or tribunal or institution shall have jurisdiction to determine the question whether a person is a judicial officer within the meaning of the Constitution but such question shall be determined by the Judicial Service Commission whose decision thereon shall be final and conclusive.

No act of such person or proceeding held before such person, prior to such determination, shall be, deemed to be invalid by reason of such determination.

“law” means any Act of the National State Assembly and any law enacted by any legislature at any time prior to the commencement of the Constitution and includes an Order in Council.

“law officer” shall mean (other than in Articles 219, 220 and 221) a public officer holding the office of Solicitor General, Senior Additional Solicitor General, Additional Solicitor General, Senior Deputy Solicitor General, Deputy Solicitor General, Senior State Counsel, State Counsel, Assistant State Counsel, Senior State Attorney, State Attorney, Senior Assistant State Attorney, Assistant State Attorney, Junior Assistant State Attorney and a person holding any other office for which the entry qualification is not less than the qualifications required to hold the office of State Counsel of State Attorney.

“local authority” means any Municipal Council, Urban Council or Pradeshiya Saba and includes any Authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such Council.

“officers of the republic” shall mean persons who hold any paid office under the Republic.

“person” shall mean a natural or legal person.

“people” shall mean citizens of Sri Lanka.

“private school” shall mean a school which is not a Government school.

“public corporation” means any corporation, board or other body which was or is established by or under any law and including companies incorporated under the Companies Act with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise.

“public enterprise” shall mean a public corporation engaged in commercial activity.

“public office” shall mean any paid office under the Republic.

“public officer” means a person who holds any paid office under the Republic other than a judicial officer, but does not include –

- (a) the President;
- (b) the Prime Minister;
- (c) the Speaker;
- (d) a Minister;
- (e) a Deputy Minister;

- (f) a Member of the National State Assembly;
- (g) a Member of the Judicial Service Commission;
- (h) a Member of the Public Service Commission;
- (i) a Member of the Human Rights Commission of Sri Lanka;
- (j) a Member of the Delimitation Commission;
- (k) a Member of the National Procurement Oversight Commission;
- (l) Commissioner General of Elections;
- (m) Members of the Finance Commission;
- (n) Members of the National Advisory Council;
- (o) Members of the Public Enterprise Management Commission;
- (p) Member of the High Posts Committee;
- (q) the Secretary-General of the National State Assembly;
- (r) a Member of the staff of the Secretary-General of the National State Assembly;
- (s) the Auditor-General;
- (t) Attorney-General.

“published” mean publication in the Government Gazette and the publication of the Gazette on the internet.

“provincial minister” with reference to any Provincial Council means a Minister appointed under Article 227.

“public institution” means a Ministry, department or any institution of the Government including a public corporation, Provincial Council or Local Authority.

“recognised political party” means unless the National State Assembly otherwise provides, every political party which is treated as a recognised political party under the Ceylon (National State Assembly Elections) Order in Council, 1946 or under Parliament Elections Act No. 1 of 1981.

“republic” shall mean the Republic of Sri Lanka referred to in Article 1 and shall include any reference to “Ceylon” in the Constitution or in any written law.

“senior citizen” shall mean a citizen who is 70 years or above.

“school going age” means such age between a prescribed maximum and minimum age at which a child is liable to attend school.

“school” shall mean any Government school or a private school engaged in primary and secondary education according to curricula approved by the Government and regulated by the Government.

“state” shall mean the Republic of Sri Lanka and shall include all organs of Government and agencies and functionaries of the Government.

“superior court” shall mean the Supreme Court of the Court of Appeal.

“territorial waters” includes the territorial sea and the historic waters of Sri Lanka.

“territorial Sea” means the area declared to be the territorial waters of Sri Lanka by the proclamation made under the Maritime Zones Law No. 22 of 1976.

“territory” shall include natural or reclaimed land mass whether or not attached to any part of the Republic as set out in paragraph (1) of Article 2.

“territory acquired by the republic” shall mean any territory the Government of the Republic of Sri Lanka recognises as part of the territory of the Republic of Sri Lanka which did not form a part of the territory of Sri Lanka at the commencement of the Constitution.

“temple” shall have the same meaning in the Buddhist Temporalities Ordinance.

“Tripitaka” means the discourses of the Buddha as recorded on Ola Leaf at the Aluvihara Temple in Matale in the first century BC during the reign of King Walagamba and reprinted with a Sinhala translation by the Lanka Buddha Mandalaya in 1956.

“university” includes any higher education institute within the meaning of the Universities Act No. 16 of 1978.

“Viharadhipathi” means a *Viharadhipathi* within the meaning of Buddhist Temporalities Ordinance (Chapter 318) and recognised by any Nikaya or Chapter referred to in paragraph (2) of Article 13.

“written law” means any law and subordinate legislation including statutes, Proclamations, rules, by-laws and regulations made or issued by anybody or person having power or authority under any law to make or issue the same.

“youth” shall mean a citizen who is between the age of eighteen and thirty five.

**CHAPTER XXX**

**REPEAL**

341. The Constitution adopted and enacted on the 31<sup>st</sup> day of August 1978 is hereby repealed.



CHAPTER XXXI

**PROMULGATION OF THE CONSTITUTION**

**Promulgation of the Constitution**

342. (1) The provisions of Chapter I to Chapter XXX shall come into force on the day appointed by the President by Proclamation.
- (2) In the event of any inconsistency between the Sinhala and Tamil text of this Constitution, the Sinhala text shall prevail.
- (3) The National State Assembly shall meet on the day so appointed and the President may, in such Proclamation, specify the time at which the National State Assembly shall so meet.

**Devo vassatu kalena  
sassa sampatti hetu ca  
phito bhavatu loko ca  
raja bhavatu dhammiko**

*(May the rain be timely  
May the crops be bountiful,  
May the people be happy,  
May the ruler be righteous)*

*SIDDHIRASTU*

## FIRST SCHEDULE

### [Paragraph (1) of Article 2 and Paragraph (1) of Article 221]

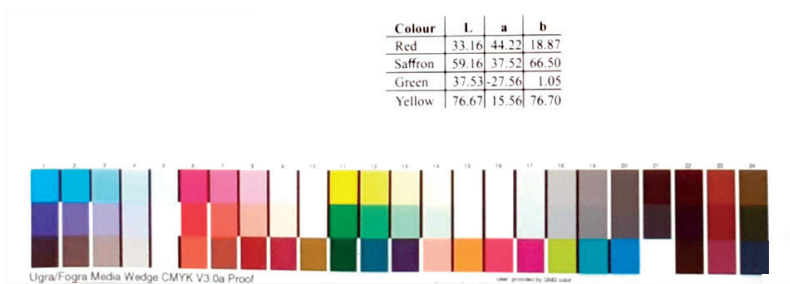
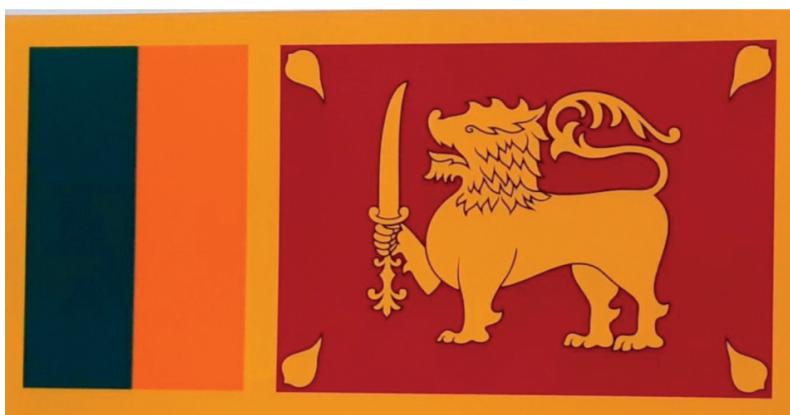
#### Names of Administrative Districts and Provinces

Name of District	Name of Province
1. Colombo	Western
2. Gampaha	
3. Kalutara	
4. Kandy	Central
5. Matale	
6. Nuwara – Eliya	
7. Galle	Southern
8. Matara	
9. Hambantota	
10. Jaffna	Northern
11. Kilinochchi	
12. Mannar	
13. Vavuniya	
14. Mullaitivu	
15. Batticaloa	Eastern
16. Ampara	
17. Trincomalee	
18. Kurunegala	North Western
19. Puttalam	
20. Anuradhapura	North - Central
21. Polonnaruwa	
22. Badulla	Uva Province
23. Moneragala	
24. Ratnapura	Sabaragamuwa
25. Kegalle	

## SECOND SCHEDULE

### ARTICLE 7

#### *Part I*

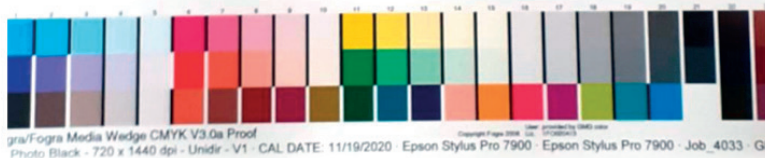


## THE NATIONAL FLAG

*Part II*



Colour	L	a	b
Red	46	56	40
Blue	35	-1	-47
Yellow	81	7	75
Black	16	0	0



**NATIONAL EMBLEM**

### THIRD SCHEDULE

#### ARTICLE 8 - Words and Music of the National Anthem

*LONG MARCH*  
*W. G. S. S. (1952)*

සම මගින් සියලුම ජාතීන්ගේ සතුට සහ සුඛය සාක්ෂි කරමින්  
Witnessing the happiness and well-being of all races together

The image displays a handwritten musical score on ten staves. The notation includes various musical symbols such as notes, rests, and bar lines. Below the notes, there are lines of lyrics written in Devanagari script. The score is organized into several systems, with the final system labeled 'CODA (S: 107) (S: 108)'. The handwriting is clear and legible, typical of a professional manuscript.

*LOUIS ARMAND*  
March (2-100)





## **FOURTH SCHEDULE**

### **PART I**

#### **OATH OR AFFIRMATION REFERRED TO IN ARTICLE 84, 107, 122, 157, 238, 321, 322**

“I ..... do solemnly declare and affirm ..... that I will faithfully perform, the duties and wear discharge the functions of the office of ..... in accordance with the Constitution of the Democratic Socialist Republic of Sri Lanka and the law, and that I will be faithful and bear true allegiance to the Republic of Sri Lanka and that I will to the best of my ability uphold and defend the Constitution of the Republic of Sri Lanka and that, I will not, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka.

### **PART II**

#### **OATH OR AFFIRMATION REFERRED TO IN ARTICLE 196 AND 222**

“I ..... do solemnly declare and affirm ..... that I will be faithful and bear true allegiance to swear the Republic of Sri Lanka and that I will to the best of my ability uphold and defend the Constitution of the Republic of Sri Lanka and that, I will not, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka.



