

**Gazetted 20th Amendment to the Constitution:
Some Salient Features**

Situation Update

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The government of Sri Lanka gazetted its proposed 20th amendment to the constitution on 2nd September 2020. It nullifies the major democratic gains achieved including checks and balances (i.e. independent commissions) to the executive presidency through the 19th amendment to the constitution. The 19th amendment established a Constitutional Council as the mechanism to ensure the independence of such institutions.

Some of the salient features of the proposed 20th amendment are given below.

1. Constitutional Council (CC) will be replaced by a Parliamentary Council (PC). The Parliamentary Council will be consists of (a) the Prime Minister; (b) the Speaker;(c) the Leader of the Opposition; (d) a nominee of the Prime Minister, who shall be a Member of Parliament; and (e) a nominee of the Leader of the Opposition, who shall be a Member of Parliament. (Article 41A) There are no representation of the civil society in the PCI while CC had three civil society members.

2. Independent commissions introduced by the 19th amendment will be abolished. According to the gazetted 20th amendment “The Chairmen and members of [such] Commissions shall be appointed by the President. In making such appointments, the President shall seek the observations of a Parliamentary Council.” (Article 41A)

The Article 41A of the gazetted 20th amendment enables the president to appoint the following commissions and persons, previously appointed by the CC:

1. The Election Commission. 2. The Public Service Commission. 3. The National Police Commission. 4. The Human Rights Commission of Sri Lanka. 5. The Commission to Investigate Allegations of Bribery or Corruption. 6. The Finance Commission. 7. The Delimitation Commission.

1. The Chief Justice and the Judges of the Supreme Court. 2. The President and Judges of the Court of Appeal. 3. The Members of the Judicial Service Commission, other than the Chairman.

4. The Attorney-General. 5. The Auditor-General. 6. The Parliamentary Commissioner for Administration (Ombudsman). 7. The Secretary-General of Parliament.

3. There is no mention of the Right to Information Commission, which was established by the 19th amendment, in gazetted the 20th amendment. Previously members of the RTI commission were appointed by the CC. Once the CC is abolished president will be the sole authority to appoint the members of the RTI commission and thus will deprive its independence.

4. Two important commissions, established by the 19th amendment have been abolished: Audit Service Commission, National Procurement Commission. Both commissions are important institutions in combatting corruption. (Article 57.4)

5. President will enjoy complete immunity. No Fundamental Rights petition cannot be filed against the President. Article 35 of the gazetted amendment says that “ 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.”

6. The president is empowered to dissolve the parliament at his will after one year of a new parliament is elected. (Article 70) This means that the president can remove the Prime Minister and the cabinet at his will.

7. Limitations imposed by the number of the cabinet (30) and deputy ministers (45) by the previous 19th amendment has been dropped. President is empowered to appoint any number of ministers.

8. The gazetted 20th amendment has reintroduced the “Urgent Bills” which was abolished by the 19th amendment. (Article 122) In the case of a Bill which is, in the view of the Cabinet of Ministers, urgent in the national interest the President can refer it to the Supreme Court requesting its determination within 24 -72 hours. (Article 122)Such a Bill will not be gazetted and thereby derive people's right to know and public discourse and time to challenge in a court of law. Urgent Bills, a concept which was introduced by the 1972 constitution had been misused by the successive government to pass various Bills keeping people in the dark.

9. The time frame for gazetted Bills to be challenged in the courts has been reduced from the previous two weeks to one. (Article15.1)

10. Dual citizens are no longer disqualified from contesting in elections under the proposed 20th amendment. Now dual citizen PM’s younger brother, Basil Rajapaksa, a Sri Lankan-American citizen could be appointed as a member of the parliament and a minister.