

## 18<sup>th</sup> Amendment to the Constitution

The table below in summary form compares the existing provisions of the Constitution and the proposed amendments.

Present Provision	Proposed Amendment	What it means
<i>Removal of the two term limit</i>		
<p>Article 31 (2)</p> <p><u>“No person who has been twice elected to the office of President by the People shall be qualified thereafter to be elected to such office by the People.”</u></p>	<p>Repealing Article 31(2)</p>	<p>The danger here is that <b>this removal of two term limit</b> could lead to <b>authoritarianism</b> mainly due to the tendency of the incumbent to be re-elected consecutively which would consequentially lead to the loss of democracy in Sri Lanka.</p>
<i>Mandatory attendance at Parliament by President</i>		
<p>Article 32 (3)</p> <p>The President shall, by virtue of his office, <u>have the right at any time to attend</u>, address and send messages to Parliament. 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 Parliament and shall not be liable for any breach of the privileges of Parliament, or of its Members.</p>	<p>Repealing Article 32(3) and substituting the phrase,</p> <p><u>“the President shall by virtue of his office attend Parliament once in every three months.</u> In the discharge of this function the President shall be entitled to all the privileges, immunities and powers of a member of Parliament, other than the entitlement to vote, and shall not be liable for any breach of the privileges of Parliament or of its members.”</p> <p>And the immediate insertion of the following paragraph, “The President shall by</p>	<ul style="list-style-type: none"> <li>• The President attending in Parliament in a periodical manner would further increase his powers, so as to <b>enable him to interfere with the will of the elected representatives of the people in the legislature.</b></li> <li>• <b>Undermines the Separation of Powers</b> (Separation of Powers requires the three branches of government to be kept independent of</li> </ul>

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	virtue of his office, also have the right to address and send messages to Parliament.”	<p>one another to avoid abuse of power).</p> <ul style="list-style-type: none"> <li>• The Parliament would lose the power to act as a check on the office of the executive presidency.</li> <li>• <b>The exact rationale behind this particular provision is questionable.</b></li> <li>• This enables the Executive to <b>manipulate the Parliamentary process</b></li> </ul>
<i>Replacing the Constitutional Council with a Parliamentary Council</i>		
<p>Article 41A (the 17<sup>th</sup> Amendment)</p> <p>Establishes the Constitutional Council</p> <ul style="list-style-type: none"> <li>• Composition of the Council</li> </ul> <ol style="list-style-type: none"> <li>1. The Prime Minister</li> <li>2. The Speaker</li> <li>3. The Leader of the Opposition in Parliament</li> <li>4. One person appointed by the President</li> <li>5. 5 persons appointed by the President, on the nomination of both the Prime Minister and the Leader of the Opposition</li> <li>6. One person nominated by the agreement of the majority of the Members of Parliament belonging</li> </ol>	<p>Repealing Articles 41A to 41H</p> <p>New Article 41A : creates a <b>Parliamentary Council</b></p> <ul style="list-style-type: none"> <li>• Composition of the Council</li> </ul> <ol style="list-style-type: none"> <li>1. The Prime Minister</li> <li>2. The Speaker</li> <li>3. The Leader of the Opposition</li> <li>4. A nominee of the Prime Minister, who shall be a member of the Parliament</li> <li>5. A nominee of the Leader of the Opposition, who shall be a Member of Parliament.</li> </ol> <p>The persons appointed in terms (4) and (5) shall be nominated in such a manner that would ensure that the nominees would</p>	<ul style="list-style-type: none"> <li>• <b>All members of the Parliamentary council must be Members of Parliament</b></li> <li>• Therefore, the Parliamentary Council will be constrained by the demands of the electorate and their party. Their independence and integrity will be undermined.</li> <li>• In contrast the Constitutional Council had more flexibility in terms of the variety of persons to be considered as members of the Council.</li> <li>• The Parliamentary Council is <b>inadequate in representing</b></li> </ul>

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to political parties or independent groups to which the Prime Minister and the Leader of the Opposition belongs and appointed by the President.	belong to communities which are communities other than those to which the persons specified in (1),(2),(3) above belong.	<b>diverse opinions.</b>
<i>President retains power to make key government appointments without any regard to the observations of Parliamentary Council</i>		
<p>Article 41B(1)</p> <p>“No person shall be appointed by the President as the Chairman or a member of any of the Commissions, <u>except on a recommendation of the Council</u>”.</p> <p>The Commissions are as follows:</p> <ol style="list-style-type: none"> <li>1. The Election Commission</li> <li>2. The Public Service Commission</li> <li>3. The National Police Commission</li> <li>4. The Human Rights Commission</li> <li>5. The Permanent Commission to Investigate Allegations of Bribery and Corruption</li> <li>6. The Finance Commission</li> <li>7. The Delimitation Commission</li> </ol> <p>Article 41C(1)</p> <p>“No person shall be appointed by the President to any of the Offices (mentioned below)..... <u>,unless such appointment has been approved by the</u></p>	<p>Proposed Amendment</p> <p>Article 41A(1)</p> <ul style="list-style-type: none"> <li>• The Chairman and members of the Commissions and the Specified offices (as mentioned in column no.1)</li> </ul> <p>Shall be appointed by the President. In making such appointments the President <u>shall seek the observations</u> of a Parliamentary Council.</p> <ul style="list-style-type: none"> <li>• Article 41A(6) “When the President seeks observations of the Parliamentary Council.... the observations must be communicated within one week. If the council fails to communicate its observations within one week then the President shall proceed to make the appointments.”</li> </ul>	<ul style="list-style-type: none"> <li>• The Constitutional Council had the power to make <b>recommendations</b> but the Parliamentary Council only has the power to make <b>observations</b></li> <li>• There is a stark contrast between the president “<b>making appointment on the recommendation of the Constitutional Council</b>” and the President “<b>seeking observations of a Parliamentary Council</b>” in order to make appointments.</li> </ul> <p>Therefore, the <b>Parliamentary Council is much weaker</b> than the Constitutional Council.</p> <ul style="list-style-type: none"> <li>• The Amendment <b>allows the President to ignore the observations</b> of the Parliamentary Council and make appointments to key</li> </ul>

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<p><u>Council upon a recommendation made to the Council by the President.”</u></p> <ul style="list-style-type: none"> <li>• the Chief Justice and the Judges of the Supreme Court</li> <li>• The President and the Judges of the Court of Appeal</li> <li>• The members of the Judicial Service Commission other than the Chairman</li> <li>• The Attorney General</li> <li>• The Auditor General</li> <li>• The Parliamentary Commissioner for Administration (Ombudsman)</li> <li>• The Secretary General of Parliament</li> </ul>		<p>Government posts as he pleases.</p>
<p><i>Public Service Commission appointments to be made solely at the discretion of the President</i></p>		
<p>Article 54(1)</p> <p>The members of the Public Service Commission, to be <u>“appointed by the President on the recommendation of the Constitutional Council.”</u></p> <p>And</p> <p><u>“The President on the recommendation of the Constitutional Council shall appoint one member as its</u></p>	<p>The Amendment proposes that Article 54(1) should be amended to allow the members of the Public Service Commission, to be <u>“appointed by the President and “The President shall appoint one member as its Chairman.”</u></p> <p>(Same approach applies to removals as well)</p>	<ul style="list-style-type: none"> <li>• Previously appointments to the Public Service Commission had to be made on the recommendation of the Constitutional Council. The proposed amendments allow the President to make the appointments solely at his discretion.</li> <li>• The <b>Parliamentary</b></li> </ul>

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<p><u>Chairman.</u>"</p> <p>(Same approach applies to removals as well )</p>		<p><b>Council has no power</b> to make any observation with regards to the appointments.</p> <ul style="list-style-type: none"> <li>• It would <b>give unfettered power to the President</b> to make appointments to the Public Service Commission. It would <b>further undermine the independence</b> of the Public Service Commission.</li> </ul>
<p><i>Cabinet to have more power over the public service</i></p>		
<p>Article 55</p> <p>(1) The <u>appointment, promotion, transfer, disciplinary control and dismissal of public officers</u> shall be vested in the Public Service Commission.</p> <p>(2) Notwithstanding the provisions of the paragraph above, the <u>appointment, promotion, transfer, disciplinary control, and dismissal of all Heads of Departments</u> shall vest in the Cabinet of Ministers who shall exercise such <u>powers after ascertaining the views of the Commission.</u></p>	<p>Repealing Article 55, the substitution is as follows,</p> <ol style="list-style-type: none"> <li>1. The <u>Cabinet of Ministers</u> shall provide for and <u>determine all matters of policy relating to public officers</u>, including policy relating to appointments, promotion, transfer, disciplinary control and dismissal.</li> <li>2. The <u>appointment, promotion, transfer, disciplinary control and dismissal of all Heads of Departments</u> shall, <u>vest in the Cabinet of Ministers.</u></li> <li>3. Subject to the provisions of the Constitution, the appointment,</li> </ol>	<ul style="list-style-type: none"> <li>• <b>Cabinet is allowed to determine all matters of policy relating to public officers</b></li> <li>• <b>Cabinet would not need to “ascertain the views of the Public Service Commission” to deal with the Heads of Departments.</b></li> <li>• <b>This undermines the independence of the Public Service Commission.</b></li> </ul>

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	<p>promotion, transfer, disciplinary control and dismissal of public officers shall be vested in the Public Service Commission.</p>	
<i>Restricting the role of the Election Commission</i>		
<p>Article 104B (4)</p> <p>(4)(a) The Commission shall have the power during the period of an election, to prohibit the use of any movable or immovable property</p>	<p>Inserting a new paragraph Article 104B(4a)</p> <p>“(4a) For the avoidance of doubt it is stated that <u>any guideline issued by the Commission during the period commencing with the making of an Order for holding of an election or the making of a Proclamation requiring the conduct of a Referendum</u> as the case maybe, shall</p> <p>a) <u>be limited to matters which are directly connected with the holding of the respective election or the conduct of a respective Referendum</u> as the case maybe and</p> <p>b) <u>not be connected directly with any matter relating to the public service or any matter within the ambit of administration of the Public Service Commission or the Judicial Service Commission</u>, as the case may be</p>	<ul style="list-style-type: none"> <li>• Reduces the power of the Election Commission by imposing limitations on its jurisdiction.</li> <li>• Specifically the Election Commission shall no longer have the power to deal with the following subject matters: all public property. Therefore, <b>the Election Commission will no longer have the power to issue directions to prevent political parties from using state resources</b> to advance their campaigns during elections.</li> <li>• This <b>undermines the future of free and fair elections</b> in Sri Lanka.</li> <li>• During elections both public and private media will be under a</li> </ul>

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<p>custody or under whose control such property is for the time being, to comply with and give effect to such direction.</p> <p>(5)(a) The Commission 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 Commission may consider appropriate to any broadcasting or telecasting operator or any proprietor or publisher of a newspaper as the case may be, as the Commission may consider necessary to ensure a free and fair election.</p> <p>(b) It shall be the duty of the Chairman of the Sri Lanka Broadcasting Corporation and the Chairman of the Sri Lanka Rupavahini Corporation, to take all necessary steps to ensure compliance with any guidelines as are issued to them under sub-paragraph (a).</p> <p>(c) Where the Sri Lanka</p>	<p>appointed under the Constitution”</p> <p>2) and in paragraph (5), by the repeal of sub-paragraphs (b),(c) and (d) thereof and the substitution therefore of the following paragraph,</p> <p>“(b) It shall be <u>the duty of any broadcasting or telecasting operator or any proprietor or publisher of a newspaper</u> as the case maybe, to <u>take all necessary steps to ensure compliance with any guidelines</u> as are issued to them under paragraph (a)”</p>	<p>duty to comply with guidelines issued by the Election Commission.</p> <ul style="list-style-type: none"> <li>• Previously only the state media had a duty to comply with direction issued by the Election Commission.</li> <li>• This will <b>undermine the free flow of information</b>, during election time. It will also <b>allow the ruling party to manipulate all media</b> during election time.</li> <li>• It is important to note that under the proposed new Parliamentary Council, the members of the Election Commission will be appointed possibly at the sole discretion of the President.</li> </ul>

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<p>Broadcasting Corporation and the Sri Lanka Rupavahini Corporation as the case may be, contravenes any guidelines issued by the Commission under sub-paragraph (a), the Commission may appoint a Competent Authority by name or by office, who shall, with effect from the date of such appointment, take over the management of such Broadcasting Corporation or Rupavahini Corporation as the case may be in respect of all political broadcasts or any other broadcast, which in the opinion of the Commission impinge on the election, until the conclusion of the election and the Sri Lanka Broadcasting Corporation and the Sri Lanka Rupavahini Corporation, shall not, during such period, discharge any function connected with or relating to such management which is taken over by the Competent Authority.</p> <p>(d) Parliament may by</p>		



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(c).		
	<p>Insertion of new Article 155FF</p> <p>Repealing the following sections:</p> <ul style="list-style-type: none"> <li>• Article 155G</li> <li>• Article 155H</li> <li>• Article 155J</li> <li>• Article 155K</li> <li>• Article 155L</li> </ul>	<p>The powers of the National Police Commission will be significantly reduced. Its powers will be limited to investigating complaints from the members of the public against the police force. All other powers will be repealed.</p>