

THE REPORT OF THE BAR ASSOCIATION OF SRI LANKA ON THE TWENTIETH AMENDMENT TO THE CONSTITUTION - A BILL TO AMEND THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA



I. Introduction

- 1.1 The Bar Association of Sri Lanka ("BASL") appointed a special Committee of the BASL to study the "Twentieth Amendment to the Constitution - A Bill to amend the Constitution of the Democratic Socialist Republic of Sri Lanka" published in the Gazette of the Democratic Socialist Republic of Sri Lanka Part II of August 28, 2020 Supplement issued on 02.09.2020 (the "Bill"), and submit views on the same on an urgent basis to be tabled before the Executive Committee of the BASL and the Bar Council.
- 1.2 Mr. Nihal Jayamanne, PC was invited to chair the Committee and the other members of the Committee were Mr. Ikram Mohamed, PC, Mr. M.M. Zuhair, PC, Mr. L.M.K.Arulanandam, PC, Mr. Prasantha Lal De Alwis, PC, Mr. Nihal Jayawardene, PC, Mr. Nalin Ladduwahetty, PC, Mr. Maithri Wickremesinghe, PC, Mr. Uditha Egalahewa, PC, Mr. Anura Meddegoda, PC, Mr. Mohan Weerakoon, PC, Mr. S.T. Jayanaga, PC, Mr. Priyal Wijayaweera, PC, Mr. Maurapada Gunawansa, PC, Mr. Ravi Algama and Mr. Shantha Jayawardena (Convenor).
- 1.3 Mr. Nihal Jayamanne, PC declined the invitation to chair the Committee and also to participate in the Committee. Mr. Ikram Mohamed, PC, Mr. Anura Meddegoda PC and Mr. Ravi Algama also declined to be in the Committee. Mr. Jagath Wickramanayaka PC was subsequently appointed to the Committee.
- 1.4 The Committee unanimously elected at its first meeting held on 14 September 2020, Mr. L.M.K. Arulanandam, PC as the Chairman of the Committee.
- 1.5 The Committee met on 14 September 2020 and 17 September 2020. The members present at each meeting of the Committee are set out in the Annexure 1, to these observations.
- 1.6 The Committee noted that the BASL has been formed *inter alia* to extend co-operation and support towards the maintenance of the honour and independence of the Judiciary of Sri Lanka, consider matters of national importance relating to the Rule of Law and Administration of Justice and if need be to make representations thereon to the Government and/or any other relevant authority and taking any further steps in respect thereof including filing of actions or intervening in actions in Courts of Justice.
- 1.7 The Committee in preparing its observations on the Bill had been mindful of the obligations of BASL in terms of its Constitution and in particular to act in support of maintaining the independence of judiciary of Sri Lanka and to support the rule of law and the administration

of justice. The Committee had proceeded on the basis that it is fundamental to the Rule of Law that the legislature, the executive and the judiciary are coequal branches of Government and that no one branch of Government is superior to the other. The Committee was of the view that the provisions of the Bill that strengthen the Rule of Law and the Administration of Justice should be supported by the BASL and conversely any provisions that weaken the Rule of Law or the Administration of Justice should be opposed by the BASL. There were some dissenting views on specific provisions as well.

- 1.8 This Report in its totality (including the dissenting views) was placed before Special Meetings of the Executive Committee of the Bar Association of Sri Lanka on 23rd September 2020 and 26th September 2020, and placed before a Special Meeting of the Bar Council of the BASL on 26th September 2020.
- 1.9 The Report of the said Committee, subject to certain amendments, was adopted unanimously by the Bar Council of the BASL at the said Special Meeting of the Bar Council held on 26th September 2020.
- 1.10 **The following is the final Report of the BASL, on the “Twentieth Amendment to the Constitution - A Bill to amend the Constitution of the Democratic Socialist Republic of Sri Lanka” as approved by the Bar Council on 26th September 2020 :-**

2. Clause 2 of the Bill

The amendment sought to be introduced by clause 2 clarifies that the ability of a President to call for an election before the expiry of his first term of office is related to the second term. It is an amendment that can be supported.

3. Clause 3 of the Bill – Duties of the President

- 3.1 Clause 3 of the Bill repeals Article 33 of the Constitution. Article 33(1) sought to be repealed by clause 2 imposed inter alia a duty on the President to ensure the Constitution is respected and upheld. It is the view of the BASL that the Rule of Law necessarily requires the President, conferred with wide ranging powers under the Constitution should have the duty to uphold the Constitution. The BASL is of the view that repealing such a provision is detrimental to the Rule of Law. Article 33(1) also imposed three other duties which are equally necessary for a country governed by the Rule of Law.
- 3.2 Clause 3 of the Bill introduced a new Article 33 which retained the provisions of Article 33(2) of the Constitution without the reference to the duties imposed on the President. The BASL is of the view that deleting the word ‘duties’ is not conducive to the Rule of Law.
- 3.3 The BASL is of the view that clause 3 of the Bill should be deleted.



4. **Clause 4 of the Bill – The President’s Responsibility to Parliament**

- 4.1 Clause 4 of the Bill proposes to repeal Article 33A of the Constitution which made the President responsible to the Parliament. We observe that however Article 42 proposed in the Bill under Clause 5 makes the President responsible to Parliament for the due exercise, performance and discharge of his powers, duties and functions.
- 4.2 In the circumstances the BASL is of the view that there is nothing obnoxious in the amendment proposed by Clause 4 subject to our comments relating to Clause 5 of the Bill below.

5. **Clause 5 of the Bill – Immunity of the President**

- 5.1 Clause 5 of the Bill deletes Article 35 of the Constitution and introduces in its place a new Article 35. The BASL is of the view that no person should be above the law. The President in particular being the repository of substantial powers under the Constitution should be held accountable for the exercise of those powers in accordance with the Constitution. No person is above the law and to grant absolute immunity from suit is contrary to all known principles of the Rule of Law.
- 5.2 Moreover, Article 4(d) of the Constitution specifically provides that the sovereignty of the people shall be enjoyed by the people inter alia by the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all organs of the Government. Needless to say the President is not exempted from the obligations to respect, secure and advance fundamental rights. Depriving the citizens of a remedy when the President violates fundamental rights is inimical to the Rule of Law. Nevertheless, we are mindful that certain powers of the President should not be justiciable and a suitable exception should be carved out.
- 5.3 The BASL is of the view that clause 5 of the Bill should be substituted with the following.

“Article 35 of the Constitution is hereby amended by deleting the second proviso to Article 35(1) and substituting the following in place thereof.

‘Provided further that the Supreme Court shall have no jurisdiction to pronounce upon the exercise the power of the President under Articles 33(2)(a), 33(2)(b), 33(2)(d), 33(2)(e) and 33(2)(g).’ ”



6. Clause 6 of the Bill – Parliamentary Council

- 6.1 Clause 6 repeals Chapter VII A of the Constitution relating to the Constitutional Council and introduces a new Chapter VII A consisting of Article 41A, providing for a Parliamentary Council.

(A) Composition of the Parliamentary Council

- 6.2 The BASL is of the view that the composition of the Parliamentary Council proposed by clause 6 of the Bill is more conducive to the Rule of Law than the composition of the Constitutional Council contained in Article 41A of the Constitution. The inclusion in the Constitutional Council of persons who are not elected by the people is contrary to the sovereignty of the people and not conducive to the Rule of Law. The committee noted that non-elected members of the present Constitutional Council is not answerable to an organ of the State.

It was observed by the Bar Council that the proviso therein should facilitate the communal representation of the country.



(B) Appointments to the Public Service Commission, the National Police Commission, the Human Rights Commission, the Commission to Investigate Allegations of Bribery or Corruption and the appointment of the Parliamentary Commissioner for Administration (Ombudsman).

- 6.3 The BASL is of the view that the Public Service Commission, the National Police Commission, the Human Rights Commission, the Commission to Investigate Allegations of Bribery or Corruption and the appointment of the Parliamentary Commissioner for Administration (Ombudsman) are part of the executive and the method of appointment proposed by clause 6 of the Bill cannot be objected. However, in respect of appointments to the Commission to Investigate Allegations of Bribery and Corruption and the Human Rights Commission, the BASL is of the view that considering their respective roles in reviewing / investigating executive acts, the appointments should be made by the President nominating the names of individuals to the Parliamentary Council and the appointment being made by the President subject to the approval of the Parliamentary Council. Further, there was a comment that transitional provisions should be included permitting the present incumbents to continue to serve their respective terms.

(C) Appointments to the Superior Courts and the Judicial Service Commission

- 6.4 The separation of powers on which the Constitution is based and the coequal arms of Government necessarily requires that no one arm of Government should have control over the composition of another arm of Government. Article 4 of the Constitution provides that the judicial power of the people shall be exercised by Parliament through Courts, Tribunals and Institutions created and established or recognized by the Constitution, or created and established by law. In these circumstances, it is imperative that the executive should not have control over the appointment of Judges or the Judicial Service Commission. Indeed, if there is one arm of Government that should have control it is Parliament and not the President.
- 6.5 The BASL is of the view that as regards the appointment of Judges of the Supreme Court and the Court of Appeal the President should not have absolute control over the appointments. The BASL is of the view that the appointment should be made by the President nominating an individual to the Parliamentary Council and the appointment being made by the President subject to the approval of the Parliamentary Council. This ensures that the legislature and the executive provides the necessary checks and balances relating to the appointment to the judiciary and the Judicial Service Commission.



(D) Appointments to the Elections Commission

- 6.6 Needless to say the sovereignty of the people which is inalienable includes the power of franchise. The franchise is exercisable by the people at the election of the President and of the Members of Parliament and at a referendum.
- 6.7 The Elections Commission is fundamental in ensuring that the inalienable sovereignty of the people is not affected in any way. The Elections Commission is responsible for the conduct of the election of the President. It is inimical to the Rule of Law that the President should have control over the appointment of members of the Elections Commission which conducts its own election.
- 6.8 The BASL is of the view that the appointment to the Elections Commission should be made by the President nominating the names of individuals to the Parliamentary Council and the appointment being made by the President subject to the approval of the Parliamentary Council. This ensures that the legislature and the executive provides the necessary checks and balances relating to the appointment to the Elections Commission.

(E) The Appointment of Members of The Finance Commission and the appointment of the Auditor General

- 6.9 The control of public finance by Parliament is fundamental to representative democracy. This is also enshrined in Article 148. The Finance Commission and the Auditor-General are necessary and essential to ensure Parliamentary control of finance. The Government inter alia allocates funds on the recommendation of the Finance Commission. The Auditor-General ensures that the funds are utilised according to law. To grant the President control over these appointments would diminish Parliamentary control over finance. It is inimical to the Rule of Law that the President should have control over the appointment of members of the Finance Commission and the Auditor-General.
- 6.10 The BASL is of the view that the appointment to the Finance Commission and the appointment of the Auditor General should be made by the President nominating the names of individuals to the Parliamentary Council and the appointment being made by the President subject to the approval of the Parliamentary Council. This ensures that the legislature and the executive provides the necessary checks and balances relating to these appointments.



(F) The Appointment of the Secretary-General of Parliament

- 6.11 The Secretary-General of Parliament is the head of the Parliamentary staff. He performs critical functions in support of the legislature. The control of appointment of the Secretary-General by the President is inimical to the Rule of Law. The BASL is of the view that the appointment of the Secretary- General of Parliament should be made by the President nominating the name of individual to the Parliamentary Council and the appointment being made by the President subject to the approval of the Parliamentary Council. This ensures that the legislature and the executive provides the necessary checks and balances relating to this appointment an important appointment in Parliament through which the legislature operates.

(G)The Appointment of the Attorney-General

- 6.12 The Attorney General is conferred wide ranging powers under the Constitution. It is necessary for the Rule of Law that one organ of Government should not have control over the office of the Attorney-General through the appointment of the Attorney General. It is our view that the appointment of the Attorney-General should be made by the President nominating the name of individual to the Parliamentary Council and the appointment being made by the President subject to the approval of the Parliamentary Council. This ensures that the legislature and the executive provides the necessary checks and balances relating to the appointment of the Attorney General.

(H)Proposed Article 41A(10) in Clause 6 of the Bill – Removal of members of commissions and persons holding high office

- 6.13 The BASL is of the view that proposed Article 41A(10) in Clause 6 of the Bill should be amended to read as follows.

“No person appointed to be the Chairman or member of a Commission referred to in Schedule I of this Article or any of the persons appointed to the offices referred to in Part I and Part II of Schedule II of this Article shall be removed, otherwise than in the manner provided for in the Constitution or in any law enacted for such purpose. Where no such provision is made, such person may be removed by the President for *cause stated* with the approval of the Parliamentary Council.”



7. **Clause 7 of the Bill – The Executive**

7.1 Clause 7 of the Bill repeals the entirety of Chapter VIII of the Constitution consisting of Articles 42 to 53 of the Constitution and substitutes new proposed Articles 42 to 53.

7.2 **Proposed Articles 44(1), 45(1) and 46(1)**

Proposed Articles 44(1), 45(1) and 46(1) make a fundamental change relating to the appointment of Members of the Cabinet. While Articles 43(2), 44(1) and 45(1) required the President to appoint Members of the Cabinet, Ministers not in the Cabinet and Deputy Ministers on the advice of the Prime Minister proposed Articles 44(1), 45(1) and 46(1) remove the requirement to act on advice and introduce a requirement of consultation with the Prime Minister where considers such consultation to be necessary. It also enables the President to assign to himself any subject or function and remain in charge of subject or function not assigned to a Minister.

7.3 The executive power of the people is exercised by the President elected by the people. Each organ of Government exercises coequal power. The President as the repository of executive power should be able to exercise executive power as a Minister of the Cabinet and similarly should not be required to act on the advice of the Prime Minister who enjoys that position as a Member of the legislature in selecting which of the members of Parliament should form part of the Executive and members of the Cabinet, non-Cabinet Ministers and Deputy Ministers.

7.4 The BASL is of the view that the amendment introduced by proposed Articles 41(1), 42(2) and 43(2) is not a matter that can be objected to, by the BASL, in view of the imbalance of power of the President and the Prime Minister under the existing provisions. We also note that as the President is elected by the people at presidential election, there is justification for the President being conferred with executive powers.

8. **Clause 8 of the Bill**

8.1. **Amendment proposed to the Article 54(2) of the Constitution.**

The BASL is of the view that the removal of a member of the Public Service Commission by the President should be for cause and accordingly the amendment proposed to Article 54(2) should be amended to read as follows.



“by the substitution, in paragraph (4) of that Article, for the words ‘by the President with the approval of the Parliamentary Council or is convicted’, of the words ‘by the President for cause stated or is convicted’ ”,

9. **Clause 11 of the Bill – Decisions of the Public Service Commission**

- 9.1 According to the existing provisions, a public servant aggrieved by a decision of the Public Service Commission may appeal to the Administrative Appeals Tribunal created under Article 59 of the Constitution or by way of a Fundamental Rights Application under Article 126 of the Constitution.
- 9.2 The Bill does not repeal Article 59 of the Constitution which creates the Administrative Appeals Tribunal. However the proposed amendment in Clause 11, by amending Article 61A of the Constitution, confers finality to decisions of the Public Service Commission subject only to the Jurisdiction of the Supreme Court under Article 126 of the Constitution.
- 9.3. Thus the proposed amendment creates an anomalous situation as the Administrative Appeals Tribunal is in existence without Jurisdiction/ power to hear appeals against the decisions of the Public Service Commission. Thus, the Administrative Appeals Tribunal will be there without any function being assigned to. We are also of the view that if the only forum allowed for the public servants to challenge the decisions of the Public Service Commission is the Supreme Court, then the Supreme Court would be inundated with Fundamental Rights Applications filed by public servants regarding disciplinary matters, transfers and promotions adding to the laws delays in the Supreme Court.
- 9.4 Therefore the BASL is of the view that the existing Article 61A should not be amended and the proposed amendment to Article 61A cannot be supported. The important role played by the Administrative Appeals Tribunal in adjudicating disputes is also noted.

10. **Clause 12 of the Bill**

For the reasons set out in 7 above, the BASL is of the view that proposed Article 61E should be amended to read as follows.

“The President shall appoint -

- (a) the Heads of the Army, the Navy and the Air Force; and



- (b) *subject to the approval of the Parliamentary Council the Attorney-General.*



11. Clause 13 of the Bill

For the reasons set out in 7 above, the BASL is of the view that proposed Articles 65(1) and 65(6) should be amended to read as follows.

- "1. There shall be Secretary-General of Parliament who shall be appointed by the President subject to the approval of the Parliamentary Council and who shall hold the office during good behaviour."
- "6. Whenever the Secretary-General is unable to discharge the function of his office, the Speaker may appoint a person to act in place of the Secretary-General."

12. Clause 14 of the Bill – Dissolution of Parliament

12.1 The legislative power of the people is exercised by Parliament. The Parliament is elected for a period of 5 years by the people. The legislature, the executive and the judiciary are co-equal organs of Government. The President as the Head of the executive being granted the unfettered power to dissolve Parliament at his whim albeit after one year but before the term of office of Parliament has expired is contrary to the Rule of Law and the separation of powers. It is contrary to the sovereignty of the people.

12.2 We propose that the President's power to dissolve Parliament during the period specified in Article 62(2) should be limited to the following circumstances.

- (a) Parliament by resolution requests the President to dissolve Parliament.
- (b) The rejection by Parliament of the Appropriation Bill on two consecutive occasions.
- (c) The rejection of the statement of Government policy on two consecutive occasions.

(d) Parliament passes a motion of no confidence in the Government.

12.3 We propose that the President shall be required to dissolve Parliament in the case of (b) above.

13. **Clause 15 of the Bill – Judicial Review of Bills**

13.1 **Amendment proposed to Article 78(1)**

Our Constitution does not contain judicial review of legislation. It is imperative for the Rule of Law that the judiciary should be given sufficient time and assistance to determine whether a Bill is inconsistent with the Constitution and the required majority for its enactment including the need for a referendum. The proposed Article 78(1) reduces the period available for such scrutiny from 14 days to 7 days. We believe that the amendment is not conducive to the Rule of Law.

13.2 **The new proposed Article 78(3)**

The proposed Article 78(3) is salutary and should be supported.

13.3 We also propose that Article 80(3) be amended by the addition of the following words to the end of that sub-article.

“save and except on the ground that it is contrary to Article 78(3) and such amendment if included in the Bill would have required such Bill to be passed by two-thirds of the whole number of Members (including those not present) or such majority and approved by the People at a Referendum.”

14. **Clause 17 of the Bill**

14.1 **Amendment proposed by Clause 17 (1)**

We believe that independence required for the Rule of Law must ensure that all members of the Commission set out in the schedules to Article 41A should not be qualified to be elected as a Member of Parliament.



14.2 **Amendment proposed by Clause 17(4) – Taking away of the Dual-Citizenship Disqualification**

Article 91(d)(1)(xiii) of the Constitution debar a citizen who is also citizen of any other country from being qualified to be elected as a Member of Parliament. The BASL is of the view that the sovereignty of the people would be gravely affected by the legislature including persons whose loyalty is not solely to Sri Lanka being elected as Members of Parliament. Indeed, a person who has acquired citizenship of another country almost always has sworn an oath of allegiance to that other country. The repeal of Article 91(d)(1)(xiii) of the Constitution would grant the right to the thousands if not hundreds of thousands of diaspora members of every community who have obtained citizenship in other countries in addition to the citizenship of Sri Lanka to contest an election to enter Parliament and influence the policies of the Government while being a citizen of a foreign country who has sworn allegiance to that country. So for example in Australia they would have sworn and oath in the following manner.

“From this time forward,
I pledge my loyalty to Australia and its people,
whose democratic beliefs I share,
whose rights and liberties I respect,
and whose laws I will uphold and obey.” (emphasis added)



14.3 Those diaspora members who are citizens of Norway would have taken the following oath.

“As a citizen of Norway I pledge loyalty to my country Norway and the Norwegian society, and I support democracy and human rights and will respect the laws of the country.” (emphasis added)

14.4 Those diaspora members who are citizens of the United Kingdom would have taken the following oath.

“I will give my loyalty to the United Kingdom and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen.” (emphasis added)

14.5 Those diaspora members who are citizens of Switzerland would have taken the following oath.

"I swear or I solemnly promise: to be loyal to the Republic and the canton of Geneva as to the Swiss Confederation; to scrupulously observe the constitution and the laws; to respect the traditions, to justify my adhesion to the community of Geneva by my actions and behaviour; and to contribute with all my power to keeping it free and prosperous."

- 14.6 Those diaspora members who are citizens of the United States of America would have taken the following oath.

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform non-combatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God."

- 14.7 To permit a person who is also a citizen of another country to be elected to Parliament is not only a surrender of sovereignty but is contrary to national interest and indeed a threat to security of the nation.
- 14.8 The BASL is of the view that Article 91(1)(d)(xiii) should not be repealed.

15. **Clause 19 of the Bill**

- 15.1 For the reasons set out in 7 above, the BASL is of the view that the proposed Article 103(1) should be amended as follows.

"There shall be an Election Commission (in this Chapter referred to as the "Commission") consisting of three members appointed by the President subject to the approval of the Parliamentary Council from amongst persons who have distinguished themselves in any profession or in the fields of administration or education. The President on the recommendation of the Parliamentary Council shall appoint one member as its Chairman."



15.2 For the reasons set out in 7 above, the BASL is of the view that the proposed Article 103(7) should not be amended.

16. **Clause 20 of the Bill**

16.1 In order to ensure that there is no ambiguity as to the scope of Article 104B. The BASL is of the view that proposed Article 104B(4a) should be amended by the inclusion of the following words at the end of that Article.

“unless such guideline is required for the purposes set out in Article 104B4(a).

17. **Clause 22 of the Bill**

The BASL is of the view that Article 104GG is necessary for the sovereignty of the people and to ensure a free and fair election. The BASL is of the view that Article 104GG should be retained.

18. **Clause 23 of the Bill**

The BASL is of the view that for the reasons set out in 7 above, proposed Article 107(1) in clause 23 of the Bill should be amended to read as follows.

“The Chief Justice, the President of the Court of Appeal and every other Judge of the Supreme Court and the Court of Appeal shall be appointed by the President by Warrant under his hand subject to approval of the Parliamentary Council.”

19. **Clause 24 of the Bill**

While acting appointments as Chief Justice and President of the Court of Appeal under proposed Article 109(1) would be limited to sitting Judges of the Supreme Court and Court of Appeal respectively the proposed Article 109(2) empowers the appointment of an Acting Judge to the Supreme Court or the Court of Appeal. The BASL is of the view that for the reasons set out in 7 above, proposed Article 109(2) in clause 24 of the Bill should be amended to read as follows.



“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, subject to the approval of the Parliamentary Council, appoint another Judge to act as a Judge of the Supreme Court or Court of Appeal, during such period.”

20. **Clause 25 of the Bill**

For the reasons set out in Clause 7 above and to ensure the independence of the judiciary the BASL is of the view that proposed Article 111D(1) be amended to read as follows.

“There shall be a Judicial Service Commission (in this Chapter referred to as the ‘Commission’) consisting of the Chief Justice and the two most senior Judges of the Supreme Court appointed by the President. Provided that where the Chief Justice and the two 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 senior most Judge of the Supreme Court and the next most senior Judge of such Court, who has had experience as a Judge of a Court of First Instance.”

21. **Clause 26 of the Bill**

For the reasons set out in Clause 7 above and to ensure the independence of the judiciary the BASL is of the view that proposed Article 111E(6) be amended to read as follows.

“The President may for cause stated and subject to approval of the Parliamentary Council remove from office any member of the Commission.”

22. **Clause 27 of the Bill – Urgent Bills**

The BASL is of the view that the proposed Article 122 is inimical to the Rule of Law administration of justice and the sovereignty of the people. Particularly in circumstances where judicial review of legislation is not available it would lead the way to tyranny.



23. **Clause 31 of the Bill**

- 23.1 The control of public finance by Parliament is fundamental to representative democracy. This is also enshrined in Article 148. The Auditor-General is necessary and essential to ensure Parliamentary control of finance. The Auditor-General ensures that the funds are utilised according to law. To grant the President control over his appointment would diminish Parliamentary control over finance. It is inimical to the Rule of Law that the President should have control over the appointment of the Auditor-General. The BASL is of the view that the appointment of the Auditor General should be made by the President nominating a name of an individual to the Parliamentary Council and appointment being made by the President subject to the approval of the Parliamentary Council. This ensures that the legislature and the executive provides the necessary checks and balances relating to these appointments. It also ensures that the executive that spends the money allocated by Parliament is not in sole control of the auditing of such activity.
- 23.2 For these reasons the BASL is of the view that proposed Article 153(1) and proposed Article 153(4) be amended as follows.

“(1) There shall be an Auditor-General who shall be a qualified Auditor, and subject to the approval of the Parliamentary Council, be appointed by the President and shall hold office during good behaviour.”

“(4) Whenever the Auditor-General is unable to discharge 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.”

24. **Clause 32 to Clause 39 of the Bill**

For the reasons set out in 23 above, the BASL is of the view that the abolition of the Audit Service Commission is contrary to national interest the Rule of Law and the sovereignty of the people. The BASL is of the view that Article 153A to 153H of the Constitution should not be repealed.



25. Clause 40 of the Bill

25.1 Proposed Articles 154(1), (2), (3)

For the reasons set out in 23 above, the BASL is of the view that proposed Articles 154(1) should be amended to read as follows.

“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 Public Service Commission, the Provincial Public Service Commissions, the Parliamentary Council, the Commissions referred to in the Schedule to Article 41B, the Parliamentary Commissioner for Administration, the Secretary-General of Parliament, local authorities, public corporations, business and other undertakings vested in the Government under any written law and any company registered or deemed to be registered under the Companies Act, No. 7 of 2007 in which the Government or a public corporation or local authority holds fifty per centum or more of the shares of that company including the accounts thereof if such company which is not listed on any Stock Exchange recognized by the Securities and Exchange Commission of Sri Lanka.”

25.2 In view of the amendment to proposed Article 154(1) the BASL is of the view that no amendment should be made to Article 154(2) and (3).

25.3 Repeal of Article 154(9)

Article 154(9) required the Auditor General to be 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. Needless to say, removing this requirement is contrary to the Rule of Law and the sovereignty of the people.

25.4 The BASL is of the view that Article 154(9) should not be repealed.



26. **Clause 41 of the Bill**

For the reasons set out in 7 above, The BASL is of the view that proposed Article 154R(1)(c) should be amended as follows.

“three other members appointed by the President subject to the approval of the Parliamentary Council, to represent the three major communities, 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.”

27. **Clause 42 of the Bill**

The BASL is of the view that proposed Article 155A(4) set out in Clause 42(2) be amended by the inclusion of the words “for cause stated” between the words “by the President” and “, or is convicted”.

28. **Clause 45 of the Bill**

The amendment proposed to Article 155F intends to decriminalise any interference or influencing of a police officer to whom the National Police Commission has delegated its powers. The BASL is of the view that the proposed amendment is inimical to the Rule of Law.

29. **Clause 54 of the Bill**

Clause 54 of the Bill repeals the provision relating to the constitutional status of the Commission to Investigate Allegations of Bribery or Corruption. The BASL is of the view that the repeal of these provisions is inimical to the Rule of Law.

30. **Clause 55 of the Bill**

Clause 55 of the Bill repeals the provision relating to the National Procurement Commission. The BASL is of the view that the repeal of these provisions is inimical to the Rule of Law.



Annexure I – Attendance

Members of the Committee Present at the Meeting on 14 September 2020

1. Mr. L.M.K.Arulanandam, PC
 2. Mr. Nihal Jayawardene, PC
 3. Mr. Maithri Wickremesinghe, PC
 4. Mr. Uditha Egalahewa, PC
 5. Mr. S.T. Jayanaga, PC
 6. Mr. Priyal Wijayaweera, PC
 7. Mr. Maurapada Gunawansa, PC
 8. Mr. Shantha Jayawardena (Convenor)
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Members of the Committee Present at the Meeting on 17 September 2020

1. Mr. L.M.K.Arulanandam, PC
 2. Mr. Prasantha Lal De Alwis, PC
 3. Mr. Nihal Jayawardene, PC
 4. Mr. Maithri Wickremesinghe, PC
 5. Mr. Mohan Weerakoon, PC
 6. Mr. Priyal Wijayaweera, PC
 7. Mr. Jagath Wickramanayake, PC
 8. Mr. Shantha Jayawardena (Convenor).
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26th September 2020

