

## **Proposals for constitutional reform**

The National Movement for Social Justice (NMSJ) proposes the following to be included in the election manifestos of political parties and candidates and then move on with the amendment immediately after the Elections:

### **1. Abolition of the Executive Presidency**

The Executive Presidency shall be immediately and totally abolished with a return to a Parliamentary form of Government.

The President shall be elected by Parliament and shall act on the advice of the Prime Minister, unless when there is express constitutional provision to the contrary. No person shall be eligible for election as President or a Vice President unless such person is a citizen of Sri Lanka, has completed the age of 35 years and is qualified for election as a Member of Parliament.

The President shall appoint as Prime Minister, the Member of Parliament who, in his opinion, commands the support of the majority of Members of Parliament. The Prime Minister shall be deemed to have resigned if Parliament passes a motion of no-confidence against him, the Appropriation Bill is not passed and when Parliament is dissolved.

The President shall be the head of the Caretaker Government during Parliamentary elections.

### **2. Vice Presidents**

There shall be two Vice Presidents who shall be from different communities and different to the one to which the President belongs. They would be elected by Parliament.

### **3. Constitutional Principles:**

Proposed Article 8A:

(1) The Republic of Sri Lanka is founded on the following values:

- (a) supremacy of the Constitution and the rule of law;
- (b) representative democracy, human dignity, the achievement of equality and social justice and the advancement of fundamental rights and freedoms;
- (c) racial, religious and gender equality; and
- (d) universal adult suffrage, regular elections and a multi-party system of democratic government.

(2) Legislation or conduct inconsistent with the Constitution shall be void. It shall be the duty of the State and all persons to respect the Constitution.

(3) The peoples of Sri Lanka who together constitute the People of Sri Lanka have the right to develop their own language, protect their own religion, to develop and promote their culture, to preserve their history and the right to their due share of State power including the right to due representation in institutions of government, without in any way weakening the common Sri Lankan identity. This shall not in any way be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of the Republic.

#### **4. Language**

At present, Sinhala is the official Language, Tamil is also an official language and English is the link language. Sinhala and Tamil shall be declared as official languages while all three languages shall be national languages, as was proposed in the Constitution Bill of 2000.

#### **5. The duration of Parliament shall be 5 years.**

#### **6. Caretaker Government**

There shall be a Caretaker Government during the period of Parliamentary elections. It shall have the powers of the Cabinet of Ministers. The Caretaker Government shall consist of the President, the two Vice-Presidents and a member each appointed by the outgoing Prime Minister and the Leader of the Opposition who shall not be candidates at the Parliamentary elections.

#### **7. Constitutional Council**

The Eighteenth Amendment shall be abolished and the Seventeenth Amendment would be brought back with suitable amendments, including those proposed in the draft report of the Parliamentary Select Committee chaired by Hon. DEW Gunasekera. The

composition of the Constitutional Council will be designed to strengthen the 17th Amendment further.

### **8.Appointments to High Posts and Independent Commissions**

Appointments to the following positions shall require the approval of the Constitutional Council:

Chief Justice and the Judges of the Supreme Court  
President and the Judges of the Court of Appeal  
Members of the Judicial Service Commission other than the Chairman  
Attorney-General  
Auditor-General  
Inspector-General of Police  
Parliamentary Commissioner for Administration (Ombudsman)  
Secretary-General of Parliament

Members of the following Commissions shall be appointed by the President on the recommendation of the Constitutional Council:

Election Commission  
Public Service Commission  
National Police Commission  
Human Rights Commission of Sri Lanka  
Permanent Commission to Investigate Allegations of Bribery or Corruption  
Finance Commission  
Delimitation Commission

In the case of the Chairmen of such Commissions, the Council shall recommend three persons for appointment, and the President shall appoint one of the persons recommended as Chairman.

### **9.Size of Cabinet**

The number of Cabinet Ministers shall not be more than 25. The total number of non-Cabinet Ministers and Deputy Ministers shall not be more than 25 and no other Minister in whatever description would be permitted.

## **10. Electoral reform**

The new electoral system shall be a mix of the first-past-the-post (FPP) and proportional representation (PR) systems. Preferential voting shall be abolished. The ratio between MPs elected under the first-past-the-post (FPP) and proportional representation (PR) systems and also whether proportional representation should be national, provincial or district have to be agreed upon. Reaching agreement would have to be done under the new Parliament and the new electoral system will thus necessitate a further constitutional amendment.

However, political parties could commit themselves to a mix of FPP and PR and doing away with the preferential voting system.

## **11. Cross-over of MPs**

MPs elected on PR lose their seats if they cease to be members of the Party and such vacancies shall be filled by the party. MPs elected on FPP lose their seats but a by-election will be held.

Presently, although an MP who loses membership of the Party loses his seat unless the Supreme Court holds that his expulsion is invalid, MPs go to the District Court and get an injunction, stalling disciplinary proceedings. This could be prevented by providing that the Supreme Court shall have sole and exclusive jurisdiction relating to disciplinary proceedings relating to MPs. This amendment need not wait till a new electoral system is agreed upon.

## **12. A new fundamental rights chapter**

The Bill of Rights mentioned in the National Human Rights Action Plan is a good basis for a new fundamental rights chapter. However, it has not been discussed enough in the country and, as such, this should come after more debate, possibly along with electoral reform. Since the issue of the Right to Information has been widely discussed it could be introduced immediately.

Political parties shall commit themselves to a new Bill of Rights that improves on the present fundamental rights chapter by expanding the scope of civil and political rights and by the inclusion of social, economic, cultural rights as well as women's and children's rights.

## **13. Enforcement of Fundamental Rights**

The following provisions can be included immediately.

All existing laws and written laws, except personal laws, shall be read subject to the fundamental rights chapter.

The remedy for infringement of fundamental rights and language rights will be available against all State action. A fundamental rights application may be made by a relative or friend of the aggrieved person or in the public interest. There shall be no time limit for filing an application, as is the case in writ applications.

Although the President is non-executive, he would still perform executive acts on the advice of the Prime Minister. Such executive action shall be subject to judicial review.

In the case of judicial action violating fundamental rights, compensation shall be paid by the State.

#### **14. Constitutionality of legislation**

A Bill shall be published in the Gazette at least 2 weeks before being placed in the Order Paper. There will be no “urgent” Bills.

Post-enactment judicial review of legislation shall be permitted. The Supreme Court shall have power to make a declaration that any law passed by parliament or statute made by a Provincial Council or any provision of any such law or statute is inconsistent with the Constitution and invalid to the extent of the inconsistency. However, in order to mitigate hardships that may be caused to persons by who may have acquired certain rights under the legal provisions being struck down, the Court may limit the retrospective effect of the declaration of invalidity or make an order suspending the declaration of invalidity for such period and subject to such conditions as would enable Parliament or a Provincial Council to take steps to make the impugned law or statute cease to be inconsistent with the fundamental rights chapter. The Indian Supreme Court has used the tool of “prospective over-ruling”, limiting the retrospective effect of a declaration of invalidity in appropriate cases. Section 172 of the South African Constitution expressly permits such limitation.

Article 84 (Bills inconsistent with the Constitution) shall be deleted.

#### **15. Impeachment of Judges of the Supreme Court or the Court of Appeal**

Provisions similar to those found in the Constitution Bill of 2000 shall be introduced. An inquiry will be held, in the case of the Chief Justice by a committee consisting of three persons each of whom hold, or have held, office as a judge in the highest court of any Commonwealth country and in the case of any other judge by a committee consisting of three persons former or present Judges of the Supreme Court or the Court of Appeal. The procedure to be followed, the mode of proof, burden of proof and the standard of proof of any alleged misbehaviour or incapacity and the right of the Chief Justice or such Judge to appear before and be heard by such committee in person or by representative shall be provided by law.

Source: <https://www.colombotelegraph.com/index.php/full-text-proposals-for-constitutional-reform/>