

# 19A

LANDMARK IN  
SRI LANKA'S  
DEMOCRATIC REVIVAL

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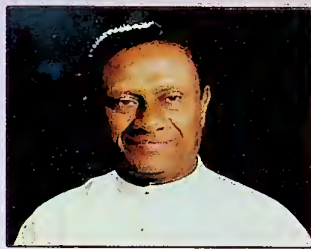
**O**ur country is now entering a decisive juncture in its history. Whether the country would turn towards becoming a haven for peace, prosperity and reconciliation or whether it would fall into the abyss of degeneration, instability and anarchy depends on the way you act today would do as citizens that love the Motherland.

President Maithripala Sirisena  
Presidential Election Manifesto 2015 - Page 8

BKT 0218  
26/08/2023



J. R. Jayewardene  
Former President of Sri Lanka



Ranasinghe Premadasa  
Former President of Sri Lanka



Dingiri Banda Wijetunga  
Former President of Sri Lanka



Chandrika Bandaranaike Kumaratunga  
Former President of Sri Lanka



Mahinda Rajapaksa  
Former President of Sri Lanka



Maithripala Sirisena  
President of Sri Lanka

I have no greed for power. I am only fulfilling the historic task entrusted to me to build and stabilise the country.

President Maithripala Sirisena  
Presidential Election Manifesto 2015 - Page 9



## A Landmark...

Sri Lanka is a democratic nation enriched with a high sense of social welfare. Despite commendable achievements in promoting democratic rule following independence in 1948, the country has witnessed a gradual concentration of power around the executive arm of the government with the adoption of every new constitution and almost all amendments to them. Exploiting the powers of the Executive Presidency introduced by the 1978 constitution and later amendments, such Executive powers ballooned during the last decade, and culminated in the enactment of 18th Amendment to the Constitution. This situation brought about a severe downturn in the democratic values in the country, which, many international authorities observed: "becoming increasingly authoritarian". Further, the Sri Lanka's democratic practices have been questioned regionally and internationally on the account of its authoritarian course that proved to be a challenge to assuring continuous growth of broad democratic values.

The adoption of the 19<sup>th</sup> Amendment, as stated in the election manifesto of President Maithripala Sirisena in 2015, therefore, is a great victory and an opportunity created for a democratic renaissance in Sri Lanka. As it marks a clear departure from the tradition of concentrating state power around one person, the 19<sup>th</sup> Amendment is a Landmark in the history of democracy in Sri Lanka. Based on this foundation, Sri Lanka is now poised to maximise this opportunity to foster democratic values and good governance irreversibly; to promote human rights and create a stable and peaceful country for the future.

**I**t is the President who should provide the leadership to get the Constitutional Amendment approved by Parliament. I decided to contest the Presidential election as the common candidate of the people to complete that task.

President Maithripala Sirisena  
Presidential Election Manifesto 2015 - Page 13

Countries with democratic governance ensure that their societies are led by universal values. Universal values have substantial importance among its citizens. In other words, democratic governance-based societies provide opportunities for its citizens to explore their potential as free human beings. Fundamental democratic features such as the rule of law, independent judiciary, civil liberties and people-elected representation are evident in these democratic contexts. Within a democratic governing system, parliamentary governance takes a main role. Universal suffrage allows citizens to practice people's power.

Sri Lanka, as a democratic nation, recently held its Presidential election, which brought forth a clear cut democratic result electing President Maithripala Sirisena. Understanding the necessity of restoring democratic values in Sri Lanka, his election agenda was articulated attesting political, social and civil change. The President's effort to ensure universal democratic values in the country has become more real with the recently approved 19th Constitutional Amendment.

This paper analyses the 19<sup>th</sup> Amendment to the constitution in order to explain how it serves to safeguard universal principles of democracy, freedom, rule of law, independence of judiciary, human rights, freedom of expression and good governance in Sri Lanka. Reference to international treaties and covenants such as the United Nations Charter (preamble), Universal Declaration of Human Rights, Commonwealth Charter and International Covenant on Civil and Political Rights, are made.

The adoption of the 19<sup>th</sup> Constitutional Amendment aims to implement universal democratic values regardless of religion, ethnicity, gender or geographic location. The amendment has made Sri Lankan citizens realize that their political leadership has respected public will. The stable and secure political and social climate had been able to contribute to this democratic practice. Moreover, the amendment ensures that Sri Lanka, as a sovereign nation, is protected from external influences, safeguarding and maintaining national security and territorial integrity.

**I** will remove obstacles to the activities of citizen's organizations by developing citizen's participation in economic, social and human rights fields. While securing the human rights already enshrined in the Constitution steps will be taken to further reinforce the rights of citizens.

President Maithripala Sirisena  
Presidential Election Manifesto 2015 - Page 17



Certain features in the Preamble of the United Nations Charter are directly linked to the 19th Constitutional Amendment.

For instance, the preamble indicates that the world is determined:

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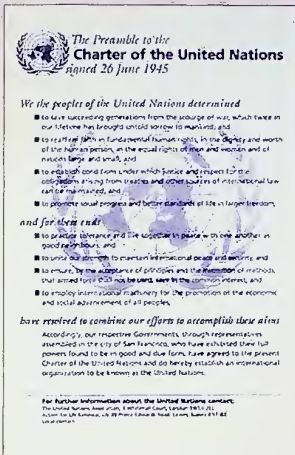
- to save succeeding generations from the scourge of war, which twice in our in our life has brought untold sorrow to mankind;

- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained; and to promote social progress and better standards of life in larger freedom.

The preamble was compiled in the aftermath of the World Wars to prevent such incidents from occurring again, by restoring peace and harmony through better democratic processes. Similarly, Sri Lanka's protracted armed conflict also brought with it civil unrest and hindrance to development. At present, Sri Lanka engages in the process of reconciliation to ensure the well-being of society. Just as the preamble of the UN Charter focuses on freedom, dignity, human rights and justice, the 19<sup>th</sup> Constitutional Amendment also addresses freedom, (Ex: Article 14(a) to the amendment) human rights, (Ex: right to access information) and justice (Ex: Transparency of the government).

The second clause of the UN Charter's preamble highlights the importance of protecting fundamental rights of the people while safeguarding dignity and ensuring equality for all, irrespective of differences. The 19<sup>th</sup> Amendment reaffirms dignity, rule of law as well as good governance while respecting and protecting fundamental human rights and human dignity. For instance, the Article 33(a) of the 19<sup>th</sup> Amendment provides for interdependency of the executive and the legislature. This highlights separation of powers and good governance similar to Articles 6 and 8 of the Commonwealth Charter (CC).



**W**e were unable to constitutionally change the Executive Presidential system that is in force since 1978 though we promised the people and the country to do so from 1994 up to date. Our inability to achieve that objective was a great failure on our part. It cannot be delayed any longer.

President Maithripala Sirisena  
Presidential Election Manifesto 2015 - Page 13




Article 70 of the 19<sup>th</sup> Amendment has empowered the Parliament while pruning the executive powers of the Presidency. This has paved the way to strengthen the Parliament as it prevents possible interferences of the Executive Presidency in the affairs of the legislature. Among the other significant changes is the abolition of the Presidential powers to dissolve the Parliament anytime without the consent of the Parliament. It restricts the President from dissolving the Parliament at his will. This is similar to Commonwealth Charter Article 1, 6 and 8 which highlights democracy, separation of powers and good governance.

Another important feature in Article 103 of the amendment is the establishment of an Independent Election Commission to conduct free and fair elections. This provides for a democratic climate to conduct free and fair elections as it creates a non-violent environment ensuring a culture of peace during elections. The Article is compatible with the Universal Declaration of Human Rights (UDHR) Article 19 on the right to freedom of opinion and expression, Article 20 on the right to peaceful assembly and association, and Article 21 on the right to take part in governance, directly or through freely chosen representatives. The same elements are also found in the International Covenant on Civil and Political Rights (ICCPR) under Article 19 on the right to hold opinions without interference and Article 21 on the right to peaceful assembly. In addition, the Commonwealth Charter Article 1 on democracy and Article 15 on the role of civil society resonate Article 103 of the 19<sup>th</sup> Amendment.

The basic rights of citizens have been assured in the Constitutional Amendment and it has further enhanced the liberty to express their views on political, economic, social and cultural systems. According to Article 14 (a) of the Constitutional Amendment, the freedom of expression is enshrined and guaranteed for all citizens as follows:

- the right of citizens to choose governments through constitutional and other democratic means,
- the right of political participation irrespective of differences,
- establishing transparent and accountable government institutions,

- 
- the right of expression and freedom of opinion,
  - the freedom to seek, receive and impart information and ideas via government institutions under the Right to Information Act
  - the Rule of Law, including the legal protection of citizens' rights, and the independence of judiciary.

All these liberties promote transparency of governance, building strong relations between the government and the public. Furthermore, similarities between Article 14 (a) of the amendment and Article 5 of the Commonwealth Charter and Article 19 of ICCPR are evident.

Another parallel between the 19<sup>th</sup> Amendment and Article 19 of the UDHR is the right of access to information. According to Article 14(a) of the amendment, every citizen is privileged to request for information held by the state, a ministry of any government department or any statutory body, any local authority or any other person, which may be required for exercising or protection of the citizen's rights. The restoration of universal democratic values through Constitutional Amendment has opened up opportunities for citizens, specifically for minorities to accelerate the progress of their communities. In keeping with internationally accepted treaty laws, the Amendment ensures the restoration of the 'once shamed' democracy of Sri Lanka.

**T**he new Constitutional structure would be essentially an Executive allied with the Parliament through the Cabinet instead of the present autocratic Executive Presidential System

President Maithripala Sirisena  
Presidential Election Manifesto, 2015 - Page 14

The rest of this article deals with five distinct yet inter-related areas provided for by 19<sup>th</sup> Constitutional Amendment. Namely:

- Dilution of executive presidential powers (which had been in force since 1978),
- Rule of law,
- Good governance,
- Establishment of a constitutional council, and
- Restoration of independent commissions.

## Dilution of Powers of the Executive Presidency

President Maithripala Sirisena has made history by taking an unprecedented step to dilute the unchallenged powers of the Executive Presidency. Fulfilling the promise he made to the nation, powers that were exclusively vested in the Presidency are now enjoyed by the Parliament. It is a historical milestone which was not achieved by previous Presidents of Sri Lanka despite attempts and promises made. Going beyond his call of duty, President Sirisena signalled in a new age of change for the country with a concept paper on Constitutional Reforms that sought to further dissolve the powers of his office. But in acknowledgement of the Supreme Court recommendation, he made changes for the dilution of executive powers.

The important steps that the President has taken to curtail the executive powers of his office are:

- Repealing the 18<sup>th</sup> Amendment that allows one person to be elected as President any number of times, and limiting it to two terms<sup>1</sup>
- Making the President responsible to the Parliament when exercising the powers vested in his office are:

*"The President shall be responsible to Parliament for the due exercise, performance and discharge of his or her powers, duties and functions under the Constitution and any written law, including the law for those relating to public security"<sup>2</sup>*

<sup>1</sup>. 19<sup>th</sup> Amendment to the constitution, Article 31

<sup>2</sup>. 19<sup>th</sup> Amendment to the constitution, Article 33A

**I** would dedicate myself to build the unity of political parties that is essential for the country today. Now the historic moment has arrived in which the main political parties could be united for a programme to build the country.

President Maithripala Sirisena  
Presidential Election Manifesto 2015 - Page 9

- Repealing of presidential immunity: even though the President is immune from law suits concerning criminal and civil cases, he can now be brought before the law in the event of violation of fundamental rights:
- Even though the President retains the power to appoint the Prime Minister, the provision of removing the Prime Minister has been taken away from the President and delegated to Parliament.
- Under the 19<sup>th</sup> Amendment, the Prime Minister would be the head of the Cabinet of Ministers and the President's liberty to keep ministries under his purview is considerably limited<sup>3</sup>
- The President no longer has the power to dissolve Parliament at his will:

*"The President shall not dissolve Parliament until the expiration of a period of not less than four years and six months from the date appointed for its first meeting, unless Parliament requests the President to do so by a resolution passed by not less than two-thirds of the whole number of Members (including those not present), voting in its favour."*<sup>4</sup>

The 19<sup>th</sup> Constitutional Amendment likewise is a landmark in Sri Lankan politics. Limiting the President's terms to two, could be regarded as a progressive development towards democracy since it does not encourage the concentration of power in the hands of a single person over a long period of time which, as witnessed by many democracies, leads to authoritarian rule. The Commonwealth Charter's Article 6 on the separation of powers and Article 8 on good governance are clearly bridged with Article 33(a) of the 19<sup>th</sup> Amendment.

Through this constitutional amendment, the President has been given certain powers in the form of responsibilities. For instance, Article 33 of the amendment emphasises the need to eliminate ethnic and racial discrimination, build social harmony and facilitate the Parliament. This provision is also in par with UDHR Article 1 on freedom and equality, Article 3 on the right to life, liberty and security of a person and Article 22 on Right to Social Security. In addition, the Commonwealth Charter Article 1 and Article 4 on tolerance, respect and understanding, ICCPR Article 6 on the inherent right to life, Article 7 on the right to security from torture and cruel, inhuman or degrading

<sup>3</sup> 19<sup>th</sup> Amendment, Article 43 (03)

<sup>4</sup> Ibid, Article 70 of the constitution



**O**ne principal feature of the Constitutional reform that I would make within the first hundred days is the abolition of the 18th Amendment to the Constitution.

President Maithripala Sirisena  
Presidential Election Manifesto 2015 - Page 16

treatment or punishment, Article 20 on the prohibition of war by law and Article 25 on the right to practice minorities' own culture, religion and language are in par with the 19<sup>th</sup> Amendment.

With regard to appointments to the Constitutional Council, Article 41.4 of the 19<sup>th</sup> Amendment reads:

*The President shall, within fourteen days of the receipt of a written communication specifying the nominations made under subparagraph (e) and (f) of paragraph (1), make the necessary appointments. In the event of the President failing to make the necessary appointments within such period of fourteen days, the persons nominated shall be deemed to have been appointed as members of the Council, with effect from the date of expiry of such period.*

This provision assigns duties to relevant authorities, ensuring efficiency, which is a core component of good governance. It is practised not only within the government but also in the office of the President itself.

The amendment also features Presidential Immunity. The Constitutional Amendment's Article 35 on the immunity of the President from suit, has brought down the extraordinary position of the executive president to the level of a fellow citizen. A similar feature could be identified in the UDHR Article 7 on equality before law, entitlement of equal protection of the law and CC Article 1 and Article 7 on the Rule of Law. Under the 19<sup>th</sup> Amendment, the Prime Minister becomes the Head of the Cabinet of Ministers.

The President's liberty to keep ministries under his purview is also considerably limited according to Article 43(3). Article 43.1 states:

*The President shall, in consultation with the Prime Minister, where he considers such consultation to be necessary, determine the number of Ministers of the Cabinet of Ministers and the Ministries and the assignment of subjects and functions to such ministers.*

This also promotes democratic consensus in the decision making process as the number of Cabinet Ministers and their portfolios are determined in consultation with the Prime Minister

**A** large number of deviations such as the total breakdown of the rule of law, fraud, corruption, wastage, inability to identify national priorities, environmental degradation, moral and spiritual degradation have emerged as obstacles to our country's march forward.

President Maithripala Sirisena  
Presidential Election Manifesto 2015 - Page 8

The executive presidential power to dissolve the parliament is also restricted in Article 70 of the Constitutional Amendment. This aims to strengthen the Parliament while constraining the President's powers to interfere with the affairs of the Parliament. This links with Commonwealth Nations Charter Articles 1, 6, and 8. It is evident that the enactment of the 19th Amendment to the constitution portrays the effort to cultivate universal democratic values.

## Rule of Law

**T**o strengthen the rule of law in any country, it is essential to maintain peace and security, achieve economic and social progress, and promote human rights and fundamental rights as enshrined in the charter of the United Nations.

A closer look at the concept of rule of law would show that it is a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and are consistent with international human rights norms and standards. It requires adherence to the principles of supremacy of the law, equality before the law,<sup>5</sup> accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. Further, justice is promulgated for accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Its administration involves both formal judicial and informal/customary/traditional mechanisms. Within this paradigm, various measures and approaches are employed to strengthen the rule of law, such as security sector reform, administration of justice, protection and combatting impunity.

<sup>5</sup> Ibid, Article 14a





In the past decade, insecurity between communities, political impunity, perpetuation of malpractices within the legal community and consistent political interference in the judicial system resulted in a context in which the rule of law was increasingly a far cry for Sri Lanka. With the historic 19th Constitutional Amendment, the concept of rule of law will play its legitimate role. For instance, Article 35 of the amendment specifies partial removal of immunity of the President. It is in keeping with Article 7 of the UDHR that states:

*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

Further, Articles 39 and 40 in the constitutional amendment reinforce the powers of the judiciary in interpreting the constitution without any political predisposition.

As per Article 41 A of the amendment, the decentralization of power of governing bodies has been made effective through the establishment of a Constitutional Council. Moreover, the rule of law has become more visible due to empowering the Speaker's position, establishment of new independent commissions and ensuing independence of the judiciary system. These are again in keeping with the UDHR Articles of 1 on Right to Equality, Article 2 on Freedom from Discrimination, Article 7 on Right to Equality before the Law, Article 9 on Freedom from Arbitrary Arrest and Exile and Article 11 on Right to be Considered Innocent until Proven Guilty, the ICCPR Articles 2 on The right to legal recourse when their rights have been violated even if the violator was acting in an official capacity, Article 6 on The right to life and survival, and 9 on the right to liberty and security of a person, Article 11 on freedom from being imprisoned on the grounds of inability to fulfil a contractual obligation, Article 14 on the equality before courts and tribunals and Article 16 on the right to recognition everywhere as a person before the law.

In order to ensure the independence of the judiciary, the 19<sup>th</sup> Amendment proposes the formation of the Judicial Services Commission under Article 111d. According to this provision, those who are qualified in the legal fraternity will be appointed to senior positions. Unlike under the controversial 18<sup>th</sup> amendment to the constitution, the President is not able to appoint a person of his choice irrespective of seniority, qualifications or experience. President Maithripala Sirisena has been able to identify the vulnerable aspects of the rule of law under the old system and take remedial measures to strengthen it in an impartial manner. Provisions have been made to appoint:

- (a) The Chief Justice and the Judges of the Supreme Court,
- (b) The President and the Judges of the Court of Appeal,
- (c) The Members of the Judicial Service Commission, other than the Chairman.

Under the recommendation of the Constitutional Council, the judicial system will be depoliticized to ensure its independence.

### Good Governance

The 19<sup>th</sup> constitutional amendment is an example of the mission of the President to ensure good governance. The amendment was successful in eliminating provisions prevalent in the constitution and its amendments that weakened exercising good governance.

The United Nations recognizes nine pillars that strengthen good governance. They are participation, rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability and strategic vision. The 19<sup>th</sup> Constitutional Amendment has introduced ample systems and processes to fortify these pillars further. For example, Article 46.4 of the amendment suggests forming a national government, Article 52.2 on appointment of secretaries to ministries under the direction of the minister, Article 103 on the enactment of an independent election commission and Article 54.1 on depoliticizing the government servant. All these provisions are clearly on par with Articles 1 and 8 of the CC.

An admirable effort made to reflect public will and also a democratic way of taking consultative decisions of national importance is reflected in Article 46.4 that sets out that:

*Notwithstanding anything contained in paragraph (1) of this Article, where the recognized political party or the independent group which obtains highest number of seats in Parliament forms a National Government, the number of Ministers in the Cabinet of Ministers, the number of Ministers who are not Cabinet of Ministers and the number of Deputy Ministers shall be determined by Parliament.*

I will establish Independent Commissions to secure the impartiality of judicial, police, elections, auditing institutions and the office of the Attorney-General.

President Maithripala Sirisena  
Presidential Election Manifesto 2015 - Page 16

## The Constitutional Council

The Constitutional Council comprises the Prime Minister, the Speaker, the Leader of the Opposition in Parliament, one Presidential appointee and five persons nominated by the President. The nominations of Prime Minister, the Leader of Opposition and one from the political party with a majority in Parliament will be made upon consensus. The power enjoyed previously by the Executive President has now been transferred to the Constitutional Council. It will be recognised as a body of participatory political representation in Parliament with powers that would be exercised in a transparent manner. Hence, the establishment of the Constitutional Council allows different opinions in decision making which is in keeping with the UDHR Article 20.

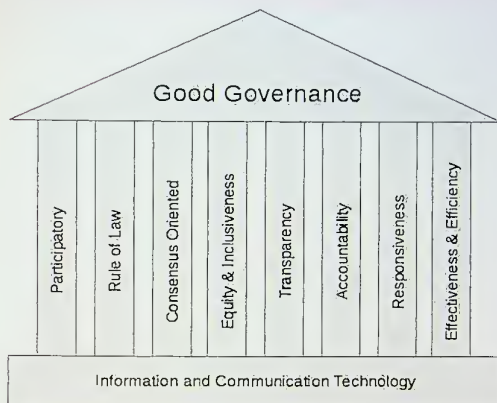
## Independent Commissions

Independent commissions are required for the functioning of governing bodies. In general terms, an independent commission is a body that works towards a specific goal of the government, free of external or political control. However, in reality, most independent commissions were politicized and lacking in strength to obtain real outcomes. The 19<sup>th</sup> Amendment to the constitution has enabled independent commissions to function independently. These commissions are:

1. The Election Commission
2. The Public Service Commission
3. The National Police Commission
4. The Audit Service Commission



5. The Human Rights Commission of Sri Lanka
6. The Commission to investigate allegations of Bribery or Corruption
7. The Finance Commission
8. The Delimitation Commission
9. The National Procurement Commission
10. The University Grant Commission
11. The Official Language Commission



In addition to the commissions specified in the 18<sup>th</sup> amendment to the Constitution, Article 41B of the 19<sup>th</sup> amendment has proposed new commissions such as the National Procurement Commission, the Audit Service Commission, the University Grants Commissions and the Official Languages Commissions (earlier general commissions) to the list of independent commissions. These independent commissions are set up to assure good governance in Sri Lanka. Most importantly, the election commission creates an appropriate democratic platform to hold periodic free and fair elections, setting out a marked departure from the previous era when fairness of elections were often challenged. These commissions are expected to assist in creating a vibrant democratic political practice in Sri Lanka. Through the establishment of independent commissions, the rule of law (Article 2 of the CC), separation of powers (Article 4 of the CC), human rights (Article 6 of the CC) and good governance (Article 8 of the CC) are secured and facilitates the growth of a democratic society.

**M**y only ambition is to create a country suited to the 21st Century and full of modernity where there will be no UNP –SLFP party differences, Sinhala – Tamil – Muslim racial divisions, class-religious - caste differences. I consider it my prime duty.

President Maithripala Sirisena  
Presidential Election Manifesto 2015 - Page 61

## Conclusion

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President Maithripala Sirisena has been able to make a historic shift by curtailing executive powers of the Presidency and establishing a democratic rule within the short period of three months, as he spelt out in his manifesto. In keeping with the will of the people, he had been able to correct the mistakes of the previous government; thus, ensuring universal democratic values of good governance, democracy, rule of law, human rights and equity. The 19<sup>th</sup> constitutional amendment has given the country new hope to restore universal values.

The 19<sup>th</sup> constitutional amendment ultimately aims to achieve a peaceful and sustainable democratic society. After much anticipation, opportunity and space had been created for all Sri Lankans regardless of ethnicity to unite and rise as one Sri Lanka to achieve sustainable peace and prosperity.



