

CHAPTER VII - THE EXECUTIVE

The President of the Republic

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30. (1) There shall be a President of the Republic of Sri Lanka, who is the Head of the State, the Head of the Executive and of the Government, and the Commander-in-Chief of the Armed Forces.

(2) The President of the Republic shall be elected by the people, and shall hold office for a term of six years.

The election and the term of office of President.

31. (1) Any citizen who is qualified to be elected to the office of President may be nominated as a candidate for such office -

(a) by a recognized political party, or

(b) if he is or has been an elected member of the legislature, by any other political party or by an elector whose name has been entered in any register of electors.

(2) 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.

(3) The poll for the election of the President shall be taken not less than one month and not more than two months before the expiration of the term of office of the President in office.

¹⁵[(3a) (i) Notwithstanding anything to the contrary in the preceding provisions of this Chapter, the President may, at any time after the expiration of four years from the commencement of his first term of office, by Proclamation, declare his intention of appealing to the People for a mandate to hold office, by election, for a further term.

(ii) Upon the making of a Proclamation under sub-paragraph (i) the Commissioner of Elections shall be required to take a poll for the election of the President.

(b) If, at any time after the date of Proclamation referred to in paragraph (a) and before the close of the poll at the election held in pursuance of such Proclamation, the President in office dies, such Proclamation shall be deemed to have been revoked with effect from the date of such death and the election to be held in pursuance of such Proclamation shall be deemed to be cancelled. The vacancy in the office of President caused by such death shall be filled in accordance with the provisions of Article 40.

(c) (i) If, at any time between the close of the poll at an election held under this paragraph and the declaration of the result of such election, a candidate at such election dies, the Commissioner of Elections shall proceed with the count and declare the result of such election, notwithstanding the death of such candidate.

(ii) If the person entitled to be declared elected as President is dead at the time of the declaration of the result of such election, the Commissioner of Elections shall not declare the result of such election but shall take a fresh poll for the election of the President.

(iii) If by reason of the death referred to in sub-paragraph (i) there is a vacancy in the office of President, the Prime Minister shall act in the office of President during the period between the occurrence of such vacancy and the assumption of office by the new President and shall appoint one of the other Ministers of the Cabinet to act in the office of Prime Minister :

Provided that if the office of Prime Minister be then vacant or the Prime Minister is unable to act, the Speaker shall act in the office of President.

(d) The person declared elected as President at an election held under this paragraph shall, if such person –

- (i) is the President in office, hold office for a term of six years commencing on such date in the year in which that election is held (being a date after such election) or in the succeeding year, as corresponds to the date on which his first term of office commenced, whichever date is earlier ; or
- (ii) is not the President in office, hold office for a term of six years commencing on the date on which the result of such election is declared.

(e) A person succeeding to the office of President under the provisions of Article 40 shall not be entitled to exercise the right conferred on a President by sub-paragraph (a) of this paragraph.

(f) For the purposes of this paragraph, the first term of office of the first President referred to in Article 160 shall be deemed to have commenced on February 4, 1978.]

¹⁶[(4) (Where a poll for the election of a President is taken, the term of office of the person elected as President at such election shall commence on the expiration of the term of office of the President in office :

Provided that notwithstanding anything to the contrary in Article 40 –

- (a) if any person declared elected as President at a poll for the election of a President dies at any time after his being declared elected as President, and before the date on which his term of office would, but for his death, have commenced, the Commissioner of Elections, shall take a fresh poll for the election of a President. If the date fixed for such fresh poll is a date later than such first-mentioned date,

the term of office of the person declared elected at such poll shall, notwithstanding the preceding provisions of this Article, be deemed to have commenced on such first-mentioned date. For the purposes only of Article 38 (1) (d), the date of commencement of the term of office of the new President shall be the date of his election ;

- (b) where the President in office is not a candidate or is not re-elected, at a poll for the election of a President, his term of office shall be deemed to have expired on the date on which the result of such election is declared. The person elected as President at such election shall assume office forthwith, but not later than two weeks from such date :

Provided that the President in office, notwithstanding anything to the contrary in Article 30, shall continue to exercise, perform and discharge the powers, duties and functions of the office of President until the assumption of office by the person declared elected as President. If the office of President becomes vacant, by reason of the person declared elected as President failing to assume office, the President in office shall continue to exercise, perform and discharge the powers, duties and functions of the office of President, until the Prime Minister or if the office of Prime Minister be then vacant or if the Prime Minister be unable to act, the Speaker commences to act in the office of President in terms of Article 40 ;

- (c) if by reason of the death referred to in sub-paragraph (a) there is a vacancy in the office of President, the Prime Minister shall act in the office of President during the period between the occurrence of such vacancy and the assumption of office by the new President and shall appoint one of the other Ministers of the Cabinet to act as Prime Minister:

Provided that if the office of Prime Minister be then vacant or the Prime Minister is unable to act, the Speaker shall act in the office of President.]

(5) The election of the President shall be conducted by the Commissioner of Elections who shall fix the date for the nomination of candidates for such election and the date on which the poll shall be taken.

(6) Parliament shall by law make provision for -

- (a) the nomination of candidates for the election of President ;
- (b) the register of electors to be used at and the procedure for the election of the President ;
- (c) the creation of offences relating to such election and the punishment therefor ;
- (d) the grounds and manner of avoiding such election and of determining any disputed election ; and

(e) all other matters necessary or incidental thereto.

Assumption of office.

32. (1) The person elected or succeeding to the office of President shall assume office upon taking and subscribing the oath or making and subscribing the affirmation, set out in the Fourth Schedule, in Sri Lanka before the Chief Justice or any other Judge of the Supreme Court.

(2) Upon such assumption of office the President shall cease to hold any other office created or recognized by the Constitution and if he is a Member of Parliament, shall vacate his seat in Parliament. The President shall not hold any other office or place of profit whatsoever.

(3) The President shall, by virtue of his office, have the right at any time to attend, 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.

Powers and functions of the President.

33. In addition to the powers and functions expressly conferred on or assigned to him by the Constitution or by any written law whether enacted before or after the commencement of the Constitution, the President shall have the power -

(a) to make the Statement of Government Policy in Parliament at the commencement of each session of Parliament ;

(b) to preside at ceremonial sittings of Parliament ;

(c) to receive and recognize, and to appoint and accredit, Ambassadors, High Commissioners, Plenipotentiaries and other diplomatic agents ;

¹⁷[(cc) to appoint as President's Counsel, attorneys-at-law who have reached eminence in the profession and have maintained high standards of conduct and professional rectitude. Every President's Counsel appointed under this paragraph shall be entitled to all privileges as were hitherto enjoyed by a Queen's Counsel ;]

(d) to keep the Public Seal of the Republic, and to make and execute under the Public Seal, the Acts of Appointment of the Prime Minister and other Ministers of the Cabinet of Ministers, the Chief Justice and other Judges of the Supreme Court, such grants and dispositions of lands and immovable

property vested in the Republic as he is by law required or empowered to do, and to use the Public Seal for sealing all things whatsoever that shall pass that Seal ;

(e) to declare war and peace ; and

(f) to do all such acts and things, not being inconsistent with the provisions of the Constitution or written law as by international law, custom or usage he is required or authorized to do.

Grant of pardon.

34. (1) The President may in the case of any offender convicted of any offence in any court within the Republic of Sri Lanka -

(a) grant a pardon, either free or subject to lawful conditions ;

(b) grant any respite, either indefinite for such period as the President may think fit, of the execution of any sentence passed on such offender ;

(c) substitute a less severe form of punishment for any punishment imposed on such offender ; or

(d) remit the whole or any part of any punishment imposed or of any penalty or forfeiture otherwise due to the Republic on account of such offence:

Provided that where any offender shall have been condemned to suffer death by the sentence of any court, the President shall cause a report to be made to him by the Judge who tried the case and shall forward such report to the Attorney-General with instructions that after the Attorney-General has advised thereon, the report shall be sent together with the Attorney-General's advice to the Minister in charge of the subject of Justice, who shall forward the report with his recommendation to the President.

(2) The President may in the case of any person who is or has become subject to any disqualification specified in paragraph (d), (e), (f), (g), or (h) of Article 89 or subparagraph (g) of paragraph (1) of Article 91 -

(a) grant a pardon, either free or subject to lawful conditions, or

(b) reduce the period of such disqualification.

(3) When any offence has been committed for which the offender may be tried within the Republic of Sri Lanka, the President may grant a pardon to any accomplice in such

offence who shall give such information as shall lead to the conviction of the principal offender or of any one of such principal offenders, if more than one.

Immunity of President from suit.

35. (1) While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity.

(2) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period of time during which such person holds the office of President shall not be taken into account in calculating any period of time prescribed by that law.

(3) The immunity conferred by the provisions of paragraph (1) of this Article shall not apply to any proceedings in any court in relation to the exercise of any power pertaining to any subject or function assigned to the President or remaining in his charge under paragraph (2) of Article 44 or to proceedings in the Supreme Court under paragraph (2) of Article 129 or to proceedings in the Supreme Court under Article 130 (a) ¹⁸[relating to the election of the President or the validity of a referendum or to proceedings in the Court of Appeal under Article 144 or in the Supreme Court, relating to the election of a Member of Parliament:]

Provided that any such proceedings in relation to the exercise of any power pertaining to any such subject or function shall be instituted against the Attorney-General.

Salary and pension.

36. (1) Within one month of the commencement of the Constitution, Parliament shall by resolution determine the salary, allowances and pension entitlement of the holders of the office of President. Such pension shall be in addition to any other pension to which such person is entitled by virtue of any prior service.

(2) Upon the assumption of the office of President the holder of such office shall become entitled to the receipt of such salary and allowances and thereafter, of such pension as may be determined by Parliament. Any subsequent amendment, repeal or replacement of this Article, and any subsequent law or any provision thereof inconsistent with this Article shall not have retrospective operation.

(3) The salary, allowances and pension of the President shall be charged on the Consolidated Fund.

(4) Parliament may by resolution increase, but shall not reduce, the salary, allowances or pension entitlement of the holders of the office of President.

Exercise, performance and discharge of powers, duties and functions of the President by the Prime Minister.

37. (1) If the President is of the opinion that by reason of illness, absence from Sri Lanka or any other cause he will be unable to exercise, perform and discharge the powers, duties and functions of his office he may appoint the Prime Minister to exercise, perform and discharge the powers, duties and functions of the office of President during such period, and may also appoint one of the other Ministers of the Cabinet to act in the office of Prime Minister during such period:

Provided that if the office of Prime Minister be then vacant or the Prime Minister is unable to act, the President may appoint the Speaker to exercise, perform and discharge the powers, duties and functions of the office of President during such period.

(2) If the Chief Justice in consultation with the Speaker is of the opinion that the President is temporarily unable to exercise, perform and discharge the powers, duties and functions of his office and is unable to make an appointment in terms of paragraph (1) of this Article, he shall communicate in writing his opinion to the Speaker and thereupon the Prime Minister shall exercise, perform and discharge the powers, duties and functions of the office of President during such period, and shall appoint one of the Ministers of the Cabinet to act in the office of Prime Minister during such period, notwithstanding the absence of such appointment as is provided for in paragraph (1) of this Article:

Provided that if the office of Prime Minister be then vacant or the Prime Minister is unable to act, the Speaker shall exercise, perform and discharge the powers, duties and functions of the office of President during such period.

(3) The provisions of the Constitution relating to the President (other than the provisions of paragraph (2) of Article 32) shall apply, in so far as they can be applied, to the person so exercising, performing and discharging the powers, duties and functions of the office of President.

(4) In this Article and in Articles 38 (1)(b) and 40 (1), "the Speaker" includes, during any period when Parliament is dissolved, the person who held the office of Speaker immediately before the dissolution of Parliament.

Vacation of office by President.

38. (1) The office of President shall become vacant -

(a) upon his death ;

(b) if he resigns his office by a writing under his hand addressed to the Speaker ;

(c) if he ceases to be a citizen of Sri Lanka ;

(d) if the person elected as President wilfully fails to assume office, within ¹⁹[two weeks] from the date of commencement of his term of office ;

(e) if he is removed from office as provided in the next succeeding paragraph ; or

(f) If the Supreme Court in the exercise of its powers under Article 130 (a) determines that his election as President was void and does not determine that any other person was duly elected as President.

(2) (a) Any Member of Parliament may, by a writing addressed to the Speaker, give notice of a resolution alleging that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of-

(i) intentional violation of the Constitution,

(ii) treason,

(iii) bribery,

(iv) misconduct or corruption involving the abuse of the powers of his office, or

(v) any offence under any law, involving moral turpitude, and setting out full particulars of the allegation or allegations made and seeking an inquiry and report thereon by the Supreme Court.

(b) No notice of such resolution shall be entertained by the Speaker or placed on the Order Paper of Parliament unless it complies with the provisions of sub-paragraph (a) and -

(i) such notice of resolution is signed by not less than two-thirds of the whole number of Members of Parliament, or

(ii) such notice of resolution is signed by not less than one-half of the whole number of Members of Parliament, and the Speaker is satisfied that such allegation or allegations merit inquiry and report by the Supreme Court.

(c) Where such resolution is passed by not less than two-thirds of the whole number of Members (including those not present) voting in its favour, the allegation or allegations contained in such resolution shall be referred by the Speaker to the Supreme Court for inquiry and report.

(d) The Supreme Court shall, after due inquiry at which the President shall have the right to appear and to be heard, in person or by an attorney-at-law, make a report of its determination to Parliament together with the reasons therefor.

(e) Where the Supreme Court reports to Parliament that in its opinion the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of any of the other allegations contained in such resolution, as the case may be, Parliament may by a resolution passed by not less than two-thirds of the whole number of Members (including those not present) voting in its favour remove the President from office.

Determination by the Supreme Court that the President was not duly elected or the election of the President was void.

39. (1) Where the Supreme Court in the exercise of its jurisdiction under Article 130 determines -

(a) that the election of the President was void and does not determine that any other person was duly elected, then, a poll for the election of the President shall be taken not later than three months from the date of the determination ; or

(b) that any other person was duly elected as President, then, such other person shall assume the office of President within one month of the date of the determination.

For the purposes of Article 38 (1) (d), the date of commencement of the term of office of the new President shall be the date of his election or the date of the determination, as the case may be.

(2) Upon the Supreme Court making any such determination as is referred to in paragraph (1) of this Article, the person who was exercising, performing and discharging the powers, duties and functions of the office of President shall forthwith cease to exercise, perform and discharge such powers, duties and functions. During the period intervening between the date of such determination and the assumption of office by the new President, the Prime Minister shall act in the office of President and shall appoint one of the other Minister of the Cabinet to act in the office of the Prime Minister:

Provided that if the office of Prime Minister be then vacant or the Prime Minister is unable to act, the Speaker shall act in the office of the President.

(3) For the purposes of Article 30(2) and notwithstanding the provisions of Article 31 (4), the term of office of the new President shall be deemed to have commenced on the date on which the term of office of the person whose election was determined to have been void or undue would, but for such determination, have commenced.

(4) The exercise, performance and discharge by any person of the powers, duties and functions of the office of the President shall not be invalid by reason only of the fact that the Supreme Court subsequently determines that the election of such person as President was void or undue.

(5) The provisions of this Article shall apply notwithstanding anything to the contrary in Article 40.

Vacation of office by President and election of succeeding President.

40. (1) (a) If the office of President shall become vacant prior to the expiration of his term of office, Parliament shall elect as President one of its Members who is qualified to be elected to the office of President. Any person so succeeding to the office of President shall hold office only for the unexpired period of the term of office of the President vacating office.

(b) Such election shall be held as soon as possible after, and in no case later than one month from, the date of occurrence of the vacancy. Such election shall be by secret ballot and by an absolute majority of the votes cast in accordance with such procedure as Parliament may by law provide:

Provided that if such vacancy occurs after the dissolution of Parliament, the President shall be elected by the new Parliament within one month of its first meeting.

(c) During the period between the occurrence of such vacancy and the assumption of office by the new President, the Prime Minister shall act in the office of President and shall appoint one of the other Ministers of the Cabinet to act in the office of Prime Minister:

Provided that if the office of Prime Minister be then vacant or the Prime Minister is unable to act, the Speaker shall act in the office of President.

(2) The provisions of the Constitution relating to the President (other than the provisions of paragraph (2) of Article 32) shall apply, in so far as they can be applied, to an acting President.

(3) Parliament shall by law provide for all matters relating to the procedure for the election of the President by Parliament and all other matters necessary or incidental thereto.

President's staff.

41. (1) The President shall have the power to appoint such Secretaries, and, in consultation with the Cabinet of Ministers, such other officers and staff as are in his opinion necessary to assist him in the exercise, performance and discharge of the powers, duties and functions of his office, and to determine their terms and conditions of service.

(2) The salaries of such Secretaries, officers and staff shall be charged on the Consolidated Fund.

(3) Such Secretaries, officers and staff shall be deemed to be public officers except that the dismissal and disciplinary control of such Secretaries, officers and staff shall be vested in the President, who may delegate to any such Secretary his powers of dismissal and disciplinary control in respect of any such officers or staff.

(4) Every such Secretary, officer or member of the staff shall cease to hold office upon a new President assuming office.

(5) Where any such Secretary, officer or member of the staff so ceases to hold office, the Cabinet of Ministers may appoint such Secretary, officer or member of the staff to any post in the Public Service:

Provided that any such Secretary, officer or member of the staff who immediately prior to his appointment as Secretary, officer of the staff was in the Public or Local Government Service or in the service of a public corporation shall be entitled to revert to such service without loss of seniority upon a new President assuming office.

(6) The proviso to paragraph (5) of this Article shall, *mutatis mutandis*, apply to any person referred to in that proviso upon -

(a) the President terminating the services of such person, otherwise than by dismissal on disciplinary grounds; or

(b) the resignation of such person, unless disciplinary proceedings are pending or contemplated against such person on the date of his resignation.

(7) For the purposes of paragraphs (5) and (6) of this Article any person who has continuously held the office of Secretary to the President, Secretary to any Ministry or any office in the President's staff' or any one or more of such offices shall be deemed to have continuously held the office which such person last held.

15. Inserted by the Third Amendment to the Constitution Sec. 2 (1)

16. Original para (4) repealed and substituted by the Third Amendment to the Constitution Sec. 2 (2)

17. Inserted by the Eighth Amendment to the Constitution Sec. 2.
18. Substituted by the Fourteenth Amendment to the Constitution Sec. (2) for “relating to the election of the President”.
19. Substituted by the Third Amendment to the Constitution Sec. (3) for “One month”.