

19th Amendment to the Constitution

While the Sri Lanka Constitution accords Buddhism the “foremost place”, it does not recognise any one religion as the state religion. Religious freedom is provided for in the Constitution, in Article 9, 10 and 14 (1)(e) and the Government generally respects the rights of minority religions to practice their faith freely.

The Constitution contains a separate chapter on Buddhism, where Article 9 reads “The Republic of Sri Lanka shall give to Buddhism the **foremost place** and accordingly it shall be the duty of the State to protect and foster the *Buddha Sasana*, while assuring to all religions the rights granted by Article 10 and 14 (1) (e)”. (emphasis added). While this provision grants Buddhism special status and State patronage, it stops short of designating any religion as the State religion.

Following the Supreme Court determination regarding the Proposed Bill on Prohibition of Forcible Conversion (August 2004), some Buddhists accused the government of shirking its responsibility to protect and foster Buddhism. Others opined that Article 9 is ineffective and the term ‘foremost place’ is vague.

In early September 2004, the *Jathika Hela Urumaya* (JHU) (National Heritage Party) made public their intention to amend the Constitution, making Buddhism the State religion. A draft Act known as the 19th Amendment was proposed.

Certain clauses in the proposed 19th Amendment raised concerns of religious freedom and equality.

Article 9.1 – “The Official Religion of the Republic is Buddhism. Other forms of religions and worship may be **practiced in peace and harmony with Buddha Sasana**”

Article 9.2 – “All inhabitants of the Republic shall have the right to free exercise of their worship. The exercise of worship shall not **contravene public order or offend morals**” (Emphasis added).

These clauses impose fetters on the freedom of worship of non-Buddhists, where it is made subject to practice “in peace and harmony with *Buddha Sasana*” and also subject to “public order and morals”. This is in contrast to the absolute right to freedom of religion granted under Article 10 of the Constitution; “every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice”. This is an absolute right, which cannot be restricted under any circumstances.

Article 9.4 – The inhabitants of the Republic professing Buddhism are bound to bring up their children in the same.

National Christian Evangelical Alliance of Sri Lanka (NCEASL)

Article 9.5 - Stipulates that it is prohibited “To convert Buddhist into other forms of worship or to spread other forms of worship among the Buddhists”.

These clauses clearly undermined the religious freedom of Buddhists and violates the absolute freedom of religion granted to all citizens under Article 10.

Determination of the Supreme Court:

In December 2004, the proposed 19th Amendment was challenged before the Supreme Court.

The petitioners challenged that the Bill in its entirety and in part is vague, ambiguous and inconsistent with the Constitution. Further that clauses of the said Bill are inconsistent with the spirit of the Constitution, secular, state, norms of pluralistic society and international obligations.

The Petition was heard before a 3 judge bench on the 10th of December 2004.

The Supreme Court determined that Clauses 9:1 – 9:5 of the Bill are inconsistent with Article 3, 10, 12(1) and 12(2) and 14(1)(e) of the Constitution, and Articles 3 and 4(a) insofar as they affect fundamental rights referred to in the previously mentioned Articles.

The Supreme Court concluded that since the Bill seeks to repeal Article 9 of the Constitution in terms of Article 83(a), **it must be passed by a Parliamentary special majority and approved by the people at t Referendum, in order to become law.**
