

# **PROVINCIAL COUNCILS IN SRI LANKA**

**A GUIDE TO UNDERSTANDING THE  
STRUCTURES, ORGANIZATION AND THE SYSTEM**

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# **PREFACE**

## **INTRODUCTION**

Provincial Councils constitute the intermediate level of government that was established within the existing governmental system which was comprised of two levels, national and local. The controversial decision was effected through the 13<sup>th</sup> Amendment to the Constitution and the operational procedures for their functioning were provided by law, Provincial Councils Act No. 42 of 1987. This legal framework involved the relocation of specific governmental powers and functions hitherto exercised at the centre at the provincial level.

The establishment of a Provincial Council in every province provided for a set of structures and positions with authority to exercise powers and functions at the provincial level, which also define the roles, responsibilities and relationships of a Provincial Council. It is to be noted that Provincial Councils do not function in isolation, and were established within the framework of the existing system of government, bringing about changes in its structure and functioning. Provincial councils are therefore a set of distinct governmental entities that, however, do not function and perform in isolation. Therefore the content of powers and functions of provincial councils is as important as the governmental context in which they are exercised and performed.

The establishment of an intermediate tier in a new multi-level system of government requires the reformulation of roles and responsibilities at the existing national and local levels. The ensuing dispersion and relocation of powers and functions hitherto exercised by the centre to and at the sub-national level is referred to as decentralization. Conceptually, it is about the location of state power and authority to perform governmental functions required for the provision of specified public services

closer to the people to be served, enabling greater accountability to them and engagement in the decision making processes on their part. Such transfer of authority can be within formal political structures (devolution), public administrative and parastatal structures (de-concentration), or to a non-state agency (privatization). The establishment of provincial councils involves the first, assignment of political, fiscal and administrative responsibilities to an elected body at the provincial level.<sup>1</sup>

This handbook presents the legal provisions establishing the structures, positions, powers and functions that provide for the political, administrative and fiscal arrangements constituting the Provincial Council as the provincial sphere of government. The handbook will also set out the system of checks and balances provided by the legal framework to ensure its proper functioning. The purpose of the handbook is not to make an assessment of the functioning of provincial councils in Sri Lanka. Nor does it seek to engage in the debate on devolution. The purpose of the handbook is to present the complex arrangements for devolution of powers and functions to the provinces in a coherent and comprehensible form.

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<sup>1</sup> However, it is noted that the form, extent and scope of de-concentration are relevant to the functioning of devolution, since they are the extant forms of decentralization in the public sector domain where the PCs function.

## 1. STRUCTURES AND POSITIONS

The legal framework for the establishment of Provincial Councils provides for a set of structures and positions that are assigned political, administrative and fiscal responsibilities that must be discharged for the proper performance of the powers and functions assigned to the province. This section examines the nature, scope and content of responsibilities of each of the structures and positions assigned by the legal framework to establish provincial councils.

### **The Provincial Council:**

Provincial Councils are established for every Province as specified in the Eighth Schedule (Western, North Western, Uva, Sabaragamuwa, Central, Eastern, Southern, North Central and Northern) with effect from such date as may be appointed by the President by order published in the Gazette. (Article 154A). The Provincial Council so established is constituted when the members of such Council are elected in accordance with the law relating Provincial Council elections. The Constitution provides for the Parliament to allow two or three adjoining Provinces to form an administrative unit, with one elected Provincial Council, one Governor, one Chief Minister and one Board of Ministers and to determine whether such Provinces should continue to be so administered.

There while there are nine provinces in Sri Lanka, eight (8) Provincial Councils were established in 1988 with the Northern and Eastern provinces have been temporarily merged into one in terms of the interim provisions of the Provincial Councils Act 42 of 1987 (Section 37 1A). The North East Provincial Council ceased to function in 1989 as its administration was taken over by

the Government owing to the failure of the administrative machinery. The Provinces were demerged in 2009 following a Supreme Court decision.

**A Provincial Council:**

- i. is an autonomous body being constituted in terms of the Constitution and hence does not come under the purview of any Ministry;
- ii. derives its power and authority from the Constitution and Acts of Parliament;
- iii. undertake activities as provided for under the Ninth Schedule, which had earlier been undertaken by the Central Government Ministries, Departments, Corporations and Statutory Authorities.

**The Governor:**

The Governor is appointed by the President and holds office during the pleasure of the President. The term of office of the Governor is five years. The Constitution assigns a focal role to the Governor in the functioning of devolved governance. The Governor is the source of executive power in respect of subjects and functions transferred to a Province and thus functions as head of the executive.

Functions assigned to the Governor seek to ensure that devolved powers are exercised within the framework of the law. Governor's role responsibilities are as follows.

Matters relating to the Council:

Summon, prorogue and dissolve the Provincial Council. These powers are exercised "in accordance with the opinion of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the



majority of the Provincial Council.” Further the Governor addresses and/or sends messages to the Provincial Council.

Exercise of executive powers:

Exercises executive powers in regard to matters on which the Provincial Council has power to make statutes, either, directly, or through Ministers of the Board of Ministers, or through subordinate officers.

Matters relating to the Board of Ministers:

Governor appoints the Chief Minister, the member who is best able to command the support of the majority of the Council provided where more than one-half of the members elected are from one political party, the leader of that party.

Matters relating to statute and policy making:

Governor must assent every statute passed by the Council for it to come into force. The Governor may return a statute presented for assent to the Council for reconsideration requesting the Council to consider the desirability of introducing amendments as may be recommended. Governor may also refer any statute for determination on the consistency of the statute with the provisions of the Constitution, to the President.

Advice to the President:

Governor advises the President of situations where failure of administrative machinery has occurred.

The Governor in the exercise of functions is required to act in accordance with the advice of the Board of Ministers, except in so far as the Governor is by or under the Constitution required to

exercise functions or any of them in his discretion. Where the Governor is by or under the Constitution required to act in his discretion, the decision of the Governor in his discretion is final. However the exercise of Governor's discretion is on the direction of the President.

The Governor performs several important functions under the Provincial Councils Act, No. 42 of 1987. All executive action of the Governor under the Act, whether taken on the advice of the Ministers or otherwise, is expressed as being in the name of the President. Specific functions of the Governor in the conduct of business of the Provincial council are the following.

#### Provincial Finance:

Make rules for the custody of the Provincial Fund and the Emergency Fund of the Province. Receive copy of the Auditor General's Report and lay it before the Council. Financial Statutes to be introduced on the recommendation of the Governor. Cause to be laid before the Provincial Council a statement of receipts and expenditures of the Province (Annual Financial Statement) for each year.

#### Provincial Public Service:

Exercise powers of appointment, transfer, dismissal and disciplinary control of the officers of the provincial public service, which may be delegated to the Provincial Public Service Commission of the Province. Governor formulates schemes of recruitment and codes of conduct. Governor appoints the Provincial Public Service Commission.

### **The Chief Minister:**

Where a Provincial Council has been constituted with the election of the members of the Council, the Constitution provides for a Board of Ministers with a Chief Minister at the head. (Article 154 F1) The Governor appoints as Chief Minister the member of the Provincial Council constituted for the Province, who, in his opinion, is best able to command the support of the majority of the members of that Council, however, provided that where more than one-half of the members selected are members of one political party, the Governor shall appoint the leader of that political party in the Council as the Chief Minister. (Article 154 F4) The duties of the Chief Minister are specified by the Constitution as follows.

- i. To communicate to the Governor of the Province all decisions of the Board of Ministers relating to the administration of the affairs of the Province and proposals for legislation.
- ii. To furnish such information relating to the administration of the affairs of the Province and proposals for legislation as the Governor may call for.
- iii. If the Governor so requires, to submit for consideration of the Board of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Board.

The Chief Minister is assigned responsibility for signing the warrant for the withdrawal of funds from the Provincial Fund.

### **The Board of Ministers:**

The Governor appoints a Board of Ministers comprised of a Chief Minister and not more than four Ministers, and shall appoint the other Ministers on the advice of the Chief Minister.

- i. The function of the Board of Ministers is to aid and advise the Governor in the exercise of his functions.
- ii. The Board of Ministers is collectively responsible and answerable to the Provincial Council.

### **The Chairman and the Deputy Chairman:**

Every Provincial Council chooses two members of the Council to be respectively the Chairman and the Deputy Chairman. (Provincial Councils Act, Section 7-1)

### **High Court of the Province:**

The Thirteenth Amendment to the Constitution establishes a High Court for each Province. (Article 154 P) The Chief Justice nominates from among judges of the High Court such number of Judges as may be necessary for each such High Court. The functions of the High shall extend to:

- i. Exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province.
- ii. Exercise appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province.
- iii. Exercise such other jurisdiction and powers as may be provided by law by Parliament.
- iv. Issue according to law, order of *habeas corpus* in respect of persons illegally detained within the province and writs

of *certiorari*, *prohibition*, *procedendo*, *mandamus* and *quo warranto* against any person exercising within the Province any power under law or statute made by the Provincial Council.

**The Finance Commission:**

Provincial Councils are assigned responsibility for providing services to the people of the province in respect of specified subjects. Accordingly Provincial Councils are assigned sources of revenue to finance costs of providing such services. Additionally the Constitution requires the Government to allocate from the Annual Budget, such funds as are adequate for the purpose of meeting the needs of the Provinces. In this regard, Article 154 R of the Constitution establishes a Finance Commission consisting of –

- i. Governor of the Central Bank of Sri Lanka;
- ii. The secretary to the Treasury
- iii. Three other Members 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.

The practice has emerged for the Commission to elect one of the non-official members as Chairman.

In the allocation of funds for the Provinces, the Constitution requires that the Government shall on the recommendation of and in consultation with the Finance Commission, allocate from the Annual budget, such funds as are adequate for the purpose of meeting the needs of the Provinces. (154 R 4)

It is the duty of the Finance Commission to make recommendations to the President as to:

- i. “the principles on which such funds as are granted annually by the Government for the use of the Provinces, should be apportioned between the various Provinces; and
- ii. any other matter referred to the Commission by the President relating to Provincial finance”.

In this regard, “the Commission shall formulate such principles with the objective of achieving balanced regional development in the country, and shall take into account

- a. the population of each province;
- b. the per capita income of each province;
- c. the need, progressively, to reduce social and economic disparities; and
- d. the need progressively to reduce the differences between the per capita income of each Province and the highest per capita income among the Provinces”.

Accordingly the Finance Commission is required to assess financial needs of Provinces and apportion amongst the provinces funds allocated from the Annual Budget to meet their financial needs on the basis of principles formulated by the Commission.

The Constitution requires that the President shall cause every recommendation made by the Finance Commission under the Constitution to be laid before Parliament and notify Parliament as to action taken thereon.

### **The Chief Secretary:**

The Provincial Councils Act provides for the appointment of a Chief Secretary for each Province by the President, with the concurrence of the Chief Minister of that Province. While the Chief Secretary's functions and responsibilities are not specifically laid down in the legislation applicable to Provincial Councils, in practice he/she:

- i. Functions as the head of the provincial administration.
- ii. Functions as the Chief Accounting Officer for the Provincial in terms of the Financial Rules framed by the Governor.
- iii. Exercises power over members of the Provincial Public Service to the extent delegated by the Provincial Public Service Commission.

### **The Provincial Public Service:**

The Provincial Councils Act 42 of 1987 constitutes a Provincial Public Service for every Province comprised of officers appointed to administrative positions established for the exercise of executive powers vested in the Governor. The powers of appointment, transfer, dismissal and disciplinary control of the officers of the Provincial Public Services are vested in the Governor, who is required to provide for such procedures as may be required for the exercise of such powers.

The practice that emerged in the establishment of Provincial Public Services was for personnel at non-staff, subordinate and minor grades filling provincial and local positions of the Departments whose functions were taken over by the Provincial Councils to be absorbed into the Provincial Public Service. The staff grade positions largely comprising officers of All-Island Services remained with their substantive central public services.

The availability of these cadres for provincial positions is on release from such services by the respective central appointing authorities. Accordingly non-staff officers of scheduled posts of the Local Government Service were absorbed into the Provincial Public Service incorporating therein the local government cadres

**The Provincial Public Service Commission:**

The Provincial Councils Act, 42 of 1987 vests the appointment, transfer, dismissal and disciplinary control of the officers of the Provincial Public Services in the Governor of the Province. The Governor may delegate his powers to a Provincial Public Service Commission for that province. The Governor of the province appoints the Provincial Public Service Commission. The Commission functions as an independent body, and any attempt to influence its decisions is made an offence punishable by the High Court. The establishment of a provincial public service and an independent Provincial Public Service Commission seeks to secure functional autonomy of a PC in respect of staffing and personnel management.

**The Provincial Fund:**

The Provincial Councils Act 42 of 1987 establishes a Provincial Fund for every Province. The sources of finances for the Fund are:

- i. the proceeds of all taxes imposed by the Provincial Council,
- ii. the proceeds of all grants made to a Provincial Council by the Government,
- iii. the proceeds of all loans advanced to the Provincial Council by the Government, and
- iv. all other receipts of the Provincial Council.



Moneys are paid out of the Fund only in accordance with the Provincial Councils Act.

- i. A warrant under the hand of the Chief Minister.
- ii. The warrant is issued only on the passing of a statute of the Provincial Council granting such sums for services to be provided during financial year when the withdrawal takes place or is a charge on the Provincial Fund provided for by the law.
- iii. The custody of the Fund, the payment of moneys out of the Fund and related matters are regulated by rules made by the Governor.

The audit of the accounts of the Provincial Fund is carried out by the Auditor General in terms of Article 154 of the Constitution.

## **2. THE ORGANIZATION**

The Provincial Council is thus constituted by a set of legal structures and positions performing political, administrative and fiscal responsibilities of government. These take meaning in their collective performance. It is their collective performance that makes the Provincial Council an organization, which is a unit of government given effect through the exercise of powers and the discharge of functions that are assigned under the 13<sup>th</sup> Amendment and the Provincial Councils Act. The performance of responsibilities in terms of these powers and functions involve the provision of public services within the Province as set out under the Ninth Schedule, the Provincial List and the Concurrent List. This section examines how the political, administrative and fiscal responsibilities of the provincial structures and positions are

carried out in their collective situation in functioning as a governmental entity.

### **Demarcation of Subjects:**

The scheme of the transfer of powers and functions hitherto exercised by the Central Government to Provincial Councils implies and involves a balancing of national and regional interests. This is effectuated by the demarcation of political, executive/administrative and fiscal responsibilities in respect of national and provincial spheres of competence for the provision of public services. The demarcation of the spheres of national and provincial competence is laid out through three lists of subjects under the Ninth Schedule to the Constitution, a Provincial Councils List, a Reserved List, and a Concurrent List.

### **Provincial Council List:**

The subjects in this list are considered fully devolved to the Provincial Councils subject to national policy on each such subject which is reserved for the Centre. Provincial Councils can pass statutes on these subjects applicable to the Province.

The Provincial List contains three Appendixes for the following subjects.

- i. Law and Order
- ii. Land and Land Settlement
- iii. Education

The Appendixes further define the scope and content of devolution and set out procedures for the exercise of devolved powers in the three subjects.

Subsequent to the establishment of Provincial Councils Parliament passed the Provincial Councils (Consequential Provisions Act), No. 12 of 1989 “to make interim provision for

the interpretation of written law on matters set out in List 1 of the Ninth Schedule to the Constitution”. The Act enables Ministers and Officials of Province to act under relevant existing law.

Reserved List:

The Provincial Council cannot exercise any power in respect of any subject in this list nor can it pass any statute in regard to them.

Concurrent List:

The Provincial Council can exercise power in regard to the subjects in this list. However before the Provincial Council could pass a statute on such subject, it should consult Parliament for its opinions on the provisions contained in such statute. Where Parliament desires to pass an Act on a subject in this list it can do so provided however that it would consult the Provincial Councils about the provisions of such Act.

In this context it is important to note that whereas the Provincial and Concurrent Lists are deemed to define the provincial sphere, these subject headings are not comprehensive or all inclusive unlike those listings in the Reserved List. The sphere of the centre is delineated by the Reserved List representing matters reserved for the centre without defining or restricting in any way the ambit of the subjects set out in the Reserved List. Further any subjects and functions not included in the Provincial or Concurrent Lists will fall within the national sphere. Accordingly in defining the domain of the provincial sphere it is necessary to compare and correlate the three lists in determining what is excluded and hence will fall within the sphere of the national government.

**Powers:**

Provincial Councils are vested with following powers in respect of the provincial domain of subjects.

**A. Legislative**

Provincial Councils are vested with legislative powers in terms of making statutes for the province, in respect of subjects assigned to the Provincial Council, under the Provincial Councils List and the Concurrent List. Provincial Council thus may make statutes applicable to the Province. The legislative powers of a PC are subject to:

In respect of Concurrent Subjects subject to due consultation with Parliament and where there is an existing law subject to Parliament's power to decide to the contrary;

- ii. In respect of Provincial Subjects to the extent specified;
- iii. Within the framework of national policy.

**B. Executive/Administrative**

Executive powers in terms of actions to be taken on the basis of powers in respect of subjects about which Provincial Councils have been assigned legislative responsibilities are exercised by the Governor of the Province. (Article 154C) Such executive powers may be exercised:

- i. Directly by the Governor.
- ii. Through the Ministers of the Board of Ministers; and,
- ii. Officers subordinate to him.

When there is a Board of Ministers the Governor shall exercise his functions in accordance with their advice except where he is expected to act in his discretion.

Administrative powers extend to implementing legislative and executive decision of the Provincial Council. As already noted the Provincial Councils Act No 42 of 1987 provides every Provincial Council with a Provincial Public Service. The appointment, transfer, dismissal and disciplinary control of the officers of the Provincial Public Services are vested in the Governor of the province. The Governor appoints an independent Public Service Commission to exercise these powers under delegation. A provincial public service performing within the legal framework of the provincial executive thus constitutes the administrative powers of the Province.

### **C. Fiscal**

Fiscal powers extend to managing the finances of the province, i.e., the raising revenue and incurring of expenditures for meeting executive responsibilities. Whereas the Constitution guarantees the allocation of adequate finances from the annual budget to meet the needs of provinces, the Constitution also assigns sources of revenue as specified in the Provincial List. Provinces though vested with powers to borrow money, required laws permitting the extent of borrowing have not been made by Parliament so far. The Provincial Councils Act No 42 of 1987 provides for the establishment of a Provincial Fund setting in motion the process of appropriation of moneys for meeting of expenditures in the course of legislative and executive action.

### **Functions:**

A further aspect of provincial competence for providing public services is defined by the functional responsibilities assigned to Provincial Councils. These complement the legal and executive powers for the province to function as a sphere of governance.

## A. Statute Making

A Provincial Council may make statutes applicable to the province in respect of subjects under the Provincial Councils List in terms of Article 154G(9). Accordingly when a PC passes a statute on a subject where there is already a law, which in its long title is described as inconsistent with that law, the statute makes it inoperative within the province so long as the statute is in force. Governor of the province must give his assent to statutes passed by a PC. Statute making powers of a PC are subject to certain conditions and limitations.

- i. In respect of concurrent subjects after such consultation with Parliament: and,
- ii. In respect of Provincial Council Subjects to the extent specified.
- iii. Within the framework of national policy.

In this context it is important to note Parliament's power to pass laws in respect of subjects under the Provincial and Concurrent Lists.

- i. In respect of Provincial Subjects after such Bill has been referred to every PC by the President and where such Councils agree the Bill is passed by a simple majority and where one or more Councils do not agree by a two-thirds majority. However where on reference to Provincial councils, all do not agree to the passing of the Bill, then the Bill shall become law applicable to only those Provinces agreeing. (154 G 3)
- ii. Where one or more Councils request by resolution to make laws on any matter set out in the Provincial List. (154 G 4)

- iii. In respect of subjects in the Concurrent List after such consultation with all the PCs. (154 G 5)
- iv. Every statute made by a Provincial Council comes into force only upon such statute receives assent of the Governor.  
The Governor:
- v. Shall assent; or
- vi. May as soon as possible return it to the Provincial Council for reconsideration of the statute or any special provision thereof;
- vii. On representation of the statute by the Provincial Council after having due regard to the Governors message, assent, or,
- viii. Reserve for reference by the President to the Supreme Court for a determination that the provisions are not inconsistent with the Constitution and if determined as being not inconsistent give assent, and
- ix. If determined to be inconsistent withhold assent.

## **B. Provincial Public Management**

The creation of legislative and executive competence at the provincial level establishes a provincial public management role and responsibility in terms of the provision of public services based on subjects assigned to Provincial Councils in terms of the Ninth Schedule. This situation calls for a provincial public management capacity and capability that is qualitatively different from the coordination or an aggregation of a set of discrete departmental operations at the district which was the case prior to devolution to PCs. Then capacity and capability to provide public services devolved to the province involves original authority to

take action in responding to needs and preferences of people in the specific subject area within the province.

Thus the executive powers vested in the Governor in respect of the Province demarcate an area of provincial public management. As already noted when there is a Board of Ministers the Governor exercises executive powers with the aid and advice of the Board of Ministers. Accordingly de-facto responsibility for provincial public management rests with the Board of Ministers, collectively responsible and answerable to the Provincial Council. Oversight of the Provincial Council is therefore important. It is to be noted that the Financial Rules formulated by the Governor for the custody of the Provincial Fund constitutes a Provincial Public Accounts Committee, which have been established in all the Provinces. Further Provincial Councils have established several oversight committees including Ministry Advisory Committees.

The assignment of expenditure responsibilities to PCs for the provision of public goods and services calls for institutional and organizational arrangements to take care of their delivery to people. The law does not specify any institutional or organizational arrangements for service delivery. It is important to note that PCs took over from central government line ministries and departments the service delivery operations in respect of the Provincial List activities. These activities organized as Provincial Departments or Provincial Authorities (established under Statutes passed by Provincial Councils) constitute the core of the provincial service delivery system. The provincial service delivery system is coordinated spatially at the divisional level by the Divisional Secretary under delegation by the Governor, except for Health and Education that have remained outside the DS's purview.



### **C. Provincial Public Finance**

The expenditure responsibilities of a Provincial Council are matched by arrangements for ensuring the availability of finances to take action in this regard. The Thirteenth Amendment assigns to Provincial Councils revenue from twenty sources set out in the Provincial List. The Constitution also provides for the allocation from the Annual Budget, such funds as are adequate for the purpose of meeting the needs of the Provinces. In this regard the Government is expected to make such allocation on the recommendation of and in consultation with the Finance Commission.

A Provincial Council is a competent spending authority. A Provincial Fund is established for every province under the Provincial Councils Act, 42 of 1987 into which the following monies are paid.

- i. Proceeds of all taxes imposed by the PC.
- ii. Monies from all grants made by the Government.
- iii. All loans advanced from the Consolidated Fund.
- iv. All other receipts.

Use of such finances must be on the basis of appropriation by the Provincial Council or charges specified in the law. This is effectuated through an Annual Financial Statement caused to be laid before the Council by the Governor setting out the estimated receipts and expenditures of the Province as demands for grants to the Provincial Council for the specific year. Appropriation of monies in respect of such grants as are assented to by the Council by a Statute passed by the Council. Withdrawal of monies from the Fund is only under a warrant issued under the hand of the Chief Minister of the Province. These provisions of the

Constitution and the Law seek to secure the functional autonomy of a PC in respect of finances.

#### **D. Provincial Public Personnel Management**

The Provincial Councils Act No. 42 of 1987 provided for the staffing of provincial executive functions through a Provincial Public Service. As already noted personnel powers were vested in the Governor of the province. Provision was made for the Governor to delegate such powers to a Provincial Public Service Commission also established under the same law. The powers vested in the Governor are those of appointment, transfer, dismissal and disciplinary control. The Governor is also required to “provide for and determine all matters relating to officers of the provincial public service, including the formulation of schemes of recruitment and codes of conduct for such officers, principles to be followed in making promotions and transfers, and the procedure for the exercise and the delegation of the powers of appointment, transfer, dismissal and disciplinary control of such officers”. The Provincial Public Service Commission functions as an independent body, and any attempt to influence its decisions is made an offence punishable by the High Court. The establishment of a provincial public service and an independent PPSC seeks to secure functional autonomy of a PC in respect of staffing and personnel management.

#### **Provincial Services:**

The Ninth Schedule to the Constitution sets out the subjects in respect of which a Provincial Council can pass statutes and take executive action. These also specify the subjects in respect of which Provincial Councils may provide the people in the province goods and services. It is noteworthy that the subjects assigned to provinces comprise mainly matters of a regional

concern and focus bearing directly on the daily life of people. Ensuing responsibilities make the Provincial Councils the provider of basic services to people.<sup>2</sup> A reader-friendly classification of the subjects under the Provincial List is set out in Table 1.

**Table 1**

<b>List 1 Service Provision Responsibilities of Provinces</b>	
1. Public Order	Police and Public Order
2. Provincial Administration	Provincial Public Service Local Government
3. Provincial Planning	Planning and Implementation of Provincial Economic Plans, Progress Control, Monitoring and Evaluation, Data and Information
4. Provincial Finance	Taxes as set out in the Provincial List, Fees in respect of subjects assigned, Borrowing to the extent permitted by Parliament, Provincial Debt
5. Economic Services	Agriculture and Agrarian Services Animal husbandry Fisheries (within territorial waters) Land Development Irrigation other than Inter-provincial Irrigation Provincial Roads Electricity other than Hydro to feed the National Grid Industries, Mines and Mineral Development to the extent permitted Provincial Enterprises. Provincial Tourism Trade and Commerce, Food Supply within the Province, Consumer Protection and Price

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<sup>2</sup> On the other hand the subjects reserved for the centre are those of a national or inter-provincial scope.

	Control Cooperatives, Markets and Fairs, Rural Development
6. Human Resources Development	Education and Educational Services to the extent specified Health including Health Development Plan and Annual Health Plan of the Province; Public Hospitals, Rural Hospitals, Maternity Homes and Dispensaries; Public health Services, Health Education, Nutrition, Maternity and Child Care, Food sanitation and Environmental Health Indigenous Medicine Employment, Employment Planning and Manpower Planning
7. Social Protection	Social Services and Rehabilitation, Rehabilitation of Destitute, Rehabilitation and Welfare of Physically, Mentally and Socially Handicapped Probation and Child Care Relief of the Disabled and Unemployed
8. Prisons	Reformatories and Borstal Institutions
9. Urban Development, Housing and Community Amenities	Provincial Housing, Rest Houses and Bungalows, Burials and Burial Grounds, Cremation and Cremation Grounds, Renaming of Towns and Villages
10. Environment	Protection of the Environment to the extent permitted, Social Forestry
11 Recreation, Culture and Religion	Sports Theatres and Dramatic Performance Ancient and Historical Monuments and Archaeological Sites other than those declared to be of National Importance Libraries and Museums
12. Regulation of Provincial Activities	Regulation of Corporations and Un- incorporated Activities

### **Provincial Expenditure and Revenue Assignment:**

The provision of public services by Provincial Councils takes place within the framework of the expenditure and revenue assignment set out in legal provisions establishing Provincial Councils.

### **Expenditure Assignment:**

The subjects in respect of where a Provincial Council can take executive action also constitute the subjects in respect which Provincial Councils may engage in the provision of goods and services to the people. Such services provided by a Provincial Council constitute matters in respect of which moneys may be appropriated out of the Provincial Fund. In turn these constitute the expenditure responsibilities of provincial councils. These are listed in Table 1. It is to be noted that while a Provincial council may incur expenditures in providing services under these subjects the actual expenditure situation will depend upon the spending taking place at other levels of government in such service areas.

### **The Revenue Assignment**

The decentralization theorem asserts that the assignment of public expenditure powers to provinces must be matched by adequate finances to meet such needs. Sources of revenue assigned to Provincial councils are set out in Table 2.

**Table 2**

<b>Provincial Revenue (List 1)</b>	
1. Tax	36.1 Turnover taxes on wholesale and retail sales 36.2 Betting taxes 36.5 Dealership licence taxes on drugs and

	<p>other chemical</p> <p>36.17 Taxes on lands and buildings including property of the State to the extent permitted by Law</p> <p>36.18 Taxes on mineral rights within limits and exemptions as prescribed by Law</p> <p>36.20 Other taxation within the province in order to raise revenue for provincial purposes to the extent permitted by Law</p>
2. Duties	36.6 Stamp duties
3. Fees and Charges	<p>36.3 Toddy tapping licence fees and liquor licence fees</p> <p>36.4 Motor vehicle licence fees within such limits and subject to such exemptions as may be prescribed by Law</p> <p>36.8 Fines imposed by courts</p> <p>36.9 Fees charged under the Medical Ordinance</p> <p>36.10 Fees charged under the Motor Traffic Act</p> <p>36.11 Departmental fees in respect of any of the matters specified in List I</p> <p>36.12 Fees under the Fauna and Flora Protection Ordinance</p> <p>36.13 Fees on lands alienated under Land Development Ordinance and Crown Lands Ordinance</p> <p>36.14 Court fees, including stamp fees on documents produced in court</p> <p>36.15 Regulatory charges under the Weights and measures Ordinance</p> <p>36.16 Land revenue, including the assessment and collection of revenues, and survey and maintenance of land records for revenue</p>

	purposes 36.19 Licence fees on possession, transport, purchase and sale of intoxicating liquors
4. Rents	36.3 Arrack and toddy rents

Above items of revenue constitute existing tax items under different laws assigned to Provinces as sources of provincial revenue. Some of the items, turnover taxes on wholesale and retail sales<sup>3</sup>, motor vehicle license fees, taxes on lands and buildings, taxes on mineral rights are within such limits and exemptions as may be prescribed by law made by Parliament. Most of the others are fees charged under different laws. Other taxation within the Province in order to raise revenue for provincial purposes is to the extent permitted by or under law made by Parliament.

The overall expenditure-revenue situation of the different levels of government, national, provincial and local in 2011 is at Table 3.

**Table 3**  
**Intergovernmental Shares of Revenue and Expenditure - 2011**

	Rs. Millions	
Level of Government	Revenue	Expenditure
National	949,917	1400,0972
Provincial	40,990	157,373
Local	31.0	29.0

Source: Central Bank Annual Report 2012 and Ministry of Local Government

<sup>3</sup> Turnover tax on wholesale and retail sales within the Province has since been withdrawn and a grant in lieu of the tax revenue is provided by the Government.

### **3. THE GOVERNMENTAL SYSTEM**

Thus the structures, powers and functions introduced at the provincial level create a provincial public management domain with legislative, executive, fiscal and administrative competence, defining the space and hence the scope and content of devolved provincial governance. It constitutes only one side of the devolution equation. The legal framework for the establishment of Provincial Councils also provides for powers and functions reserved for the Central Government enabling intervention both in specified situations of system failure as well as circumstances requiring system regulation, constituting the other side of the devolution equation.

The establishment of provincial councils therefore introduces a centre-periphery dimension of government entirely different from the relationship between central and local government that existed till then. In its totality the establishment of provincial councils introduced a multi-level system of government that constituted a new experience not only in terms of creating three levels of government, central, provincial and local, but as much in terms of the set of relations between them, made necessary for each level to perform its governmental role and responsibility. The nature, scope and content of the transformation in the system of government make managing the coherent functioning of the system of multi-level devolution a fundamental imperative.

This section examines two dimensions of multi-level context of the establishment of Provincial Councils.

#### **Powers, Roles and Responsibilities of the Centre:**

The provincial council does not and cannot function in isolation. It is and should be in reciprocity and concurrence with the centre.



Accordingly the building blocks for devolved governance at the centre have a crucial role in the performance of Provincial Councils in delivering devolution. Centre-province relations represent the institutionalization of this relationship in creating complementarities and partnerships for national integration and development. Accordingly the elements of the devolved system cannot be confined to or exist in isolation in the province. They extend to the centre as well. Such a construction of the devolved system proceeds from the fundamental nature of devolution as a balancing of central and provincial interests.

### **A. Powers of the Parliament**

Powers retained by Parliament in respect of a Provincial Council making statutes on subjects under the Provincial List and the Concurrent List have been noted earlier. On a more operational and an ongoing basis following powers involves the Parliament in the functioning of Provincial Councils different ways.

In respect of the items 35 and 36.1, 36.4, 36.7, 36.18 and 36.20 in the Provincial List, pertaining to fiscal powers, a province can act only within limits prescribed by Parliament.

Article 154R(7) requires the President to cause every recommendation of the Finance Commission under this Article to be laid before Parliament, and notify Parliament as to action taken thereon.

The Appropriation Bill of the Government that is laid before Parliament annually incorporates transfers of finances to Provincial Councils on the basis of the recommendation of the Finance Commission to the President to be passed by Parliament.

The Provincial Councils Act No 42 of 1987 provides for the application of Article 154 of the Constitution to the audit and accounts of the Provincial Fund. The audit of the Provincial Fund carried out by the Auditor General is submitted to Parliament.

## **B. Powers of the President**

As the Head of State and Head of the Executive the President's role is pre-eminent. The President exercises significant and crucial powers under the Thirteenth Amendment in respect of PCs.

I. The President makes proclamations under Articles 154J (Public Security), 154L (Failure of Administrative Machinery), 154N (Financial Instability), whereby the powers of a PC can be assumed by himself or vested in Parliament.

J. The President appoints the Governors of Provinces. The Governor exercises his discretion on the direction of the President.

K. President appoints the Finance Commission. The Finance Commission reports to the President.

L. The President appoints the Chief Secretaries of Provinces, albeit, with the concurrence of the Chief Minister.

M. The President directs the Governor when acting in his discretion.

N. The President directs the Governor in the exercise of executive powers in a situation where public security is threatened.

O. The President may, in a situation of administrative failure, assume all or any functions of the administration of the

Province and declare that the powers of the Provincial Council shall be exercised by or under the authority of Parliament.

The Constitution does not specify any formal institutional arrangements for the President to interact with the provincial system as Head of Executive.

### **C. Powers of the Central Executive**

There are several areas where the scheme of devolution has left powers with the Central Executive to intervene in the functioning of the centre-province relationships.

#### **i. National Policy**

In the assignment of responsibilities between the centre and provinces, “National Policy on all Subjects and Functions” has been made a subject reserved for the centre. It is to be noted that the power to formulate National Policy on all subjects and functions therefore extends to the Provincial and Concurrent Lists. The Constitution does not define as to what national policy is. Nor does the Constitution specify the procedure for formulation of National Policy.

#### **ii. Allocations from the Annual Budget**

The Constitutional Framework for devolving expenditure responsibilities to the Provinces, requires the establishment of a scheme of financial transfers to Provinces for the purpose of meeting the needs of their respective expenditure responsibilities.<sup>4</sup> As noted above, the Finance Commission is required to formulate principles for the apportionment between the provinces, of funds allocated from the Annual Budget.

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<sup>4</sup> This is in respect of the gap between revenue and expenditure

Currently following allocations are made from the Annual Budget as financial transfers to Provinces.

- i. Block Grant to meet current expenditure needs of provinces, calculated as the amount needed to fill the gap between recurrent expenditure of the province and the devolved revenue collected by that province. This grant is need-based.
- ii. Criteria-Based Grant to meet social and economic development expenditures of the Province on the basis of a set of socio-economic indicators as the criteria for apportionment. The criteria reflect differences in per capita income and social and economic disparities relative to population.
- iii. Province Specific Development Grant for capital investments in respect of economic and social infrastructure development activities in the Province. .

These Grants are incorporated in the Annual Budget and released by the Treasury Operations Department of the Ministry of Finance to the Provinces through the Ministry of Local Government and Provincial Councils in respect of the Block Grant and directly in respect of the others.

#### **D. Role of the Governor**

The Governor appointed by the President holds office during the pleasure of the President. The Constitution assigns a focal role to the Governor in the functioning of the Provincial Council. As already noted executive powers in respect of subjects where a Provincial Council has the power to pass statutes are vested in the Governor, The functions and the functional responsibilities assigned to the Governor seek to ensure that devolved powers are

exercised within the framework of the law. The role responsibilities of the Governor may be summarized as follows.

i. Matters relating to the Council:

Summon, prorogue and dissolve the Provincial Council. These powers are exercised “in accordance with the opinion of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council.” Address and/or send messages to the Provincial Council.

ii. Exercise of executive powers:

Exercises executive powers in regard to matters on which the Provincial Council has power to make statutes, either, directly, or through Ministers of the Board of Ministers, or through subordinate officers.

iii. Matters relating to the Board of Ministers:

Governor appoints the Chief Minister, the member who is best able to command the support of the majority of the Council provided where more than one-half of the members elected are from one political party, the leader of that party.

iv. Matters relating to the passing of Statutes:

Governor must assent every statute passed by the Council for it to come into force. The Governor may return a statute presented for assent to the Council for reconsideration requesting the consider the desirability of introducing amendments as may be recommended. Governor may also refer any statute for determination on the consistency of the statute with the provisions of the Constitution, to the President.

v. Advice to the President:

Governor advises the President of situations where failure of administrative machinery has occurred.

The Governor in the exercise of his functions is required to act in accordance with the advice of the Board of Ministers, except in so far as the Governor is by or under the Constitution required to exercise functions or any of them in his discretion. Where the Governor is by or under the Constitution required to act in his discretion, the decision of the Governor in his discretion is final. However the exercise of Governor's discretion is on the direction of the President.

The Governor performs several important functions under the Provincial Councils Act, No. 42 of 1987. All executive action of the Governor under the Act, whether taken on the advice of the Ministers or otherwise, is expressed as being in the name of the President. Specific functions of the Governor in the conduct of business of the Provincial council are the following.

vi. Financial Management:

Make rules for the custody of the Provincial Fund and the Emergency Fund of the Province. Receive copy of the Auditor General's Report and lay it before the Council. Financial Statutes to be introduced on the recommendation of the Governor. Cause to be laid before the Provincial Council a statement of receipts and expenditures of the Province (Annual Financial Statement) for each year.

vi. Provincial Public Service:

Exercise powers of appointment, transfer, dismissal and disciplinary control of the officers of the provincial public service, which may be delegated to the Provincial Public Service Commission of the Province. Governor formulates schemes of recruitment and codes of conduct. Governor appoints the Provincial Public Service Commission.

**E. Role of the Finance Commission**

The key areas of activities the Commission performs in pursuance of its foregoing constitutional mandate are the following.

i. Assessment of Provincial Needs

The assessment of provincial needs is key to the whole process of allocation and apportionment of funds. The current practice seeks to address not only the service provision needs of individual provinces, but also imperatives of balanced provisions as well as costs of provision across province. The procedure for assessment of provincial needs is based upon the presentation by the province of a request for funds in respect of the forthcoming financial year. The Finance Commission issues a set of guidelines for this purpose annually.

ii. Consult with and Recommend to Government (Financial) Needs of the Provinces

This function is about determining the size of the pool of funds for transfer to provinces to meet their respective overall fiscal needs. The current practice is to aggregate assessed expenditure needs of the individual provinces into a total need for all provinces and negotiate with the National Budget Department on this basis.

iii. Recommendation to the President the Apportionment of Funds Between the Provinces.

The National Budget Department informs the Finance Commission of the amounts of funds to be allocated in respect of each of the grant items (viz., Block Grant, Matching Grant, Criteria-Based Grant and Province Specific Development Grant). The apportionment of the funds so allocated follows the principles underpinning each of the grant items. The Finance Commission recommends the apportionment of these funds between the provinces in the form of an annual submission to the President incorporating courses of action in respect of related issues regarding provincial finance.

iv. Follow –up on the use of Funds

Scrutiny of the use of funds so transferred constitutes an important concern about the performance of provincial finance. Such scrutiny extends from simple reporting on disbursements in respect of the Block Grant and conformity with purpose in terms of Guidelines in respect of the Matching Grant, Criteria Based Grant and Province Specific Development Grant. Provincial performance on the collection of revenue constitutes an integral aspect of scrutiny.

Several constitutional provisions underscore the critical and important role of the Finance Commission in provincial finance.

- i. Assignment of the responsibility for the determination of needs of provinces.
- ii. Recommendation of the Finance Commission to be laid before the Parliament by the President who shall notify what action has been taken thereon.



- iii. Any question relating to the adequacy of funds, any recommendation made, or principle formulated by the Commission shall not be inquired into, pronounced upon or in any manner entertained, determined or ruled upon by a Court or Tribunal.

## F. National Oversight of Provincial Devolution

A further element of the powers retained at the centre in the functioning of the Provincial Councils are the roles and responsibilities for national oversight of the exercise of devolved powers.

### i. Role of the Auditor General

The audit of the accounts of the Provincial Fund is vested in the Auditor General. A copy of the report of the Auditor General is presented to the Governor of the respective Province where the Provincial Fund has been audited, who causes it to be laid before the Council.

### ii. National Police Commission

Appendix I to the Provincial List in defining the conditions and the procedures for the exercise of powers vested in a Provincial Council under the subject of Law and Order provides for a National Police Commission.<sup>5</sup> According to the provisions in Appendix 1, the National Police Commission is comprised of:

- a. The IGP,
- b. A person nominated by the Public Service Commission in consultation with the President,
- c. A nominee of the Chief Justice.

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<sup>5</sup> The Constitution under Appendix 1 of the Provincial List divides the Sri Lanka Police into a National Division and a Provincial Division.

The National Police Commission is responsible for:

- a. Promotion of police officers in the Provincial Division to the National Division
- b. Promotions, transfers and disciplinary control of members of the National Division.
- c. Hear and determine appeals from officers seconded to Provincial Divisions against whom disciplinary action has been taken by Provincial Police Divisions.
- d. Set standards for recruitment and promotion of Police Officers of all Divisions and such standards shall be uniform for all Provincial Divisions.

iii. National Land Commission

Appendix II to the Provincial List in defining the conditions and the procedures for the exercise of powers vested in a Provincial Council under the subject of Land and Land Settlement provides for a National Land Commission. According to the provisions in Appendix II:

- a. The Commission shall include representatives of all Provincial Councils;
- b. Formulate national policy with regard to the use of State Land.
- c. Have a Technical Secretariat representing all relevant disciplines required to evaluate physical as well as socio-economic factors relevant to natural resource management.
- d. National policy on land use will be based on technical aspects (not on political or communal aspects), and the Commission shall lay down general norms in regard to the use of land.
- e. In the exercise of powers devolved in respect of Land and Land Settlement, Provincial Councils shall exercise such powers having due regard to the national policy formulated by the National Land Commission.

### **National-Provincial-Local Relations:**

The second aspect of the multi-level system of government introduced by the establishment of Provincial Councils is the set of relations between these different levels, the centre, the province and the local.

#### **A. Subsidiarity in the Multi-Level System**

A significant aspect of organization for devolution at the centre is the sound institutionalization of its relations with the provinces. Indeed the institutional imperative of centre's responsibility for national policy function and inter-governmental financial transfers is centre-province relations that can bring about effective coordination of the roles and functions of the centre and the provinces. Meaningful centre-province relations call for a complementarity of development role and functions as between national and provincial development strategies and programmes. It is not a relationship that is based upon a continuum of policy, planning and implementation operations extending from the centre to the provinces.

The complementarity of centre-province relationship implicitly extends to the local level by the guarantee of the status of Local Authorities in terms of their powers and functions. Then the powers and responsibilities of local authorities (Municipal Councils, Urban Councils and Pradeshiya Sabhas) constitutes an integral sphere of devolution and a partner in devolved governance making for a multi-level governmental relationship. Accordingly the Thirteenth Amendment in effect establishes two arenas of devolved governance, i.e., the provincial and local. The design implication of a local sphere is that a Local List of subjects and functions is added implicitly if not explicitly to the Provincial

and Concurrent Lists of devolved powers and functions. It makes for three levels of representative government.

### Formulating a Provincial Development Strategy

The establishment of provincial Councils creates a sub-national mandate which, subject to nationally set standards, for identifying local priorities, defining how best to meet them, and delivering the services in a manner as would meet the locally defined needs. This was a significant departure in the provisioning of public services that were hitherto, nationally defined, sectorally oriented, and delivered through local agents accountable to the centre. It is relevant to note that the core principles of good governance are fundamental to furthering democracy and development in terms of choices and opportunities available to people to meet as equitably as possible the needs of current generations without compromising the future.

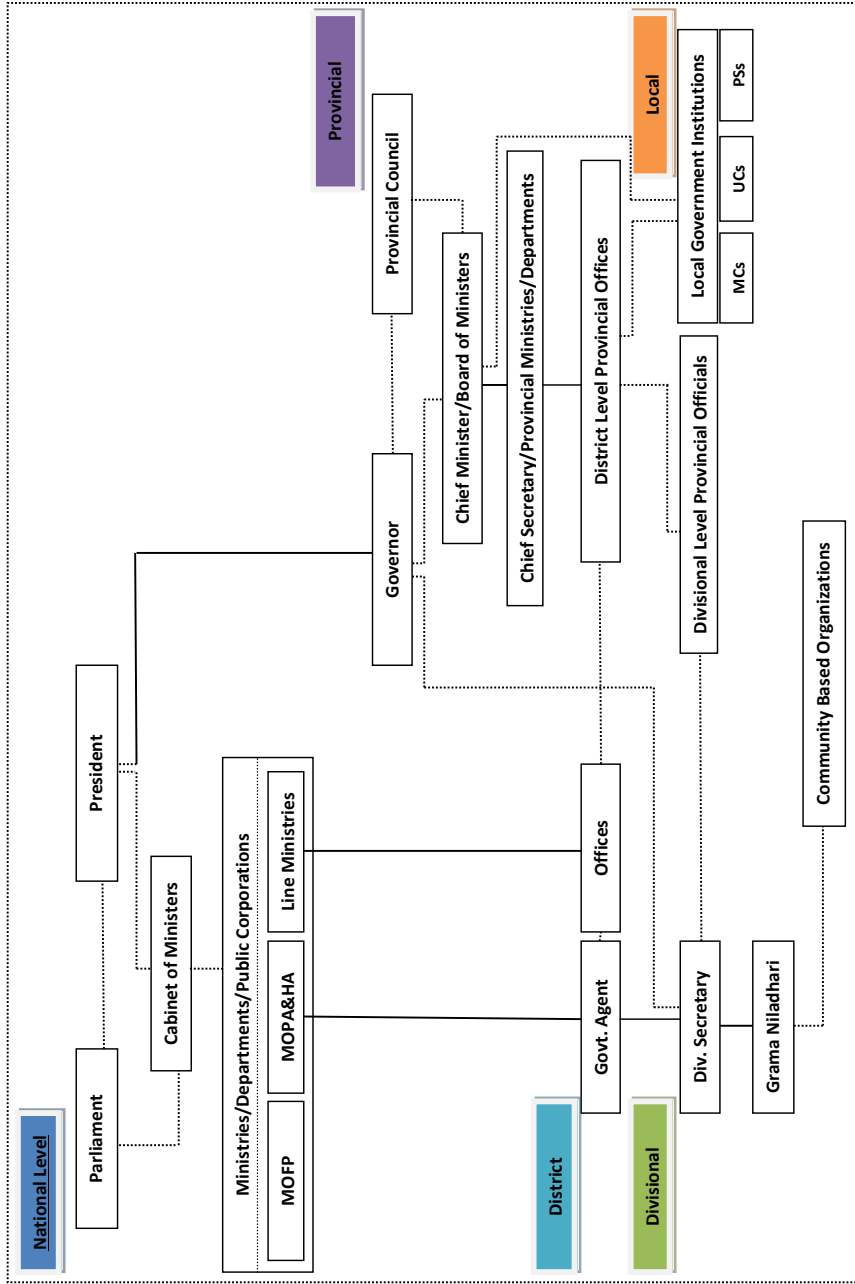
Then the fundamental objective of good provincial governance should be equitable and sustainable human development, to enhance the well being of the people living in the province. In fact the fundamental objective of financing provinces, as set out in the Thirteenth Amendment, is “achieving balanced regional development”. (see Article 154 R 8) Balanced regional development is about each province, all of the provinces and necessarily the whole country.

### B. Service Provision Partnerships

The three lists accordingly provide the basis for demarcating the national from the provincial spheres of government. It is important to note that these responsibilities and the attendant powers and functions cannot to be exercised in isolation. This assignment of responsibilities between the Centre and the Provinces is in fact a framework for partnership in actions as the

responsibilities of the centre and the province have distinct complementarities that can and need to be articulated through policy and programme action at both levels. The institutionalization of provincial governance is accordingly embedded in the institutional arrangements for the partnership between the centre and the province. Further, the Thirteenth Amendment by bringing Local Authorities into the structure of devolved governance makes the local level also partners in the provision of public goods and services to people. Indeed the closeness of Local Authorities to people makes partnership between Provincial Councils and Local Authorities a necessary condition for good governance and effective development.

**STRUCTURE OF GOVERNMENT ADMINISTRATION IN SRI LANKA**



**ORGANIZATION OF PROVINCIAL COUNCIL ADMINISTRATION**

