

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA.**



**THE BILL TITLED "TWENTY SECOND AMENDMENT TO THE
CONSTITUTION"**

AND

THE BILL TITLED "JUDICATURE (AMENDMENT) ACT NO. OF 2026"

SC/SD/28/2026

Petitioners : T. M. S. Pasindu Silva
The Bar Association of Sri Lanka
No. 153,
Mihindu Mawatha,
Colombo 12.

Lakitha Isiwara Wakishta Arachchi
The Bar Association of Sri Lanka
No. 153,
Mihindu Mawatha,
Colombo 12.

Counsel : M. A. Sumanthiran PC and Saliya
Peiris PC with Suren Fernando, Ermiza
Tegal, Jerusha Crosette Thambiah,
Delan De Silva, Sanjit Dias, Ramzi
Bacha, Mark Schubert, Benislos
Thushan, Kithsiri Ambagahawatte,
A.L. Natheer, Hemantha
Wettasinghe, V. Thiyaheshwaran,
Athula Ranagala, Gunaratne
Wanninayake, Ruwan Asiri De Silva,

SG
To proceed
21/09/2026

Chandima Wijeratne, Upali Mohotti
PC, Nagendran Prathipan, Samantha
Mallawaarachchi, H.R.P. Senanayake,
Keerthi Jayasinghe, Janaka
Abeysekara, Badra Seneviratne, M.M.
Rafeek, Kandasamy Thayaparan,
Priyantha Alagiyawanna, Gamini
Alwis, Thishya Weragoda, Lakshan
Dias, Chandani Dayaratna, Mahesh
Kotuwelle, Lakshan Abeywardena,
Ushani Bombuwala, Lakshan
Wijewardena, Ashani Rathnayake and
Nadeesha Perera instructed by Ramzi
Bacha Associates.

Intervenant-Petitioner : Lakshman Nipuna Arachchi MP
No. 179/1,
Nilani Gardens,
Micro Tower 1,
1st Floor,
Bokundara, Piliyandala.

Counsel : Nigel Hatch PC with Siroshni
Illangage instructed by G. Dinesh De
Silva.

SC/SD/29/2026

Petitioners : Professor G. L. Peiris
No. 37,
Kirula Place,
Colombo 05.

Counsel : Ali Sabry PC with Ruwantha Cooray,
Shamith Fernando, Shehani Alwis,
Naamiq Nafath, Deshan Aluwihare,
Akila Aluthwatte, Joshua Moraes,
Vimukthi Karunarathne, Thenuda
Imbulagoda, Akash Rafeek, Yousuf
Alfayard and Navod Rathnasekara
instructed by N & S Associates

Intervenant Petitioners : 1. Sarath Manamendra,
No. 75/5/B,
U. L. L. Perera Mawatha,
Kurunuduwatta, Tudella,
Ja-ela.

Counsel : Mohan Weerakoon PC instructed by
G. Dinesh De Silva.

2. Adikari Appuhamilage Janaka Adikari,
Attorney-at-Law,
No. 10,
Council Lane, Dehiwala.

Counsel : Chamara Nanayakkarawasam
instructed by G. Dinesh De Silva

3. Sirisena Arachchige Sudaththa
Thilaksiri,
Royal Park Apartments,
Lake Drive,
Rajagiriya.

Counsel : Jagath Abeynayake instructed by
Chamodi L.C. Rajaneththi

4. Wijesuriya Arachchige Palitha
Senadheera,
No. 501,
Narangodapaluwa,
Batuwatta.

Counsel : K. V. S. Ganesharajan with Aadhes
Thuraiaraja, Vithusha Loganathan,
Thrindi Sangalpana instructed by M.
Mangaleswary Shanker.

5. Rev. Wakmulle Uditha Sthawira,
Naigala Rajamaha Viharaya,
Weeraketiya.

Counsel : Mohamed Shah Zarene Khan
instructed by Chamodi L.C.
Rajaneththi

6. Koswinnage Sarath Lal Perera,
No. 202/18,
Rathmaladeniya Road,
Pannipitiya.

Counsel : Niranjan Arulpragasam with Lasika
Udayangani, Ashenka de Silva
instructed by Charika Wanigabaduge

SC/SD/30/2026

Petitioner : Dias Bandaralage Ajith Shantha
Kumara Jayathilaka,
No. 181/B/5/D,
Suhada Mawatha,
Arawwala Road,
Pannipitiya.

Counsel : Petitioner appeared in person.

SC/SD/31/2026

Petitioner : Rathnayake Mudiyanseelage Ranjith
Madduma Bandara,
No. 31/3,
Kandawatta Terrace,
Nugegoda.

Counsel : Thisath Wijegunawardane PC with
Gihan Liyanage and Amrith
Karunathilake instructed by Dinusha
Randeniya.

SC/SD/32/2026

Petitioner : Korale Gedara Ranjan Kumara
Seneviratne,
General Secretary,
Sarvajana Balaya Party,
No. 13/92, 3rd Lane,
Koswatta, Nawala.

Counsel : Ranjan Senevirathne instructed by T.

Nalin Panditharatne.

SC/SD/33/2026

Petitioner : Sathendra Maithri Gunaratne,
No. 118,
Barnes Place,
Colombo 07.

Counsel : A. S. M. Perera, PC with Chathunika
Vitharana instructed by NICLO
Associates.

SC/SD/34/2026

(Challenging "Judicature (Amendment) Act No. of 2026" Bill)

Petitioner : Rathnayake Mudiyansele Ranjith
Madduma Bandara
No. 31/3,
Kandawatta Terrace,
Nugegoda.

Counsel : Thisath Wijegunawardane, PC with
Gihan Liyanage and Amrith
Karunathilake instructed by Dinusha
Randeniya.

SC/SD/35/2026

Petitioner : Udaya Prabhath Gammanpila,
No. 448,
Kotte Road,
Pitakotte.

Counsel : Boopathy Kahathuduwa instructed by
Sachintha Randil Perera.

SC/SD/36/2026

Petitioners : 1. Milinda Rajapaksha,
Chairman,
Bahujana Balaya,

2. Iranga Mendis,
General Secretary,
Bahujana Balaya,

3. Piyal Darshana Guruge,
National Organizer,
Bahujana Balaya,

All Petitioners at:
Bahujana Balaya,
No. 125,
Model Farm Road,
Borella, Colombo 08, Sri Lanka.

Counsel : Boopathy Kahathuduwa instructed by
Ama Sahani Jayaweera

SC/SD/37/2026

Petitioner : Aruna Laksiri Unawatuna,
No. 2,
Buddhist Center Road,
Colombo 10.

Counsel : Petitioner appears in person.

SC/SD/38/2026

Petitioner : Prof. Ganewattage Don Ranjith Upul
Abeyrathne,
Senior Professor of Political Science,
Faculty of Arts,
University of Peradeniya,
Peradeniya.

Counsel : Geoffrey Alagaratnam, PC with H.
Fathima Musfira, Nilakshi Silva, Linuri
Munasinghe, Sanjit Dias and Pulasthi
Hewamanna instructed by Ishara
Gunawardena.

SC/SD/40/2026

Petitioner : Dr. Nadeesh Rangana de Silva,
Department of Legal Studies,
Faculty of Humanities and Social
Sciences,
Open University of Sri Lanka.

Counsel : N. K. Ashokbharan instructed by R.
D. Pramuditha Senehara
Hettiyakanda.

SC/SD/41/2026

Petitioner : Prof. Naleen Indika Pussella,
Department of Remote Sensing and
GIS,
Faculty of Geomatics,

Sabaragamuwa University of Sri Lanka.

Counsel : Anura Meddegoda PC instructed by
R. D. Pramuditha Senehara
Hettiyakanda

SC/SD/42/2026

Petitioner : 1. Prof. Mahim Mendis,
Senior Lecturer,
Department of Social Sciences,
Faculty of Humanities and Social
Sciences,
The Open University of Sri Lanka.

2. Prof. Hasintha Wijesekara,
Faculty of Applied Sciences,
University of Sabaragamuwa.

Counsel : Anura Maddegoda, PC instructed by
R. D. Pramuditha Senehara
Hettiyakanda

SC/SD/43/2026

Petitioner : Haputhanthri Gamage Sagara
Kariyawasam,
No. 1316,
Nelum Mawatha,
Jayanthipura, Battaramulla.

Counsel : Saman Galappaththi instructed by
Shamika D Senevirathna.

SC/SD/44/2026

- Petitioner : 1. Rivihara Sachith Pinnaduwa,
Attorney-at-Law,
Young Lawyers Association,
No. 383/1,
Kalapaluwawa, Rajagiriya.
2. Dinusha Lakali Thiranagamage,
Attorney-at-Law,
Young Lawyers Association,
No. 383/1,
Kalapaluwawa, Rajagiriya.

Counsel : Ermiza Tegal with Thahira Cader,
Mark Schubert, Vihangi Liyanagama,
Nisara Wickramasinghe instructed by
G. A. D. Lalith N. Gunaratne.

SC/SD/45/2026

Petitioner : Arjuna Parakrama,
No. 13,
Sunray Garden,
New Wariyagala Watta,
Nillambe.

Counsel : Dr. Jayampathy Wickramaratne PC
instructed by G. A. D. Lalith N.
Gunaratne.

SC/SD/46/2026

Petitioner : Shiral Lakthilaka,

Attorney-at-Law,
No. 15,
Luxapana Mawatha,
Jayanthipura,
Battaraulla.

Counsel : Shiral Lakthilaka instructed by
Chathuranga Hathurusinghe.

SC/SD/47/2026

Petitioner- : 1. Rajeev Amarasuriya,
President,
Bar Association of Sri Lanka.

2. Nalin De Silva,
Secretary,
Bar Association of Sri Lanka.

Both at,
The Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,
Colombo 12.

Counsel : M. A. Sumanthiran PC and Saliya
Peiris PC with Suren Fernando, Ermiza
Tegal, Jerusha Crosette Thambiah,
Delan De Silva, Sanjit Dias , Ramzi
Bacha, Mark Schubert, Benislos
Thushan, Kithsiri Ambagahawatte,
A.L. Natheer, Hemantha Wettasinghe,
V. Thiyaheshwaran, Athula Ranagala,

Gunaratne Wanninayake, Ruwan Asiri
De Silva, Chandima Wijeratne, Upali
Mohotti PC, Nagendran Prathipan,
Samantha Mallawaarachchi, H.R.P.
Senanayake, Keerthi Jayasinghe,
Janaka Abeysekara, Badra
Seneviratne, M.M. Rafeek,
Kandasamy Thayaparan, Priyantha
Alagiyawanna, Gamini Alwis, Thishya
Weragoda, Lakshan Dias, Chandani
Dayaratna, Mahesh Kotuwelle,
Lakshan Abeywardena, Ushani
Bombuwala, Lakshan Wijewardena,
Ashani Rathnayake, Nadeesha Perera
instructed by Ramzi Bacha Associates.

Intervenant-Petitioners : 1. Adikari Appuhamilage Janaka Adikari,
Attorney-at-Law,
No. 10,
Council Lane, Dehiwala.

Counsel : Chamara Nanayakkarawasam
instructed by G. Dinesh de Silva.

2. Wijesooriya Arachchilage Don
Niroshan Buddhika,
No. 422C,
Balagoda Junction,
Poddala,
Galle.

Counsel : Chamara Nanayakkarawasam with

Apoorwa Nanayakkara, Sampath
Yalewaththa, Patali Abayarathna,
Ridma Senarath instructed by
Dimuthu Upeksha Fernando

3. Lakshman Nipuna Arachchi MP
No. 179/1,
Nilani Gardens,
Micro Tower 1,
1st Floor,
Bokundara, Piliyandala.

Counsel : Nigel Hatch, PC with Siroshni
Illangage instructed by G. Dinesh De
Silva

SC/SD/48/2026

Petitioner : Dr. Ajantha Wijesinghe Perera,
No. 16,
Temple Road,
Rattanapitiya,
Boralesgamuwa.

Counsel : Nuwan Peiris instructed by H. D. H.
Senewiratne.

SC/SD/50/2026

Petitioners : 1. Centre for Policy Alternatives
(Guarantee) Limited,
No. 6/5,
Layards Road,
Colombo 05.

2. Dr. Paikiasothy Saravanamuttu,
No. 3,
Ascot Avenue,
Colombo 05.

Counsel : Suren Fernando with Luwie
Ganesthasan with Khyathi
Wickramanayake instructed by
Nathali Shenelle Livera.

Intervenant Petitioner : Jamuni Kamantha Thushara,
No. 67,
"Nandana", Eluvila,
Panadura.

Counsel : Jagath Abeynayaka instructed by
Chamodi Lakshani Chethana
Rajaneththi.

SC/SD/51/2026

Petitioner : G. Weerasinghe,
General Secretary,
Communist Party of Sri Lanka,
No. 91,
Dr. N. M. Perera Mawatha,
Colombo 8.

Counsel : Nadeesha Wijeratne

SC/SD/52/2026

Petitioner : Don Dematage Ananda Palitha,
No. 43/8/B,
Singha Road,
Keraga Pokuna,
Wattala.

Counsel : Kaneel Maddumage with Dilshi
Sandunika instructed by Praveen M.
Premathilaka

SC/SD/53/2026

Petitioner : H. G. Anuradha Lakmini,
No. 04,
Richard de Soyza Housing Scheme,
Koswatta,
Battaramulla.

Counsel : Danushka Rahubadda with Dhanusha
Udahawatte instructed by U.G.
Laksahani Himashi.

SC/SD/54/2026

Petitioner : Dayasiri Jayasekera,
Fairway Waterfront,
No. 101,
Buthgamuwa Road,
Rajagiriya.

Counsel : Tharaka Nanayakkara instructed by S
B Dissanayake Associates

SC/SD/56/2026

Petitioner : Chirantha Anthoney Ranmal
Amerasinghe,
No. 109/8,
Kahatagahawatta Mawatha,
Dampe Road,
Madapatha.

Counsel : Thishya Weragoda with Stefania
Perera, Chamodi Geethma, Yasanga
Senadeera, Sulakshi Batuwita, Kalani
Dissanayake, Prathap Welikumbura,
Ayeshmantha Gayan, Wasana
Nalawatta, Dinithi Fernando
instructed by Thamila Dinushi Perera.

SC/SD/57/2026

Petitioners : 1. Anuksha Iraj Weeraratne,
No. 65, Jawatta Road,
Colombo 05.

2. Nilantha Sathsara Gamage,
No. 38/8, 1st Lane,
Old Kesbewa Road,
Gangodawila,
Nugegoda.

3. Wijesooriya Arachchige Chamara
Wijesooriya
No. 316, Dhippitigoda,
Kalaniya.

4. Nandana Cuda Meegoda
No. 14/4/1/A, Gohagoda Road,
Katugasthota.

Counsel : Thishya Weragoda with Stefania
Perera, Chamodi Geethma, Yasanga
Senadeera, Sulakshi Batuwita, Kalani
Dissanayake, Prathap Welikumbura,
Ayeshmantha Gayan, Wasana
Nalawatta, Dinithi Fernando
instructed by Niluka Dissanayake

SC/SD/58/2026

Petitioner : Atham Lebbe Aazath
No. 367, 2/2, Dam Street,
Colombo 12.

Counsel : Thishya Weragoda with Stefania
Perera, Chamodi Geethma, Yasanga
Senadeera, Sulakshi Batuwita, Kalani
Dissanayake, Prathap Welikumbura,
Ayeshmantha Gayan, Wasana
Nalawatta, Dinithi Fernando
instructed by Niluka Dissanayake

SC/SD/59/2026

Petitioner : Kadhana Arachchige Bandula
Chandrasekara,
No. 119,
University Road,
Rattanapitiya, Boralesgamuwa.

Counsel : Thishya Weragoda with Stefania
Perera, Chamodi Geethma, Yasanga
Senadeera, Sulakshi Batuwita, Kalani
Dissanayake, Prathap Welikumbura,
Ayeshmantha Gayan, Wasana
Nalawatta, Dinithi Fernando
instructed by Niluka Dissanayake

SC/SD/61/2026

Petitioner : Suwada Hennedige Dayaratna,
No. 571/10,
Church Road,
Gonawala.

Counsel : Petitioner appeared in person

SC/SD/63/2026

Petitioner : Gamini Sisira Kumara,
The Convener,
Professionals' Centre for People,
No. 293/E1, 2nd Lane,
Mandawala Road, Kesbewa,
Piliyandala.

Counsel : Swasthika Arulingam with Dinusha
Thiranagama instructed by G. A. D.
Lalith N Gunaratne.

SC/SD/64/2026

Petitioner : Kumara Wadu Dhanuka Lakmal,
Ginigalduwa,

Pasal Mawatha,
Mitiyagoda.

Counsel : Isuru Mahesh Panditha instructed by
Amanda Parami Kalpashaka.

SC/SD/65/2026

Petitioners : 1. Dharamasiri Lankapeli,

2. Dudeesha Duminda Nagamuwa,

3. Waithilingam Mahendran,

All of,

Peoples Struggle Alliance,
No. 136,
Pansala Road,
Kaluthara-North.

Counsel : Nuwan Bopege with Charith De Silva,
Dinusha Thiranagama, Chahura
Weththasinghe and Hansaka
Chandrasighe instructed by G. A. D.
Lalith N Gunaratne.

SC/SD/66/2026

(Challenging "Judicature (Amendment) Act No. of 2026" Bill)

Petitioner : Aruna Laksiri Unawatuna,
No. 2,
Buddhist Center Road,
Colombo 10.

Counsel : Petitioner appeared in person.

SC/SD/67/2026

Petitioner : Duminda Weerasingha Rajapaksha,
No. 341/6A,
Wakwellla Road,
Galle.

Counsel : Chandima Weerakoody with Aswida
Benedict, Savandi Jayawardena
instructed by Udaya Shantha
Dadallage.

SC/SD/68/2026

Petitioner : Ven. Bogodakande Bodhidhamma
Thero,
Bodhidhamma International Human
Rights and Nonviolence Organisation,
Digalena Aranya Senasanaya,
Narawelkatiya,
Pituvala Road,
Elpitiya.

Counsel : L. Ratnayake with A. Wijerathne
instructed by Amindika Rathnayaka.

SC/SD/69/2026

Petitioner : K. W. Janaranjana,
No. 71/4,
Jaya Mawatha,
Mampe,
Piliyandala.

Counsel : Pulasthi Hewamanna with Fadhila
Fairoze, and Dharini Fernando
instructed by Brintha Chandragesh.

SC/SD/70/2026

Petitioner : Mr. Gamini Viyangoda,
No. 883/9,
Flower Road,
Etul Kotte.

Counsel : Suren Gnanaraj with Sakuni
Weerarathna, Layangi Dissanayake,
Anuk Dharmasena and Sandun
Batagoda instructed by S. W. Amila
Kumara.

SC/SD/71/2026

Petitioner : 1. W. M. S. D. Weerakoon,

2. Maneesha Kithsiri Bandara
Senevirathna,

Both at,

The Kandy Bar Association,
Lawyers Office Complex,
William Gopallawa Mawatha,
Kandy.

Counsel : Anura Meddegoda, PC instructed by
Dinusha Randeniya.

SC/SD/72/2026

- Petitioners : 1. Sri Lanka Postal and
Telecommunication Services Union,
P.O. Box 28,
Colombo.
2. Konara Mudiyanseelage Chinthaka
Bandara,
NIC No: 680085102V,
Post Office Official Residence,
Maradana,
Colombo 10.

Counsel : Maithree Gunarathne, PC with Kusal
Senanayake, Methmi Ailapperuma
instructed by Darshika Perera &
Samudra Gunawardhena (NICLO
Associates).

SC/SD/73/2026

Petitioner : Sudath Nishantha Nethisinghe,
No. 77/4,
Mount Calvary Road,
Ja-Ela.

Counsel : Asthika Devendra with Abheetha
Nandakumara instructed by Dinusha
Randeniya.

SC/SD/74/2026

- Petitioners :
1. Graded Principals' Association,
No. 507/2A/1,

Old Kottawa Road,
Kottawa.

2. Mudunkotuwa Kumarasiri Nimal,
NIC No: 702662850V,
No. 502/5/28,
Royal Garden,
Kosgama.

Counsel : Maithree Gunarathna, PC instructed
by Darshika Perera & Samudra
Gunawardhena (NICLO Associates)

SC/SD/75/2026

Petitioners : 1. Rajapaksha Arachchilage Namal Ajith
Rajapaksha,
No. 44/48,
Agoda Village,
Kandy Road,
Peliyagoda.

2. Kananke Acharige Jagath Kularathne,
No. 4/2,
D.J. Wijesiriwardene Road,
Mount Lavinia.

Counsel : Lakshan Dias with Navodya Gamage,
Imashs Fernando, Uthpala
Ranasinghe, Dasuni Viyanjani,
Yashodara Ilangasinghe, Nimansa
Meetiagoda instructed by Dayani
Panditharatne.

SC/SD/76/2026

Petitioner : Venerable Ulapane Sumangala
Thero,
Dharmayathanaya,
No. 45/04,
Nawala Road,
Narahenpita,
Colombo 05.

Counsel : Eraj de Silva, PC with Nalani
Manathunga, Hafeel Farisz, Daminda
Wijayaratne, Janagan
Sundramoorthy, Zul Luthufi, Naveed
Ahamed, Sanjana Mapatuna, Parami
Gunawardana and Amasha Pathirana
and Kaushali Piumi Jayaweera
instructed by R.M.S.P. Rathnayaka.

SC/SD/77/2026

Petitioner : Dr. Nelum Deepika Udagama
No. 79/17,
Kurunduwatta Road,
Thalangama South,
Battaramulla.

Counsel : Nilshantha Sirimanne with Dr.
Saranee Gunathileke, Deshara
Goonetilleke, Nelundi Herath and
Dinali Gunasekara instructed by S. W.
Amila Kumara.

SC/SD/78/2026

Petitioner : Prabath Sudarshana Wickremesinghe
Gunawardana,
No. 22/12,
Regent City,
Demanhandiya,
11270.

Counsel : Eraj de Silva, PC with Nalani
Manatunga, Daminda Wijeratne,
Janagan Sundramoorthy, Naveed
Ahamad, Sanjana Mapathuna, Parami
Gunawardana, Amasha Pathirana,
Kaushali Piumi Jayaweera instructed
by Vidanapathirana Associates.

SC/SD/79/2026

Petitioners : 1. Wajira Abeywardane,
No. 400,
Kotte Road,
Pitakotte.

2. Thalatha Athukorala,
Attorney-at-Law,
No. 400,
Kotte Road,
Pitakotte.

Counsel : Ronald Perera, PC With Chandimal
Mendis, Sanjeewa Anthony, Yasas De
Silva, Sumudu Kakalandala, Nipun

Samarathunga, Praveena Raviraj,
Punyagith Dunusinghe, Mr. Kanishka
Rajapakshe instructed by
Vidanapathirana Associates.

SC/SD/80/2026

Petitioner : Kelum Jayasumana,
No. 140/D1,
Suhada Mawatha,
Katuwawala Road, Boralesgamuwa.

Counsel : Eraj de Silva PC with Nalani
Manathunga, Daminda Wijeratne,
Janagan Sundramoorthy, Naveed
Ahamad, Sanjana Mapathuna, Parami
Gunawardana, Amasha Pathirana,
Kaushali Piumi Jayaweera instructed
by Vidanapathirana Associates.

SC/SD/81/2026

Petitioners : 1. Sandun Nagahawatta
2. Lahiru Welgama

Both of:

Colombo Law Society,
No. 129,
Hulftsdorp Street,
Colombo 12.

Counsel : Saliya Pieris, PC with Suren

Gnanaraj, Thanuka Nandasiri,
Sarinda Jayawardhane, Ishan
Jayasundara instructed by Nalin
Samarakoon.

SC/SD/82/2026

Petitioner : Tennakoon Mudiyanseelage Rajitha
Keerthi Thennakoon,
Keerthi Traders,
Wangiyakumbura,
Boralanda.

Counsel : Maithree Gunarathna, PC instructed
by Darshika Perera & Samudra
Gunawardhena (NICLO Associates)

SC/SD/83/2026

Petitioner : Muthuheen Gedara Thisara
Nuwantha
Anuruddha Bandara,
No. 867/3,
Jalasampadanagara Mawatha,
Athgala,
Gampola.

Counsel : Saliya Pieris, PC with Manujaya De
Silva instructed by Yohan Pieris.

SC/SD/84/2026

(Challenging "Judicature (Amendment) Act No. of 2026" Bill)

Petitioner- : 1. Rajeev Amarasuriya,

President,
Bar Association of Sri Lanka.

2. Nalin De Silva,
Secretary,
Bar Association of Sri Lanka.

Both at,
The Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,
Colombo 12.

Counsel : M. A. Sumanthiran PC and Saliya
Peiris PC with Suren Fernando, Ermiza
Tegal, Jerusha Crosette Thambiah,
Delan De Silva, Sanjit Dias, Ramzi
Bacha, Mark Schubert, Benislos
Thushan, Kithsiri Ambagahawatte,
A.L. Natheer, Hemantha Wettasinghe,
V. Thiyaheshwaran, Athula Ranagala,
Gunaratne Wanninayake, Ruwan Asiri
De Silva, Chandima Wijeratne, Upali
Mohotti PC, Nagendran Prathipan,
Samantha Mallawaarachchi, H.R.P.
Senanayake, Keerthi Jayasinghe,
Janaka Abeysekara, Badra
Seneviratne, M.M. Rafeek,
Kandasamy Thayaparan, Priyantha
Alagiyawanna, Gamini Alwis, Thishya
Weragoda, Lakshan Dias, Chandani
Dayaratna, Mahesh Kotuwelle,

Lakshan Abeywardena, Ushani
Bombuwala, Lakshan Wijewardena,
Ashani Rathnayake, Nadeesha Perera
instructed by Ramzi Bacha Associates.

SC/SD/85/2026

Petitioner : Dodangodage Don Sudath
Wickramarathne,
No. 28,
Pragathi Mawatha,
Katuwana,
Homagama.

Counsel : Kaneel Maddumage with Dilshi
Sandunika instructed by Praveen M
Premathilaka.

SC/SD/86/2026

(Challenging the "Twenty Second Amendment Act No. of 2026"
Bill and "Judicature (Amendment) Act No. of 2026" Bill)

Petitioner : Kottawaththa Hewage Ashan
Madushanka,
No. 29 (26/120),
Ranajayagama,
Waidya Road,
Dehiwala.

Counsel : Chandrika Manamendra instructed by
Gayathri Nawarathna

SC/SD/88/2026

- Petitioners : 1. Ceylon Teachers Union (Lanka Guru Sangamaya),
No. 65/4,
Chithampalam Gardinar Mawatha,
Colombo 02.
2. Benedict Joseph Starlin Fernando,
No. 182/8,
Sri Kadireshan Street,
Colombo 13.

Counsel : Saliya Pieris, PC with Sarinda Jayawardhane, Jagadeesha Ranasinghe, Ishan Jayasundara instructed by Yohan Anthony Pieris.

SC/SD/91/2026

Petitioner : Rear Admiral (Dr.) Sarath Piyananda Weerasekera RWP VSV USP Ndc Psc,
No. 262 G,
1st Lane,
Shanthipura,
Thalawathugoda.

Counsel : Petitioner appeared in person

SC/SD/92/2026

Petitioner : Kanaththage Sanjeewa,
No. 543/D,
Nugethibukanda,

Nawadagala.

Counsel : Kaneel Maddumage with Dilshi
Sandunika instructed by Praveen M.
Premathilaka.

SC/SD/93/2026

Petitioners : 1. Dr. Gonakumbura Pangukarage
Prasad Nuwan Malaka Gonakumbura,
No. 59D,
Bandaranayaka Mawatha,
Ratnapura.

2. Ganegama Liyanage Don Sachinthaka
Gunawardena,
No. 134/4,
High Level Road,
Maharagama.

On behalf of:
'Rata Next' Organisation

Counsel : Jayathu Wickramasuriya instructed
by Eranda S. Wanasinghe

SC/SD/94/2026

Petitioner : Wilegoda Mudalige Jayantha,
No. 350,
Yowun Place,
Hokandara South,
Hokandara.

Counsel : Thishya Weragoda with Stefania
Perera, Chamodi Geethma, Yasanga
Senadeera, Sulakshi Batuwita, Kalani
Dissanayake, Prathap Welikumbura,
Ayeshmantha Gayan, Wasana
Nalawatta, Dinithi Fernando
instructed by H.M. Thilakarathna.

SC/SD/95/2026

Petitioner : Thota Hewage Ananda Lacille de
Silva
Hill Side Villa,
Thiranagama,
Hikkaduwa.

Counsel : Harith De Mel with Dulani Peiris,
Hasini Rupasinghe, Vihitha Lekamge
and Minul Muhamdiramge instructed
by R. M. Chamali S. Ranathunga.

SC/SD/96/2026

Petitioner : 1. Parackrama Agalawatte,
No. 16,
Station Lane,
Nugegoda.

2. Jayantha De Alwis,
No. 127/8,
Bernard Soysa Mawatha,
Colombo 05.

Counsel : Rahul Perukanda instructed by

Mahalingam Mayuran

SC/SD/98/2026

Petitioner : Ven. Balangoda Kassapa Thero,
No. 253/A,
Kudagoda,
Horempella.

Counsel : Petitioner appeared in person

SC/SD/99/2026

Petitioner : Mahinda Ariyawansa,
No. 593,
Blumendhal Road,
Kotahena,
Colombo 12.

Counsel : Samantha Premachandra instructed
by Shantha Mihira Bambarabotuwa.

SC/SD/100/2026

Petitioner : Harshana Supun Rajakaruna,,
No. 02,
Wijerama Mawatha,
Colombo 07.

Counsel : Gamini Hettiarachchi with Madhawa
Jayawardena Sithara instructed by
Sithara Abeywardena.

SC/SD/101/2026

Petitioner : Anura Mahendra Bandara,

No. 39,
Pagoda Road,
Nugegoda.
NIC No: 19583650369V

Counsel : Petitioner appeared in person.

SC/SD/102/2026

Petitioner : Premnath Chaminda Dolawatte,
No. 13,
Lawyers Complex,
Kaduwela.

Counsel : Thishya Weragoda with Stefania
Perera, Chamodi Geethma, Yasanga
Senadeera, Sulakshi Batuwita, Kalani
Dissanayake, Prathap
Welikumbura, Ayesmantha Gayan,
Wasana Nalawatta, Dinithi Fernando
instructed by Niluka Dissanayake

SC/SD/103/2026

Petitioners : 1. Committee for Protecting the Rights
of Prisoners,
No. 245/12,
Serpentine Road,
Borella,
Colombo 08.

2. Rangoda Hettiarachchige Senaka
Perera,
No. 151/2,

Welagedara,
Attanagalla.

Counsel : Lakshan Dias with Maneesha
Kumarasinghe Navodya Gamage,
Asher Stephen, Imasha Fernando,
Yashodara Illangasinghe, Nimansa
Meetiyagoda, Imasha Dilrukshi,
Uthpala Ranasinghe, Dasuni
Viyanjani instructed by M. L. Dayani
Panditharathne.

SC/SD/104/2026

(Challenging "Judicature (Amendment) Act No. of 2026" Bill)

Petitioner : Atham Lebbe Aazath,
No. 367, 2/2,
Dam Street,
Colombo 12.

Counsel : Thishya Weragoda with Stefania
Perera, Chamodi Geethma, Yasanga
Senadeera, Sulakshi Batuwita, Kalani
Dissanayake, Prathap Welikumbura,
Ayeshmantha Gayan, Wasana Nalawatta,
Dinithi Fernando instructed by Niluka
Dissanayake

SC/SD/105/2026

Petitioners : 1. Sirithunga Jayasooriya,
No.57/7,
D.S. Fonseka Road,

Thimbirigasyaya,
Colombo 5.

2. Sardha Kumara Manjula Pathiraja
No. 24/7/D,
Kohalwila Road,
Goonawala.

3. Prasenajit Mandata Puchihetty
No. 359/15/A,
6th Lane,
Maya Mawatha,
Makumbura,
Kottawa

Counsel : Lakshan Dias with Maneesha
Kumarasinghe, Navodya Gamage,
Asher Stephen, Imasha Fernando,
Yashodara Illangasinghe, Nimansa
Meetiyagoda, Imasha Dilrukshi,
Uthpala Ranasinghe, Dasuni
Vijanjani instructed by M. L. Dayani
Panditharathne .

SC/SD/106/2026

(Challenging "Judicature (Amendment) Act No. of 2026" Bill)

Petitioner : Premnath Chaminda Dolawatte,
No. 13,
Lawyers Complex,
Kaduwela.

Counsel : Thishya Weragoda with Stefania

Perera, Chamodi Geethma, Yasanga
Senadeera, Sulakshi Batuwita, Kalani
Dissanayake, Prathap Welikumbura,
Ayeshmantha Gayan, Wasana
Nalawatta, Dinithi Fernando instructed
by Niluka Dissanayake

SC/SD/107/2026

Petitioners : 1. Tharaka Ramanya Balasuriya,
No. 188,
Bandaranaike Mawatha,
Kegalle.

2. Shehan Asanka Semasinghe,
No. 600/M,
Airport Road,
Anuradhapura

3. Premitha Bandara Tennakoon,
Rangiri,
Yapagama,
Dambulla.

Counsel : Lakshan Dias instructed by M. L.
Dayani Panditharathne

SC/SD/108/2026

(Challenging "Judicature (Amendment) Act No. of 2026" Bill)

Petitioners : Ven. Ulapane Sumangala Thero,
Dharmayathanaya

No. 45/4,
Nawala Road,
Narahenpita,
Colombo 05.

Counsel : Eraj de Silva PC instructed by R. M.
S. P. Rathnayaka.

SC/SD/109/2026

(Challenging "Judicature (Amendment) Act No. of 2026" Bill)

Petitioners : Prabhath Sudharshana
Wickremasinghe Gunawardana,
No. 22/12,
Regent City,
Demanhandiya
11270.

Counsel : Eraj de Silva PC instructed by R. M.
S. P. Rathnayaka.

Respondent : Hon. Attorney General
Attorney General's Department,
Colombo 12.

Counsel : Viraj Dayaratne PC SG, Nirmalan
Wigneswaran SDSG, Suharshi Herath
Jayaweera SDSG, Dr. Avanti Perera
DSG, Sureka Ahmed SSC, Arindra
Jayasinghe SC and Senal
Senevirathne SC.

BEFORE:

P. PADMAN SURASENA, CJ
ACHALA WENGAPPULI, J
ARJUNA OBEYESEKERE, J
SAMPATH B. ABAYAKOON, J
K. M. GIHAN H. KULATUNGA, J

The Bill titled the "Twenty Second Amendment to the Constitution" (hereinafter sometimes referred to as the 22nd Amendment to the Constitution Bill) and the Bill titled "Judicature (Amendment) – A Bill to amend the Judicature Act, No. 2 of 1978" (hereinafter sometimes referred to as the Judicature (Amendment) Bill) were published as a Supplement in Part II of the Government Gazette on 07th August 2026. These two Bills were presented in Parliament by Hon. Harshana Nanayakkara, the Minister of Justice and National Integration, and were placed on the Order Paper of Parliament of 18th August 2026.

The abovementioned Petitioners have filed the above numbered Petitions in the Registry of the Supreme Court invoking the jurisdiction vested in this Court in terms of Article 121 read with Articles 120 and 123 of the Constitution.

While the first petition, SC/SD No. 28/2026 was filed on 18th August 2026, the final petition SC/SD No. 109/2026 was filed on 31st August 2026. In addition, eleven parties intervened in these proceedings (hereinafter referred to as the Intervient Petitioners) and requested that that they also be heard in terms of Article 134(3) of the Constitution. Accordingly, Court heard all of them.

Upon receipt of the said Petitions, Court took steps to list these Petitions for hearing on 01st September 2026 and 02nd September 2026 with notice to the Petitioners and the Hon. Attorney General, as required under Article 134. This was done with a view to enable Court to conduct and conclude the inquiries relating to these Petitions.

The Bench assembled at 10.00 a.m., on 1st September, 2026 in Court No. 502 for the hearing of 72 Petitions challenging the Constitutionality of the said Bills. At the commencement of the hearing, Mr. M. A. Sumanthiran, PC, the learned Counsel appearing for the Petitioner in SC/SD No. 28/2026 made an application that the venue of the hearing of the Petitions be transferred to Court No. 501 in view of the presence of a large number of people who have come to participate or witness the proceedings in Court. Many of the other learned Counsel appearing

for the Petitioners in the other petitions too made the same application. Having deliberated on the said application, Court decided to allow that application since Court No. 501 can better accommodate the Attorneys-at-Law, the Petitioners and members of the Public who had gathered to participate or witness the proceedings in Court. Court thereafter adjourned to allow the shifting of the venue for the hearing.

Request for a "Full Court"

The Bench reassembled in Court No. 501 for hearing the Petitions at 10.45 a.m. Soon after proceedings recommenced, the learned Counsel for the Petitioners informed Court that they wish to support the Motions that some of the Petitioners have previously filed requesting a "Full Court" to hear these Petitions.

The Court allowed the Petitioners to support that application and proceeded to hear all parties who made applications for a "Full Court" – i.e., presumably a bench comprising of the Hon. Chief Justice and the other twelve Judges of this Court – to hear these Petitions. Thereafter, Court proceeded to hear the Intervient Petitioners and the learned Solicitor General in opposition to the aforesaid application. After hearing all parties, Court adjourned to consider the said application. Court reassembled at 11.45 a.m. and pronounced its unanimous decision to reject the application made by the learned Counsel for the Petitioners. We set out below the reasons thereto.

The grounds asserted by the learned Counsel for the said application are as follows:

1. *In terms of Section 49(3) of the Judicature Act, if a Judge of the Supreme Court is interested in a matter, it shall be heard or determined by some other Judge or Judges of that Court in terms of the "well-established case law and practice";*
2. *All Judges of the Supreme Court are interested in this matter;*
3. *Therefore, these Petitions must be heard by the "Full Court" in view of the circumstances of this matter and by reason of the "obvious Conflict of Interest";*
4. *His Lordship the Chief Justice would be the first Judge of the Supreme Court who will benefit if this Bill is enacted into law without the process of a referendum;*

5. *If a referendum is mandated, then there is a possibility that His Lordship the incumbent Chief Justice may retire before its completion;*
6. *If for those reasons, His Lordship the Chief Justice wishes to recuse himself from hearing this matter, then the Petitioners move that a bench comprising of all other Hon. Judges of this Court except His Lordship the Chief Justice be constituted to hear this matter;*
7. *In view of the circumstances set out above, the constitution of the bench to hear these matters must be determined by the other Lordships of the Supreme Court.*

We found that the Petitioners have filed similar Motions or made similar requests in several Petitions. The learned Counsel for the Intervenant Petitioners and the learned Solicitor General pointed out that the aforesaid application made by the learned Counsel for the Petitioners are unlawful as they are contrary to the Constitutional provisions relating to the appointment of a numerically larger bench of Judges to hear a case.

First and foremost, we have to remind ourselves and be mindful of the fact that we are obliged to follow the procedure laid down in the Constitution. The hearing of these Petitions cannot be assigned a procedure outside the Constitution. The law relating to the constitution of a numerically larger bench of Judges is found in Article 132 of the Constitution. We will reproduce it below:

Article 132

- “(1) The several jurisdictions of the Supreme Court shall be ordinarily exercised at Colombo unless the Chief Justice otherwise directs.*
- (2) The jurisdiction of the Supreme Court may be exercised in different matters at the same time by the several Judges of that Court sitting apart:*

Provided that its jurisdiction shall, subject to the provisions of the Constitution, be ordinarily exercised at all times by not less than three Judges of the Court sitting together as the Supreme Court.

(3) *The Chief Justice may –*

- (i) *of his own motion; or*
- (ii) *at the request of two or more Judges hearing any matter; or*
- (iii) *on the application of a party to any appeal, proceeding or matter if the question involved is in the opinion of the Chief Justice one of general and public importance, direct that such appeal, proceeding or matter be heard by a Bench comprising five or more Judges of the Supreme Court.*

(4) *The judgment of the Supreme Court shall, when it is not an unanimous decision, be the decision of the majority."*

Thus, the jurisdiction of this Court is ordinarily exercised at all times by not less than three Judges of the Court sitting together as the Supreme Court. This however, must be read with Article 126(2) and Article 128(5) of the Constitution which permits a bench of two Judges of this Court to grant Leave to Proceed in an application which complains of an infringement of a fundamental right or language right, and in an application which seeks Leave to Appeal or Special Leave to Appeal. In terms of Article 132(3), it is the Chief Justice who has the sole and exclusive discretion, firstly to form an opinion in his mind that the question involved is one of general and public importance, and secondly to direct that such appeal, proceeding or matter be heard by a Bench comprising five or more Judges of the Supreme Court. The Constitution has not vested that discretion with any other Judge or a group of Judges nor does the Constitution envisage, contemplate or permit such a course of action.

The Hon. Chief Justice, as per his minute dated 31st August 2026, having taken into consideration all the relevant facts and circumstances has constituted a Bench comprising the present five Judges of this Court to hear and determine the aforementioned Petitions along with all other Petitions which have been or may be filed in due course challenging the Bills titled "Twenty Second Amendment to the Constitution" and the "Amendment to the Judicature Act". The Hon. Chief Justice has made the said decision in the exercise of the discretion vested in him in terms of Article 132(3) of the Constitution. Instead of constituting a Bench of three Judges, the Hon. Chief Justice, having taken into consideration the matters pleaded by the Petitioners and being of the opinion that the question involved is one of general and public importance, has already made a decision to constitute a bench of five Judges and directed

that these petitions be determined by the said Bench. Thus, had this Court acceded to the aforesaid application of the Petitioners, that would have amounted to an abdication by the Hon. Chief Justice of the Constitutional role vested in him and a usurpation of the discretion of the Hon. Chief Justice by the other Judges of this Court. It was on that legal basis that we decided to reject the said applications made by the learned Counsel for the Petitioners.

We have set out above the legal basis for the rejection of the said application. Furthermore, the following circumstances would show the reasons and rationale of nominating five Judges as opposed to a "Full Court" comprising the Hon. Chief Justice and the other twelve Judges. We are aware that the Hon. Chief Justice has also constituted another bench consisting of three Judges of this Court to hear and determine the Constitutionality of another Bill titled the "Anti-Corruption (Amendment)", which seeks to amend the Anti-Corruption Act, No. 9 of 2023. The said "Anti-Corruption (Amendment)" Bill was published in the Gazette of 27th July 2026 and was thereafter placed on the Order Paper of Parliament one day after the impugned Bills were placed on the Order Paper of Parliament – i.e., on 19th August 2026. A total number of fifteen petitions have been filed challenging the Constitutionality of that Bill. The said Bench of three Judges consists of three Judges other than the Judges serving on this Bench. The hearing in relation to the said petitions was due to commence on 03rd September 2026 and continue on 04th September 2026. As much as the five of us sitting on this Bench, the other three Judges sitting on the Bench hearing the other Special Determination also have limited time to prepare and forward their determination in view of the temporal limitation imposed by Article 121(3) of the Constitution.

Whenever the Judges of this Court are required to hear and determine a Special Determination with regard to a Bill placed on the Order Paper of Parliament, the Judges who hear such Petitions stop all other work and dedicate their full time to read the petitions, hear the Petitioners, read the written submissions, deliberate among themselves, prepare the preliminary draft of the determination, again deliberate and discuss the contributions each member of the panel may make before finalizing the final draft of the determination to be forwarded to the Hon. Speaker and His Excellency the President. As all these things have to be attended to within a limited period of time, the Hon. Chief Justice would refrain from listing the Judges who are involved in drafting such determinations, if such a request is made.

Moreover, during any given week, the Chief Justice refrains from listing the Judges who have made requests not to list them on some specific days. Such permission wherever possible, is generally applied and obtained in advance. These could be for a variety of reasons ranging from illnesses to personal difficulties. Some Judges have their overseas leave approved in advance. Therefore, all the Judges may not be available to sit on the Bench during any given week.

The instant cases filed by the Petitioners are not the only cases this Court has to deal with. The Petitioners are interested in getting all the Judges to hear only their petitions. Similarly, the other litigants are also interested and eager to get their cases heard not by a Full Bench but by a normal bench in the normal course of events. Each case is important to the parties of that case and it is the bounden duty of this Court to ensure that such cases are heard and determined as expeditiously as possible. Court cannot without any reasonable basis or justification, give prominence to some selected cases and postpone other cases and then send the other litigants who come to Court for their respective cases with empty hands. The availability of resources namely, the availability of Judges during a week is generally only known to the Hon. Chief Justice as he is the one who grants permission and excuses the other Judges from sitting on the Bench. That is why, the Legislature in its wisdom, has vested the power to constitute the Benches only with the Chief Justice. We must also state here that the Judges of this Court nevertheless have dedicated their lives (including their personal freedom) and are prepared and ready at all times to serve the People of this Country who come before them. But we regret our inability to discharge our obligations in the way the Petitioners insist.

As will be more fully explained later in this Determination, the primary argument the Petitioners advanced is firstly, that the increase of the retirement age of the Judges would amount to conferring an "inducement and/or favour" to the incumbent Judges, and secondly, the Government has proposed to give a "legislative bribe" to all the Judges in the Country by increasing their retirement age. It is the Petitioners' argument that this would violate the norms pertaining to the maintenance of the independence of the judiciary.

According to the Petitioners, the Hon. Chief Justice would be the first recipient of this "inducement and/or favour" or the "legislative bribe". This means that all the other Judges would follow suit since the increase in the retirement age applies to all Judges of this Court. However, according to the Petitioners, all the other Judges except the Hon. Chief Justice are

not only eligible to hear but should hear these Petitions. We strongly state that there is absolutely no merit in this submission.

The learned Counsel for the Petitioners are only interested in one result out of two possible results. According to them, the Hon. Chief Justice would be the first Judge of the Supreme Court who will "benefit" if this Bill is enacted into law without the process of a referendum and therefore he should not preside over this Determination. Firstly, this is based on their assumption that the Hon. Chief Justice perceives this as a "benefit" to him. On what basis have they assumed so? Secondly, the Petitioners are not complaining about the other possibility that could happen. That is, if a referendum is mandated, then there is a possibility that the Hon. Chief Justice may not be the "first beneficiary" due to the time that may be taken to hold the referendum but there will necessarily be another "first beneficiary", that being the successor of the present Chief Justice, since the Bill applies to all sitting Judges of the Supreme Court. When one applies the same yard stick, wouldn't the person who would get appointed as the next Chief Justice also "benefit"? In addition, if this is a "benefit" to the Hon. Chief Justice, we observe that this same benefit would be received by all other Judges of this Court, sooner or later. If at all, the only "benefit" the Hon. Chief Justice would get is a further term of two years in office. Every other Judge will also get the same "benefit" including the successor in the office of Chief Justice. Thus, if the Hon. Chief Justice is disqualified on that basis, such disqualification should apply to all other Judges since the "benefit" is one and the same. This in our view is a subtle attempt to fix benches according to one's whims and fancies.

In Jeyaraj Fernandopulle v Premachandra De Silva and Others,¹ this Court held that "*The Supreme Court is a creature of statute and its powers are statutory.*" As explained above, only the Chief Justice has been vested with the power of constitution of Benches. The Constitution does not vest such power in any other Judge or in a group of Judges.

The judgment read out by Justice Mark Fernando in the case of Hettiarachchi v Seneviratne, Deputy Bribery Commissioner and Others (No. 02)² shows that this Court has consistently taken the above approach. The following excerpt taken from the said judgment is self-explanatory:

¹ [1996] 1 Sri LR 70; at page 89.

² [1994] 3 Sri LR 293; at page 296.

"The petitioner's motion of 30.5.94 was filed under a misapprehension that other Judges of the Court, or more Judges, or even all the Judges, could constitute an appellate tribunal in respect of that decision of the Supreme Court which refused him leave to proceed under Article 126(2). While other Judges of the Supreme Court might regard that decision as erroneous, and refuse to follow it when deciding other matters, it was final as far as that case was concerned.

It is quite wrong to assume, as the petitioner does in his motion, that the power of the Chief Justice under Article 132(3) to direct that an appeal, proceeding or matter be heard by a bench of five or more Judges if, in his opinion, the question involved is one of general and public importance, makes any difference. That provision confers no right of appeal, revision or review." [emphasis added]

Therefore, it is clear that the application made by the learned Counsel for the Petitioners for a "Full Court" is an application in effect to review the decision already made by the Hon. Chief Justice and hence, is misconceived in law. Therefore, not only does it not have a legal basis but it also does not conform to the existing provisions of the Constitution. Thus, what the Petitioners are in effect requesting us to do is to violate the Constitution and act arbitrarily. This is something we cannot do.

Having taken into consideration all the above facts and circumstances, we decided to agree with the submission of the learned Solicitor General and the learned Counsel for the Intervient Petitioners that the aforesaid application made by the learned Counsel for the Petitioners is misconceived and is devoid of any legal foundation whatsoever.

Hearing of the Petitions

Let us now turn to the hearing of the Petitions.

At the beginning of the hearing of submissions, the Court, with the concurrence of the learned Counsel for all parties consolidated the hearing of all the Petitions relating to both Bills: i.e., the Petitions bearing numbers SC/SD/28/2026, SC/SD/29/2026, SC/SD/30/2026, SC/SD/31/2026, SC/SD/32/2026, SC/SD/33/2026, SC/SD/34/2026, SC/SD/35/2026, SC/SD/36/2026, SC/SD/37/2026, SC/SD/38/2026, SC/SD/40/2026, SC/SD/41/2026,

SC/SD/42/2026, SC/SD/43/2026, SC/SD/44/2026, SC/SD/45/2026, SC/SD/46/2026, SC/SD/47/2026, SC/SD/48/2026, SC/SD/50/2026, SC/SD/51/2026, SC/SD/52/2026, SC/SD/53/2026, SC/SD/54/2026, SC/SD/56/2026, SC/SD/57/2026, SC/SD/58/2026, SC/SD/59/2026, SC/SD/61/2026, SC/SD/63/2026, SC/SD/64/2026, SC/SD/65/2026, SC/SD/66/2026, SC/SD/67/2026, SC/SD/68/2026, SC/SD/69/2026, SC/SD/70/2026, SC/SD/71/2026, SC/SD/72/2026, SC/SD/73/2026, SC/SD/74/2026, SC/SD/75/2026, SC/SD/76/2026, SC/SD/77/2026, SC/SD/78/2026, SC/SD/79/2026, SC/SD/80/2026, SC/SD/81/2026, SC/SD/82/2026, SC/SD/83/2026, SC/SD/84/2026, SC/SD/85/2026, SC/SD/86/2026, SC/SD/88/2026, SC/SD/91/2026, SC/SD/92/2026, SC/SD/93/2026, SC/SD/94/2026, SC/SD/95/2026, SC/SD/96/2026, SC/SD/98/2026, SC/SD/99/2026, SC/SD/100/2026, SC/SD/101/2026, SC/SD/102/2026, SC/SD/103/2026, SC/SD/104/2026, SC/SD/105/2026, SC/SD/106/2026, SC/SD/107/2026, SC/SD/108/2026 and SC/SD/109/2026.

Some of these Petitions i.e., SC/SD/34/2026, SC/SD/66/2026, SC/SD/84/2026, SC/SD/86/2026, SC/SD/104/2026, SC/SD/106/2026, SC/SD/108/2026 and SC/SD/109/2026 are in relation to the Judicature (Amendment) Bill and the rest are in respect of the 22nd Amendment to the Constitution Bill. We also observe that no petition has been filed in the Registry of this Court after 31st August 2026. The last Petition to have been filed is SC/SD/No. 109/2026 which has been electronically filed at 1806 hrs. in the Registry of this Court on 31st August 2026.

Court commenced the hearing of the Petitions on their merits on a numerically sequential basis with the learned President's Counsel representing the Petitioners in SC/SD No. 28/2026 being heard first. The hearing of the petitions ended with the learned Counsel for the Petitioners in SC SD No. 109/2026 making his submissions as the last Counsel for the Petitioners. The Court proceeded to hear the submissions made by many of the Petitioners until Court adjourned the days proceedings of 1st September 2026 at 10.30 p.m. The Court resumed the hearing on 2nd September 2026 at 10.00 a.m., with the learned Counsel for the Petitioners who had not addressed Court on the previous day being afforded an opportunity of making oral submissions. The Court also afforded those Petitioners who appeared in person, the opportunity of making oral submissions and provided such Petitioners with the necessary facilities to do so. Thus, all learned Counsel for the Petitioners and the Petitioners who appeared in person were afforded the opportunity of making oral submissions.

Court thereafter proceeded to hear the oral submissions of the learned Counsel representing the Intervient Petitioners and finally heard the learned Solicitor General representing the Hon. Attorney General. Oral submissions were concluded at 5.30 p.m., on 2nd September 2026. While pre-hearing written submissions had been filed on behalf of some of the Petitioners, Court invited all learned Counsel to tender post-hearing written submissions by 3.00 p.m., on 3rd September 2026, thus affording all parties the opportunity of substantiating the oral submissions already made and responding in writing to the submissions of opposing Counsel.

Failure to comply with the provisions of Article 121(3)

Article 121(3) requires that a copy of each petition filed in terms of Article 121(3) challenging the Constitutionality of a bill shall at the same time be delivered to the Hon. Speaker. The Hon. Attorney General has tendered the letter dated 04th September 2026 submitted by the Secretary General of Parliament which confirms the following:

- (I) The Hon. Speaker has received copies of the Petitions in SC/SD/72/2026, SC/SD/74/2026 and SC/SD/82/2026 only on 03rd September 2026;
- (II) The Hon. Speaker has received copies of the Petitions in SC/SD/99/2026 and SC/SD/101/2026 only on 04th September 2026.

In the Sri Lanka Telecommunications Bill,³ this Court, having considered the submission of the learned Counsel for the petitioner that compliance with the requirements of Article 121(1) is directory and not mandatory, stated as follows:

"This purpose of the Article cannot be achieved unless the provisions designed to secure such result are regarded as mandatory. The Article also provides for the suspension of the ordinary legislative powers of Parliament for a period of 3 weeks when a Bill is referred to the Supreme Court for its adjudication – Article 121(2). The aims of the Article will be defeated unless its scope is wide enough to prevent Parliament from debating or proceeding with the Bill whilst the Supreme Court is engaged in deliberating its constitutionality. This provision which requires Parliament to be informed that the Bill is before the Supreme Court – Article 121(1) must be regarded as mandatory."

³ Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Volume VII, 23 at page 25.

This Court has consistently taken this approach in many cases: vide Homeopathy Bill,⁴ and in the Poisons, Opium and Dangerous Drugs (Amendment) Bill.⁵ Accordingly, the Petitions of the Petitioners who have failed to deliver a copy of their Petitions to the Hon. Speaker at the same time they have filed the Petitions in this Court should have been rejected *in limine* for non-compliance with the mandatory procedure stipulated in Article 121 (1) of the Constitution.

The contents of the Bills

For convenience, let us first introduce below, these two Bills.

The Bill titled "Twenty Second Amendment to the Constitution" contain four Clauses, and the Petitioners in most of these Petitions have challenged the Bill as a whole.

The marginal notes of the four clauses of that Bill are as follows:

Clause 1 - Short title

Clause 2 - Amendment of Article 107 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Clause 3 - Amendment of Article 137 of the Constitution

Clause 4 - Sinhala text to prevail in case of inconsistency

Let us also set out below, all the Clauses of the "22nd Amendment to the Constitution Bill" in their entirety.

Long Title – "AN ACT TO AMEND THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA."

⁴ Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Volume XIII, 51.

⁵ Decisions of the Supreme Court on Parliamentary Bills (2022), Volume XVII, 223.

Clause 1 – *This Act may be cited as the Twenty Second Amendment to the Constitution.*

Clause 2 – *Article 107 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the "Constitution") is hereby amended by the repeal of paragraph (5) thereof and the substitution therefor of the following paragraph:-*

"(5) The age of retirement of Judges of the Supreme Court shall be sixty-seven years and of Judges of the Court of Appeal shall be sixty-five years:

Provided however, the date of retirement of the Chief Justice shall be either the date on which the Chief Justice reaches the age of sixty-seven years or the date on which a period of six years is completed from the date of appointment as the Chief Justice, whichever occurs earlier."

Clause 3 – *"Article 137 of the Constitution is hereby amended by the substitution for the words "not more than nineteen other Judges" of the words "not more than twenty four other Judges."*

Clause 4 – *"In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail."*

The marginal notes of the four Clauses of the Bill titled "Judicature (Amendment) Act No. of 2026" are as follows:

Clause 1 - Short title

Clause 2 - Amendment of Section 4 of the Act No. 2 of 1978

Clause 3 - Amendment of Section 6 of the principal enactment

Clause 4 - Sinhala text to prevail in case of inconsistency

Let us also set out below, all the Clauses of the "Judicature (Amendment) Bill" in their entirety.

Long Title – “AN ACT TO AMEND THE JUDICATURE ACT, NO. 2 OF 1978”

Clause 1 – *This Act may be cited as the Judicature (Amendment) Act, No. of 2026.*

Clause 2 – *Section 4 of the Judicature Act, No. 2 of 1978 (hereinafter referred to as the “principal enactment”) is hereby amended, in paragraph (a) thereof, by the substitution for the words “not more than one hundred and ten Judges”, of the words “not more than one hundred and twenty Judges.”*

Clause 3 – *Section 6 of the principal enactment is hereby amended as follows:-*

(1) in subsection (3) thereof, by the substitution for the words “sixty-one years” of the words “sixty-three years”; and

(2) by the repeal of subsection (4) thereof and the substitution therefor of the following subsection:-

“(4) Notwithstanding anything to the contrary in the Public and Judicial Officers (Retirement) Ordinance (Chapter 355), the age of retirement of all other Judges and Magistrates shall be sixty-two years.”.

Clause 4 – *“In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.”*

Thus, we observe that cumulatively, the 22nd Amendment to the Constitution Bill and the Judicature (Amendment) Bill seek to make the following amendments:

- (i) To increase the retirement age of all Judges including the incumbent Judges holding office in all Courts in the Country, by two years;
- (ii) To limit the tenure of office of any person who is to be appointed to the office of the Chief Justice to a maximum term of 06 years even when such person’s age of retirement lies ahead of that period;

- (iii) To increase the number of Judges in the Court of Appeal from 19 to 24;
- (iv) To increase the number of Judges in the High Court from 110 to 120.

Arguments advanced by the Petitioners

Let us now turn to the arguments put forward by the Petitioners. In this proceeding, we have to consider seventy two Petitions which have challenged the aforesaid Clauses of the Bills. Therefore, let us first identify the grounds upon which the Petitioners have sought to challenge these Clauses. We observe that the Petitioners have cumulatively prayed for a determination and declaration that the Bills in their entirety or at least some of the Clauses of the Bills are inconsistent with the provisions of one or more of Articles 3, 4, 9, 12(1), 28, 83, 107, 108, 110 and 111C of the Constitution. It is on that basis that the Petitioners have sought to argue that the provisions in Article 83 of the Constitution shall apply to these Bills and therefore the Bills shall only become law if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present), and are approved by the People at a referendum and certificates are endorsed thereon by the President in accordance with Article 80.

These grounds are more or less common to all the Petitions although one Petitioner may have sometimes sought to advance its respective arguments in a way somewhat different from the others. These grounds which are identified as common to all Petitions are briefly set out below:

1. The Government has failed to conduct a consultative process with the relevant stakeholders on the proposed Bills before it decided to gazette the said Bills and subsequently decided to place it on the Order Paper of Parliament.
2. The extension of the retirement age of Judges would confer a direct financial benefit to each of the Judges.
3. Some of the Clauses of the Bills are inconsistent with, *inter alia*, the Preamble, Articles 3, 4, 12(1), 28, 83, 107, 108, 110 and 111C of the Constitution.
4. Increasing the retirement age is an actual inducement to sitting Judges because it is *per se* a financial benefit or inducement conferred on them.

5. Any inducement and/or favour offered to incumbent Judges, even in the form of an increase of retirement age, singularly targeting the judiciary itself will be seen by the People as an impingement of the independence of the judiciary.
6. The Independence of the Judiciary is an essential part of the Sovereignty of the People enshrined in Article 3, and the Bills as a whole and its clauses are violative of Article 3 of the Constitution because they have impinged on the independence of the judiciary;
7. The Bills as a whole are a project of "abusive constitutionalism" because it is not done in good faith since the alteration of judicial retirement ages or the composition of the superior Courts was never so much mentioned in the past;
8. The Bills as a whole are a project aimed at "Court Capture", with one tool of Court Capture being 'Court Packing', in which a Government seeks to fill the Court with Judges who may be ideologically aligned with the Government, or to "lock in" the composition of a Court perceived to be favourable to the Government of the day.
9. The increase in the retirement age of Judges would amount to a process which bypasses the appointment of Judges with the approval of the Constitutional Council and would amount to an usurpation of the power of the Constitutional Council and therefore undermines the sovereignty of the People.
10. The Bills as a whole are contrary to Article 9 of the Constitution.

Jurisdiction of the Court

Having regard to the nature of the arguments the Petitioners have sought to advance, it would be prudent for us to remind ourselves the nature of the jurisdiction the Constitution has vested in this Court, with regard to these Bills.

Chapter XII of the Constitution is titled 'Amendment of the Constitution' and consists of Articles 82 – 84. Article 82(1) of the Constitution provides that, "*No Bill for the amendment of any provision of the Constitution shall be placed on the Order Paper of Parliament, unless the provision to be repealed, altered or added, and consequential amendments, if any, are*

expressly specified in the Bill and is described in the long title thereof as being an Act for the amendment of the Constitution." The Bill titled the "22nd Amendment to the Constitution" is compliant with Article 82(1).

Article 82(5) stipulates that, *"A Bill for the amendment of any provision of the Constitution or for the repeal and replacement of the Constitution, shall become law if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present) and upon a certificate by the President or the Speaker, as the case may be, being endorsed thereon in accordance with the provisions of Article 80 or 79."*

The law relevant to the nature of our jurisdiction with regard to a Bill which proposes to amend a provision in the Constitution is found in proviso (a) to Article 120 of the Constitution, which is reproduced below:

Article 120

"The Supreme Court shall have sole and exclusive jurisdiction to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution:

Provided that –

(a) in the case of a Bill described in its long title as being for the amendment of any provision of the Constitution, or for the repeal and replacement of the Constitution, the only question which the Supreme Court may determine is whether such Bill requires approval by the People at a Referendum by virtue of the provisions of Article 83;"

In Article 120, there is a reference to Article 83. It is Article 120 which gives this Court the jurisdiction we are called upon to exercise. Therefore, let us reproduce below, Article 83 of the Constitution. It is as follows:

Article 83

"Notwithstanding anything to the contrary in the provisions of Article 82 –

(a) *a Bill for the amendment or for the repeal and replacement of or which is inconsistent with any of the provisions of Articles 1, 2, 3, 6, 7, 8, 9, 10 and 11 or of this Article ; and*

(b) *a Bill for the amendment or for the repeal and replacement of or which is inconsistent with the provisions of paragraph (2) of Article 30 or of, paragraph (2) of Article 62 which would extend the term of office of the President, or the duration of Parliament, as the case may be, to over six years,*

shall become law if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present), is approved by the People at a Referendum and a certificate is endorsed thereon by the President in accordance with Article 80."

Article 121(1) goes on to stipulate that:

"The jurisdiction of the Supreme Court to ordinarily determine any such question as aforesaid may be invoked by the President by a written reference addressed to the Chief Justice, or by any citizen by a petition in writing addressed to the Supreme Court. Such reference shall be made, or such petition shall be filed, within fourteen days of the Bill being placed on the Order Paper of the Parliament and a copy thereof shall at the same time be delivered to the Speaker. ..."

Article 123(1) provides that, *"The determination of the Supreme Court shall be accompanied by the reasons therefor and shall state whether the Bill or any provision thereof is inconsistent with the Constitution and if so, which provision or provisions of the Constitution."*

Where a primary determination is made in terms of Article 123(1) that any provision of a Bill is inconsistent with the Constitution, the consequential determinations that the Court is required to make are specified in Article 123(2). The jurisdiction of the Supreme Court when considering a Bill which seeks to amend the Constitution is limited to determining whether such Bill requires approval by the People at a Referendum. Hence, in terms of Article 83, the first question before Court is whether the said Bill or any part thereof seeks to amend, repeal, replace or is inconsistent with the provisions of Articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 30(2), 62(2)

or 83 of the Constitution [the entrenched provisions], and the necessity for a Referendum would arise only in the event of the said first question being answered in the affirmative.

We observe that the long title of the 22nd Amendment to the Constitution Bill is mentioned as "AN ACT TO AMEND THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA". Further, its Short Title reads as 'the Twenty Second Amendment to the Constitution.' None of the Petitioners dispute the fact that the Bill titled the 22nd Amendment to the Constitution is a Bill which proposes to amend some provisions in the Constitution. Thus, the Bill titled the 22nd Amendment to the Constitution clearly falls under proviso (a) to Article 120 of the Constitution. Therefore, the only question we are empowered to determine with regard to the 22nd Amendment to the Constitution is whether such Bill or any provision thereof requires approval by the People at a Referendum by virtue of the provisions of Article 83.

With regard to the Judicature (Amendment) Bill, the question that needs to be determined is whether the said Bill in its entirety or in part is inconsistent with one or more Articles of the Constitution and if so, whether, in addition to being passed with not less than two-thirds of the whole number of Members of Parliament (including those not present) voting in its favour [the special majority], the Bill must be approved by the People at a Referendum. The necessity for the said Bill to be approved by the People at a referendum shall arise only if such Bill is inconsistent with any of the entrenched provisions of the Constitution contained in Article 83.

Thus, in an application of this nature, the role of the Supreme Court is circumscribed by Articles 120 to 123 of the Constitution. Accordingly, the role of the Court is to examine if the Bills are in accordance with the Constitution, and where necessary, to act in terms of Article 123(2). As pointed out in the New Wine Harvest Ministries (Incorporation) Bill⁶ "*In exercising jurisdiction under Article 123 of the Constitution ... our task is to examine the provisions of the bill challenged by the Petitioner and to determine whether they are inconsistent or not with the provisions of the Constitution.*" While in the Nation Building Tax (Amendment) Bill⁷, it was stated that, "... *the Court should not substitute its own opinion for the opinion of the legislature.*", in the Special Goods and Services Tax Bill⁸, this Court stated that:

⁶ Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Volume VII, 361 at page 365.

⁷ Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Volume XIII, 65 at page 66.

⁸ Decisions of the Supreme Court on Parliamentary Bills (2022), Volume XVII, 11; at page 19.

"Following on with the comment made by the Supreme Court in the Nation Building Tax (Amendment) Bill, [SC SD 34/2016], it is necessary for this Court to observe that this Court is devoid of jurisdiction to comment on the prudence or otherwise of a particular policy formulated by the Executive and sought to be converted into legislation by the enactment of a law by Parliament. Thus, this Court will refrain from doing so, even in instances where there appears to be compelling public and national interest considerations which may warrant an adverse comment being made."

We are in agreement that when the Constitutionality of a bill is challenged, this Court must examine the clauses of the bill, determine whether or not they are consistent with the provisions of the Constitution and stay within the limits circumscribed by the Constitution. This Court cannot abdicate this duty conferred on it by the Constitution.

The argument that the Judges have a conflict of interest

At the commencement itself, we must deal with the argument that some of the Petitioners sought to advance that the Judges have a conflict of interest in these cases and if we proceed to determine the Constitutionality of the Bills we could be liable for prosecution under the provisions of the Anti-Corruption Act, No. 9 of 2023. The Petitioners seek to advance this argument on the basis that we are hearing these cases while having a personal interest in the outcome thereof. Some of the Petitioners have also cited Section 49(3) of the Judicature Act, which is reproduced below:

Section 49(3)

"Where any Judge who is a party or personally interested, is a Judge of the Supreme Court or the Court of Appeal, the action, prosecution, proceeding or matter to or in which he is a party or is interested, or in which an appeal from his judgment shall be preferred shall be heard or determined by some other Judge or Judges of the said court:

Provided that in every other case some other Judge of the High Court, the District Court, Small Claims Court, and the Magistrate's Court, as the case may be, of any adjoining zone, district or division shall have jurisdiction to hear, try and determine such action, prosecution, proceeding or better matter."

Relying on those provisions, the Petitioners sought to argue that Court has therefore no alternative but to determine that these Bills must be submitted to the People at a referendum for the People to approve because the Court has a conflict of interest.

Even though Mr. Sumanthiran, PC, the learned Counsel appearing for the Bar Association of Sri Lanka conceded that the Constitutionality of the two Bills must be determined by this Court and that this Court cannot abdicate its Constitutional role, he along with several other learned Counsel for the Petitioners also argued to the contrary and submitted that since the amendment seeks to confer a *'benefit'* by way of an increase in the age of retirement of the Judges of this Court, this Court must refrain from deciding on the Constitutionality of the Bill.

The learned Solicitor General submitted that the principle of *nemo judex in causa sua* taken in its proper context applies only to prevent a decision maker from adjudicating a dispute in which that decision maker is a party or has a direct pecuniary or personal interest in the specific outcome as between the litigants. He submitted further that the object of the challenge are two Bills of Parliament containing a decision of the Executive and not a decision of this Court and hence, the principle does not apply in its strict sense.

It was submitted further by the learned Solicitor General that even if one accepts the fact that every sitting Judge of this Court has some institutional stake in the outcome of a case concerning their retirement age, the disqualifying interest recognised by the principle of *nemo judex* is a direct, personal, and case-specific interest, and not a generalised institutional interest shared by an entire branch of Government in the outcome of legislation regulating that branch.

Even if the interest is personal, which in our view is not, as held in United States v Will⁹, "[A]lthough a judge had better not, if it can be avoided, take part in the decision of a case in which he has any personal interest, yet he not only may but must do so if the case cannot be heard otherwise... failure to apply the Rule of Necessity in these cases would have a contrary effect by denying some litigants their right to a forum."

The learned Solicitor General went on to state that if a generalised institutional interest was sufficient to disqualify a Court from hearing a matter, no measure affecting Judges could ever

⁹ 449 U.S. 200 (1980).

be reviewed and thus, this Court cannot adjudicate on legislation regulating Courts or review legislation *inter alia* on judicial salaries, retirement benefits or on the power relating to contempt of Court. On this basis, it was submitted that the logical implication of the strict *nemo judex* objection, taken to its conclusion, is untenable.

We must also observe here that the presence of Section 49 is aimed to prevent a Judge hearing its own case. This must be understood in its true sense. However, in this instance the Petitioners have attempted to abuse this provision in an attempt to prevent the Judges discharging their legal obligations by relying on that provision when in fact that section has no application to the instant case. We regret to note a gradual increase in the number of vexatious petitions being filed in Courts. We think the time has come for Courts to give a purposive interpretation to Section 49 of the Judicature Act rather than trying to blindly follow the said provision. This must be done when there are ample reasons to conclude that one of the parties to a litigation is deliberately attempting to get one or some Judges excluded from the hearing a particular case either by alleging a non-existent personal interest or maliciously making such Judge a party to the case without any justification.

In Visuvalingam and Others v Liyanage and Others¹⁰ an objection was taken that since the Judges of this Court had been issued with fresh letters of appointment owing to a purported failure on their part to take an oath prior to 7th September 1983, they were *estopped* from proceeding to resume a hearing which had started prior to that date. The Judges of this Court were thus called upon to determine a question directly concerning their legal status and continuance in their own offices and was thus personal to them.

Having observed that "*It is an unpleasant task to sit as a Judge in my own cause and to discuss the proprieties of my own conduct*",¹¹ Abdul Cader J., took the view that the existence of that personal dimension could not displace the constitutional duty of the Court when he stated that, "*when the question as regards the mandatory nature of the oath comes up, whatever time it be, as it is the Supreme Court that alone is empowered to decide this issue, it is the Judges of this Court who will be called upon to decide it*", and that, "*the capacity in which the Judges hold office gives way to the duty of the Court to decide the issue. It is the Court that decides it.*"¹² [emphasis added]

¹⁰ [1983] 1 Sri LR 203.

¹¹ *Ibid*; at 292.

¹² *Ibid*; at page 293.

Chief Justice Neville Samarakoon emphasised a different dimension when he held that, "*to deny it [the Supreme Court] the right to rule on constitutional issues is to deny the exclusive jurisdiction conferred on the Supreme Court in constitutional matters*", and that in effect, "*What is pleaded as an estoppel against the Judges is in reality an estoppel against the Supreme Court.*"¹³ [emphasis added]

Sharvananda J., [as he then was] articulated the view that what was required was a "*detached objective inquiry and discharged without fear or favour, affection or ill-will.*"¹⁴

In the above circumstances, we are of the view that the Constitution has bestowed upon this Court the sacred, exclusive and inalienable duty to determine the Constitutionality of the impugned Bills and therefore, the capacity in which we hold office must give way to the overarching duty of the Court to decide on the Constitutionality of the Bills. In other words, the individual position of a Judge cannot and shall not displace the institutional jurisdiction of this Court.

On what basis has the Petitioners presumed that all Judges have a personal interest in this case? These arguments are absolutely unfounded and have no factual or legal basis. Hence, they must be rejected in its totality. The reasons we will be giving in the course of this Determination in relation to the argument of the Petitioners that the Government has proposed to give a "legislative bribe" to all Judges in the country, will apply to this argument as well. If we accept this argument of the Petitioners, then no Judge of this Court is qualified to hear the cases of the Petitioners.

We must in no uncertain terms emphasise that this Court is legally obliged to exercise the jurisdiction vested in it by the Constitution and uphold the oath contained in the Fourth Schedule to the Constitution that we as Judges have subscribed to. We cannot abdicate that obligation. If we do that, we would be violating the Constitution. In this instance the jurisdiction to decide these issues is only with this Court. The Constitution has not empowered any other person or any other Court to exercise this jurisdiction. It should be emphasised that a referendum does not determine the Constitutionality of a Bill. It seeks the approval of the

¹³ Supra; page 227.

¹⁴ Ibid; at page 228.

People to pass a Bill without regard to whether the Bill is constitutional or not. The duty of determining Constitutionality is thus within the exclusive domain of this Court, and the failure to perform such duty would be a gross abdication of our core obligations. In this context, to say the least, the Petitioners argument that the Bill is a "legislative bribe" would be an affront to the Judges hearing these petitions and is a calculated attempt to intimidate the Judges of this Court with a threat of prosecution. We regret to state such statements amount to an affront to the independence of the judiciary.

On the other hand, this is not the first occasion that Judges of this Court and the Judges of the Court of Appeal have been called upon to decide issues which, if held in one way, would also bring 'benefits' to them. In President, High Court Judges' Association and Others v Chief Accountant, Ministry of Justice and Others¹⁵ the issue for determination was whether Advanced Payment of Income Tax could be deducted from the salaries of Judges. This Court did not shirk from the responsibility of hearing those cases and delivered judgment recently holding that Judges are not exempt from non-discriminatory taxes applicable to all citizens being imposed on them.

Another case of that nature which this Court had to decide is Justice A.H.M. Upaly Abeyrathne v. A. Jagath D. Dias, Director General of Pensions and Others¹⁶. In that case, a former Judge of this Court who retired in 2016, complained to this Court that the Director General of Pensions (the 1st Respondent in the said case) has infringed his Fundamental Right guaranteed to him under Article 12(1) of the Constitution by deducting from his pension payable monthly the commuted pension as with any other public officer. Even though the decision of this case has an impact on the amount of the pension that would be paid to all Judges, yet, this Court proceeded to hear and determine that case. In the said case, this Court held by majority decision that the commuted pension could not be deducted from the monthly pension. However, we must state here that a bench of five Judges of this Court, in President, High Court Judges Association and others v Chief Accountant, Ministry of Justice and others¹⁷ which is a case subsequently decided, has agreed in the majority decision delivered by Janak De Silva, J that the majority decision in the former case does not correctly state the law. The said five Judge bench of the subsequently decided case by majority proceeded to hold, "*To the extent that they are inconsistent with the constitutional*

¹⁵ SC Appeal Nos. 165/2023, 166/2023 and 172/2023; SC minutes of 15th September 2026.

¹⁶ SC FR Application No. 282/2018; SC minutes of 14th January 2026.

¹⁷ Supra; at page 48.

principles articulated herein, they cannot be sustained and must be, and are hereby, overruled."

Cases such as High Court Judges Association and others vs. Lionel Fernando, Co-Chairman, National Salaries and Cadre Commission and others,¹⁸ and more recently the conclusions reached by a bench of three Judges of this Court in the Inland Revenue (Amendment) Bill¹⁹ in relation to the issue of whether the bill to amend the Inland Revenue Act No. 24 of 2017 titled "Inland Revenue (Amendment)", or any provision thereof was inconsistent with the Constitution, also stand as good examples where the learned Judges of this Court did not shirk from their constitutional obligations but proceeded without any hesitation to hear and decide according to law whatever the issues raised in those cases, even though the outcome of those cases may have been to their detriment.

For those reasons, we reject the following arguments of the Petitioners:

- (a) That the Judges would likely be liable for prosecution under the provisions of the Anti-Corruption Act, No. 9 of 2023 on the basis that they heard a case while having a personal interest in the case. [We hold that there is no basis for such liability.]
- (b) That there exists a conflict of interest that would prevent this Court from hearing these petitions. [We hold that there cannot be any such conflict in the minds of any Judge.]
- (c) That a Referendum is "an elegant solution" to the Court's conflict of interest. [We must state unequivocally that the empty allure of elegance must give way to the gritty resolve of this Court to uphold Constitutional obligations.]

In order to place in context the aforementioned amendments that are sought to be introduced by the 22nd Amendment to the Constitution Bill and the Judicature (Amendment) Bill, we shall now refer to three matters that were placed before us by the learned Solicitor General, they being the historical evolution of the retirement age of Judges in Sri Lanka, the policy considerations underlying the said amendments and the position relating to the age of

¹⁸ SC Appeal 66/2008, SC minutes of 4th May 2009.

¹⁹ Decisions of the Supreme Court on Parliamentary Bills (2022), Volume XVII, 241.

retirement in other jurisdictions and in particular, the United Kingdom whose judicial system we have inherited, and India.

Evolution of the age of retirement

Since 1910, the Public And Judicial Officers (Retirement) Ordinance, No. 11 of 1910, as amended by Ordinance No. 21 of 1917, has been the only piece of legislation which has a reference to the retirement age of the Judges other than the Judges of the Superior Courts and the High Court. Section 2 thereof states that '*the President may make, and when made may revoke, vary, or amend, rules regulating the age at which, the reasons for which, and the conditions subject to which, public or judicial officers shall be required to retire from the public or judicial service.*' Therefore, deciding the age of retirement of Judicial Officers has been vested in the hands of the President by that Ordinance. Section 2(a) of that Ordinance even states that such Rules '*may prescribe the age at which the retirement of public or judicial officers or of any particular class of public or judicial officers shall be compulsory.*' Thus, according to this Ordinance the power to decide the retirement age of the Judicial Officers is with the Executive.

Clause 3 of the Judicature (Amendment) Bill proposes to secure the age of retirement of Judicial Officers by an Act of Parliament which states that "*notwithstanding anything to the contrary in the Public and Judicial Officers (Retirement) Ordinance (Chapter 355), the age of retirement of all other Judges and Magistrates shall be sixty-two years.*" We are of the view that this is a progressive step towards further strengthening the security of the tenure of the Judicial Officers.

Moreover, as pointed out by both Mr. Nigel Hatch PC who appeared for one of the Intervient Petitioners and the learned Solicitor General, we observe that this is not the first occasion that the age of retirement of Judges of the Supreme Court is being increased. Under the Independence Constitution (1946) the age of retirement was 62 years; under the 1st Republican Constitution (1972) it was 63 years; under the 2nd Republican Constitution (1978) it was 65 years. The Constitution is a living document which must be able to cater to changing social needs from time to time. This is why Article 107(5) does not either prohibit or restrict an increase in the retirement age of Judges. On the contrary, Article 108(2) prohibits a reduction of salaries of Judges. That is for good reason: i.e., to safeguard the independence of the judiciary.

We observe as pointed out by the learned Solicitor General that there was a considerable gap between the age of retirement of public servants and the age of retirement of Judges. Originally, the retirement age of public servants was 55 years. Thereafter it was increased to 57 years and now it stands at 60 years. The retirement age of Judges of the Supreme Court has remained at 65 years and that of the Judges of the Court of Appeal at 63 years since 1978 without any increase while the aforesaid increase in the retirement age of public servants has increased from 55 years in 1978 to 60 years. Moreover, the retirement age of certain categories of Public Servants has even been extended upto 63 years. This fact alone can justify the instant increase of the retirement age of the Superior Court Judges.

Policy decision of the Government

As has been pointed out by the learned Solicitor General, both in his oral submissions and in the post hearing written submissions, initially, a Note to the Cabinet dated 03rd July 2026 titled "Amendment of Statutory Retirement Age of Judges and Judicial Officers" was presented to the Cabinet of Ministers by the Minister of Justice and National Integration. This Note has set out the grounds upon which the retirement age of Judges shall be revised. In the said Note, the Hon. Minister of Justice and National Integration, having explained in detail the background facts in relation to the necessity of increasing the retirement age of Judges, has stated that it is appropriate for the Cabinet of Ministers to deliberate on and determine the retirement age of Judges.

The Note *inter alia*, has requested the Cabinet of Ministers to consider the following aspects:

- (I) *The fact that the existing legal framework governing the retirement age of Judges was introduced within a significantly different social and economic context;*
- (II) *The fact that insufficient consideration has been given to the significant increase in life expectancy resulting from advancements in medical sciences and healthcare;*
- (III) *The fact that the retirement age applicable to certain categories of professionals in the public service has been increased in recent years having regard to various considerations;*

- (IV) *The fact that no corresponding revision has been made to the retirement age applicable to Judges;*
- (V) *The fact that comparatively in many foreign jurisdictions the retirement age applicable to members of the judiciary is generally fixed at (70) years or above and therefore the relatively low retirement age applicable for judicial officers in Sri Lanka is inconsistent with prevailing international standards and contemporary realities.*
- (VI) *The fact that many Judges have continued to serve in responsible positions within the private sector after retiring at a comparatively young age which clearly demonstrates that they retain the mental acuity, physical fitness and professional competence required to undertake professional responsibilities;*
- (VII) *The fact that Judges acquire extensive professional experience and expertise over the course of their service and due to the existing retirement age the State is deprived of their continued service, which is detrimental not only to the State but to the legal system as a whole;*
- (VIII) *The fact that one of the principal commitments of the present Government is to expedite the disposal of cases and to enhance public confidence in the administration of justice;*
- (IX) *The fact that achieving the said objectives requires not only the establishment of additional courts, the improvement of judicial infrastructure and the assurance of equality before the law but also the continued service of experienced and competent Judges;*
- (X) *The fact that the retention of Judges possessing mature professional expertise and extensive judicial experience is essential for the expeditious disposal of long pending cases since the legal profession is a field in which expertise and proficiency develop progressively through accumulated knowledge and years of practical experience.*

The Cabinet of Ministers has considered the contents of the above Note at the meeting held on 06th July 2026. It was thereafter that the Hon. Minister of Justice and National Integration presented the Cabinet Memorandum dated 24th July 2026 seeking the permission and policy approval of the Cabinet of Ministers to amend the Constitution in the manner set out in Annexure 1 thereof and to amend the Judicature Act No. 2 of 1978 in the manner set out in Annexure 2 thereof.

Having considered the observations of the Minister of Finance Planning and Economic Development dated 27th July 2026 and the views expressed by several Members of the Cabinet during deliberations, the Cabinet of Ministers decided at its meeting held on 27th July 2026 to grant policy approval to amend the Constitution by incorporating the provision proposed through serial Nos. 2 and 3 in the document attached as Annexure-1 to the Memorandum, incorporate appropriate provisions for the period during which the person appointed as Chief Justice could hold office to be the date of completion of a period of six (6) years from the date of appointment to the said Office or up to the date of completion of sixty-seven (67) years of age, whichever date occurs earlier, to amend the Judicature Act, No. 2 of 1978 by incorporating the proposed provisions in Serial Nos. 1, 2 and 3 in Annexure 2, to instruct the Legal Draftsman to prepare a draft Constitutional Amendment to amend the Constitution, to prepare a Bill to amend the Judicature Act, and to direct the Secretary to the Ministry of Justice and National Integration to submit the final Constitutional Amendment/Bills together with the clearance of the Attorney General through the Minister, for the consideration of the Cabinet of Ministers.

Moreover, the aforesaid Cabinet Memorandum reveals that although Article 146 of the Constitution has empowered the Chief Justice to direct that the jurisdiction of the Court of Appeal be exercised in any particular judicial zone or district as appropriate, practical difficulties have arisen in implementing this at present mainly due to the insufficient number of Judges of the Court of Appeal. Accordingly, it was proposed to amend Article 137 of the Constitution by increasing the number of Judges of the Court of Appeal to twenty-four.

The learned Solicitor General drew our attention to the two annexures attached to the Note to Cabinet dated 3rd August 2026 presented to the Cabinet of Ministers by the Minister of Justice and National Integration. Annexure 1 thereto is an excerpt of the report submitted by the Steering Committee of the Constitutional Assembly. The Sub Committee on Judiciary of the said Steering Committee has consisted of Mr. Chandima Weerakkody, Attorney-at-Law,

Mr. M. A. Sumanthiran PC and Mr. Udaya Gammanpila, Attorney-at-Law as its members. The said Sub Committee has recommended that the age of the Judges of the Court of Appeal be increased to 65.²⁰

Annexure 2 contains the recommendations of the then President of the Bar Association of Sri Lanka, Mr. Geoffrey Alagaratnam, PC who has categorically proposed that the age of retirement of the Judges of the Court of Appeal be increased to 65. Today, the incumbent President, Secretary, Treasurer and the Assistant Secretary of the Bar Association of Sri Lanka have collectively and very strongly urged before us that such an increase which was suggested by the Bar Association of Sri Lanka itself in 2016 would now be a "legislative bribe" to the Judges.

In the Determination in relation to the Foreign Exchange Bill²¹, this Court held as follows:

"The Cabinet has deliberated on the subject matter of foreign exchange which affects the economy of this country and found that a proper legal framework is needed for the management and regulation of foreign exchange and to encourage Sri Lankan citizens to remit to Sri Lanka foreign exchange they have in their possession outside Sri Lanka. ... The existing law has not been successful in preventing the outflow of foreign exchange out of the country through legal and non legal channels. Therefore a new law was required to provide incentives for Sri Lankans having money outside the country to remit that money to Sri Lanka without having to face with criminal penalties. The Bill in hand contains provisions to cater to the said need as well as intervention by the Government if any outflows of foreign exchange becomes a threat to the national economy. The decision to bring up this Bill is nothing but a matter of policy.

The Policy making power is left to the authorities in whom it is vested by law. This Court has been reluctant to intervene in matters of policy unless such policy is found to be manifestly unreasonable".

The age of retirement of Judges in other jurisdictions.

The learned Solicitor General submitted that while Judges of the Supreme Court of the United States of America have always been eligible to hold office for life, the retirement age of Judges

²⁰ Vide Paragraph 4.1.8 at page 21 of the Written Submissions filed by Attorney General.

²¹ Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Volume XIII, 85; at page 95.

of apex Courts across the globe range from 65 years to 75 years. We observe that the age of retirement of Judges in other jurisdictions are comparatively higher than in Sri Lanka. In the United States of America, there is no retirement age for the Judges of the Supreme Court; in the United Kingdom it is 75 years; in Canada it is 75 years; in Australia (High Court) it is 70 years; in New Zealand it is 70 years; in South Africa it is 70 years or after 12 years of service; in Japan it is 70 years; in Brazil (*Supreme Federal Court*) it is 75 years; and in Philippines, it is 70 years.

Thus, while countries such as the United Kingdom and South Africa are at the higher end of the spectrum with the retirement age of the Judges of the Supreme Court being 75 and 70 respectively, India together with Sri Lanka are at the lower end of the spectrum.

The learned Solicitor General cited the United Kingdom as a prime example of a Country that has varied the retirement age of Judges to address the needs of society that arose at a particular point of time. He submitted that as recently as 2020, the United Kingdom raised the retirement age of Judges to 75 years, having previously reduced it to 70 years, primarily to address a crisis in judicial retention and recruitment. It must be noted that under the Act of Settlement 1701 of England, senior Judges held office without a retirement age as long as they were of good behaviour. The imposition of a mandatory retirement age for superior Judges came about through the Judicial Pensions Act 1959 which imposed a mandatory retirement age of 75 years. However, in order to encourage diversity on the bench and accelerate the turnover of senior Judges, the mandatory age of retirement was reduced to 70 years by the Judicial Pensions and Retirement Act 1993 but only in respect of those Judges who were appointed after 1995, thus ensuring that a reduction was prospective in nature and only applied to those who were recruited on a future date.

However, a severe shortage of Judges resulting from a variety of factors including the difficulty in recruiting leading practitioners to the Judiciary prompted the Parliament of the United Kingdom to raise the mandatory retirement age of Judges to 75 years through the Public Service Pensions and Judicial Offices Act. The said amendment contains two features significant to this proceeding. The first is that the increase in the mandatory age limit applies to sitting Judges, as well. The second is that the situation that has arisen in Sri Lanka is similar as clearly borne out by the aforementioned Note to the Cabinet of Ministers submitted by the Minister of Justice and National Integration at the time he sought approval of the Cabinet of Ministers to increase the age of retirement of Judges across all Courts.

Recent developments in India

In India, the age of retirement of Judges of the Supreme Court is 65 years. The age of retirement of Judicial officers in India was initially 60 years. However, some States from time to time have increased this age limit as these States have increased the retirement age of other employees of their State Governments. The Supreme Court of India by its Order delivered on 23rd November 2023 granted permission for the High Court of Telangana to increase the retirement age of judicial officers to 61 years.²² Similarly, a two Judge Bench of the Supreme Court of India also granted permission for the High Court of Madhya Pradesh to increase the retirement age of judicial officers to 61 years.²³

In July this year, in a Writ Petition filed by the All India Judges Association against the Union Government of India,²⁴ the Supreme Court of India by a Bench comprising the Hon. Chief Justice of India, Hon. Surya Kant, Hon. Justice Joymalya Bagchi and Hon. Justice V. Mohana granted an interim order allowing judicial officers of India to continue beyond the age of 60 years if the State Governments and High Courts have concurred to such a course of action.

In that case the Supreme Court of India held as follows:

"It is needless to state that the judicial officers, as well as the other employees of the State Government would be paid their salaries through the same Public Exchequer. When all other employees working in the State of Madhya Pradesh would be in service till 62 years, we see no reason as to why the judicial officers/members of the petitioner-association should be denied that benefit at least till the age of 61 years".

On 1st September 2026, the Indian Supreme Court delivered a further Order in the above case and directed seven States to increase the age of retirement of Judges to 62. In doing so, the Supreme Court of India held as follows:

"But, the crying need of the hour is to ensure that the attrition of the experienced judicial talent be arrested so that the gap between the sanctioned and the working strength in

²² I.A. No. 170936/2023 in Writ Petition (Civil) No. 643/2015.

²³ Writ Petition (Civil) No. 819/2018; Order on 26th May 2025.

²⁴ Writ Petition (Civil) No. 1022/1989; Order on 22nd July 2025.

the judicial service is reduced, and access to justice does not remain a mere chimera due to unfilled posts. It is with this spirit that we request the High Courts and States to reconsider the issue with regard to enhancement of age of superannuation in the district judiciary, whose conditions of service are to be governed by rules framed on their recommendation. Being alive to the aforesaid crisis in dispensation of justice, most of the High Courts have consented to such enhancement."

Thus, while in Sri Lanka, it is the Executive that has taken steps to address the issue of attrition of experience judicial officers, across the Palk Strait, it is the Supreme Court of India itself that has addressed the issue.

Having carefully considered the above material, we are satisfied that the impugned Bills are a manifestation of the policy of the Government. It is a part of broader general reforms since the 22nd Amendment to the Constitution Bill does not only deal with the age of retirement of the Judges of the Superior Courts but also deals with increasing the number of Judges in the Court of Appeal. Furthermore, the Government has simultaneously placed the Bill titled "Judicature (Amendment) Act No. of 2026" also on the Order Paper of Parliament seeking to increase the retirement age of the rest of the Judges of the country and also to enhance the number of Judges of the High Court. These are salutary provisions designed to increase the access to justice for the People of this country. We have absolutely no basis to hold that the above is an unreasonable policy.

The argument that increasing the retirement age is a violation of Article 3.

Indeed, the primary argument of the Petitioners is that increasing the retirement age of Judges is an actual inducement to sitting Judges because it is *per se* a financial benefit or inducement conferred on them. It is their position that the Independence of the Judiciary is an essential part of the Sovereignty of the People enshrined in Article 3. It is on that basis that they seek to argue that the Bills as a whole and/or its clauses are violative of Article 3 of the Constitution because they impinge on the independence of the judiciary.

We observe that Article 83(a) has referred to the provisions of Articles 1, 2, 3, 6, 7, 8, 9, 10 and 11 and Article 83 itself. The ultimate argument the Petitioners seek to advance in respect of both Bills is that these Bills as a whole are inconsistent with Article 3 of the Constitution. This is the issue we have to determine.

Since Article 3 is at the centre of the discussion that will shortly ensue, let us at the very beginning of this discussion, reproduce below, Article 3, which reads as follows:

Article 3

"In the Republic of Sri Lanka sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise."

After the Parliamentary election held in 1977, the People of this country gave a mandate to their representatives who by virtue of the said mandate took steps to promulgate the 1978 Constitution as the Supreme Law of this country. In enacting the 1978 Constitution the elected representatives of the People of Sri Lanka proceeded to state in its preamble as follows:

"SVASTI

The PEOPLE OF SRI LANKA having, by their Mandate freely expressed and granted on the sixth day of the waxing moon in the month of Adhi Nikini in the year two thousand five hundred and twenty one of the Buddhist Era (being Thursday the twenty-first day of the month of July in the year one thousand nine hundred and seventy seven), entrusted to and empowered their Representatives elected on that day to draft, adopt and operate a new Republican Constitution in order to achieve the goals of a DEMOCRATIC SOCIALIST REPUBLIC, and having solemnly resolved by the grant of such Mandate and the confidence reposed in their said Representatives who were elected by an overwhelming majority, to constitute SRI LANKA into a DEMOCRATIC SOCIALIST REPUBLIC whilst ratifying the immutable republican principles of REPRESENTATIVE DEMOCRACY and assuring to all Peoples FREEDOM, EQUALITY, JUSTICE, FUNDAMENTAL HUMAN RIGHTS and the INDEPENDENCE OF THE JUDICIARY as the intangible heritage that guarantees the dignity and well-being of succeeding generations of the People of SRI LANKA and of all the People of the World, who come to share with those generations the effort of working for the creation and preservation of a JUST AND FREE SOCIETY:

WE, THE FREELY ELECTED REPRESENTATIVES OF THE PEOPLE OF SRI LANKA, in pursuance of such Mandate, humbly acknowledging our obligations to our People and

gratefully remembering their heroic and unrelenting struggle to regain and preserve their rights and privileges so that the Dignity and Freedom of the Individual may be assured, Just, Social, Economic and Cultural Order attained, the Unity of the Country restored, and Concord established with other Nations,

do hereby adopt and enact

this

CONSTITUTION

as the

SUPREME LAW

of the

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA."

This clearly shows the importance, desire and the commitment the People of this country through their representatives have shown in taking all measures possible towards the continuous protection of the independence of the judiciary. The People of this Country through the Constitution which they have accepted as the Supreme Law of the country has not only assured to all People but also assured to the succeeding generations of the People of this country, the independence of the judiciary. The People of this country through the Constitution have also proceeded further to extend this assurance to all the people of the world, who come to share with those generations, the effort of working for the creation and preservation of a just and free society. **Thus, we have no doubt that they, the People of this country have taken all steps in their Supreme Law itself, to jealously guard the independence of the judiciary as their intangible heritage.** This is because they expect that it would be the independence of the judiciary that will in turn guarantee them freedom, equality, justice, fundamental human rights and wellbeing.

The origins of this expectation of the People, which was manifested in the form of the present Constitution could be traced back even to the time of the Buddha, who extolled the importance of the impartiality of Judges who dispense justice with the following words, as found in *Dhammapada (Chapter 19, Dhammattha Vagga, verses 256 and 257)*

"Na tena hoti dhammattho —

yen' attham sahasā naye

Yo ca attham anatthan ca —

ubho niccheyya paṇḍito.

Asāhasena dhammena —

samena nayatī pare

Dhammassa gutto medhāvī —

dhammaṭṭho' ti pavuccati

The translation of the above verses by Ven. Narada (*The Dhammapada – Pali Text and Translation with Stories in Brief and Notes*- published in 1971, at p. 209) is as follows;

"He is not thereby just because he hastily arbitrates cases. The wise man should investigate both right and wrong.

The intelligent person who leads others not falsely but lawfully and impartially, who is a guardian, is called one who abides by the law."

Therefore, there is no doubt that the independence of the judiciary was in the forefront of the minds of the framers of the Constitution.

It is pertinent at this point to refer to the following passage from the Determination in the 'Industrial Disputes (Special Provisions) Bill':²⁵

"In terms of Article 3, sovereignty is in the people and according to Article 4, the organs of government exercise the executive, legislative and judicial power of the people. No useful purpose is served by giving constitutional recognition to judicial power if there is no independent judiciary to protect itself from executive and legislative intrusions. Similarly no useful purpose is served by giving constitutional recognition to fundamental rights if there is no independent judiciary to protect them from executive and administrative excesses. Correspondingly, no useful purpose can be achieved if the People are given the power of franchise without the right to an independent judiciary to give practical effect to such right. An independent judiciary is the last bulwark to protect civil liberties against arbitrary action by the executive or the legislature in appropriate proceedings.

²⁵ Decisions of the Supreme Court on Parliamentary Bills (2022), Volume XVII, 139; at pages 147-148

In the end, the full implementation of all rights of the people depends upon the proper administration of justice by a competent, independent and impartial judiciary by upholding the rule of law. In this context, it is important to note that the SVASTI of the Constitution assures to all people the independence of the judiciary. Hence sovereignty in Article 3 of the Constitution must be read to include the right to an independent judiciary."

We fully concur with the view expressed above. The nucleus of the judicial power of the People is the independence of the judiciary and if the sovereignty of the People is to be protected, then, the independence of the Judiciary must be protected. Judicial independence is therefore not only the cornerstone of our judicial system but is also its bedrock. It is the Constitution that guarantees that Judges will be able to make decisions free of influence and based only on relevant fact and law. It is for this reason that for generations, this Court and the People of this Country have jealously guarded the independence of the Judiciary.

With the above in mind, we will now turn to the primary argument advanced by the Petitioners in the instant petitions. It is the argument that the extension of the retirement age of the Judges would amount to conferring an inducement and/or favour to the incumbent Judges. The Petitioners state that this would violate the norms pertaining to the maintenance of the independence of the judiciary. Let us morefully consider this argument.

Articles 107 and 108 of the Constitution expressly identifies the following primary safeguards by which judicial independence is protected. They are as follows:

- (a) The mode of appointment of the Chief Justice, every Judge of the Supreme Court, the President of the Court of Appeal and every Judge of the Court of Appeal has been clearly specified and is not entirely at the discretion of the President but shall be subject to the approval of the Constitutional Council whose composition we have referred to later on in this Determination and includes the Leader of the Opposition and three members of the Civil Society;
- (b) The tenure and the security of office is assured by the fact that every such Judge shall hold office during good behaviour and shall not be removed until they reach the age of retirement except by an order of the President made after an address of Parliament

supported by a majority of the total number of Members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misbehaviour or incapacity, and provided that no resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order Paper of Parliament, unless notice of such resolution is signed by not less than one-third of the total number of Members of Parliament and sets out full particulars of the alleged misbehaviour or incapacity;

- (c) The salaries of the Judges of the Supreme Court and of the Court of Appeal shall be determined by Parliament and shall be charged on the Consolidated Fund referred to in Article 149 into which Fund shall be paid the produce of all taxes, imposts, rates and duties and all other revenues and receipts of the Republic not allocated to specific purposes;
- (d) The salary payable to, and the pension entitlement of a Judge of the Supreme Court and a Judge of the Court of Appeal shall not be reduced after his or her appointment.

This would perhaps be an opportune time to refer to three decisions of this Court which have, whilst referring to one or more of the above safeguards, recognised that judicial independence forms the bedrock of our judiciary and justice system.

The first is Visuvalingam and others v Liyanage and Others²⁶ where Sharvananda, J [as he then was], stated as follows:

"The main aspirations of the Constitution are set down in its luminous preamble. Rule of law is the foundation of the Constitution and independence of the judiciary and fundamental human rights are basic and essential features of the Constitution. It is a lesson of history that the most valued constitutional rights pre-suppose an independent judiciary, through which alone they can be vindicated. There can be no free society without law, administered through an independent judiciary. It is and should be the pride of a democratic government that it maintains and upholds independent courts of justice where even its own acts can be tested. The supremacy of the Constitution is protected by the authority of an independent judiciary to act as the interpreter of the Constitution.

²⁶ Supra; at pages 236-238.

So solicitous were the framers of the Constitution to make the position of the Judges independent and entrenched that they invest them with the status of irremovability save on the limited grounds and manner specifically set out in its provisions. The Judges of the Supreme Court and of the Court of Appeal, unlike Public Officers of whatever rank, do not hold office during pleasure. The Constitution endeavours to secure the independence of the judiciary by setting up well-known mechanisms to assure their security of tenure. The vital need of security of tenure can scarcely be over-emphasised. It is significant that the Article 107 appears under the caption "Independence of the Judiciary". A Judge of the Supreme Court or of the Court of Appeal is entitled to hold office until he attains the age of 65 or 63 respectively (Article 107(5)). He is not removable by the Executive; the only way he can be removed is by an order of the President in terms of Article 107(2). Of course he may resign his office - resignation is a voluntary act different in quality and is far from removal.

Article 108 provides that their salaries shall be determined by Parliament and are charged on to the Consolidated Fund and that the salary payable to and pension entitlement of a Judge of the said Courts shall not be reduced after his appointment. It is manifest that these provisions are designed to safeguard the independence of the Judges by affording them security of tenure. These provisions have not been put into the Constitution merely for the individual benefit of the Judges; they have been put there as a matter of Public Policy. The security of tenure of Judges has been vouched to the Judges, not only for their own protection but for the protection of the State itself. The framers of the Constitution had considered it to be in the interest of the public and not merely of the individual Judges that their security of tenure should be sacrosanct and sanctioned by the Constitution. The office of a Judge has become a matter of status rather than a creation of a contract. A Judge of the Supreme Court or the Court of Appeal can cease to hold office only in terms of the provisions of the Constitution and not by operation of any rule of estoppel. ... The Judges, once they accept appointment under Article 107(1) of the Constitution are not free to contract out of the provisions of the Constitution and waive the constitutional protection which is warranted to them in order to protect their integrity and impartiality. Any such waiver is null and void."

Soza, J proceeded to state in Visuwalingam²⁷ that, "*Security of tenure of office of the Judges of the Supreme Court and Court of Appeal is an essential component of judicial independence and is entrenched in our Constitution as a principle of State Policy for the benefit of the Sovereign People. No amount of waiver or acquiescence even by the judges themselves can defeat the security of tenure of judicial office enshrined in the Constitution.*"

The second decision that we wish to refer to is the determination in the Inland Revenue (Amendment) Bill²⁸ where this Court was called upon to decide whether making Judges liable to pay taxes would impinge on the independence of the judiciary. The following passage taken from the said Determination is worthy of being reproduced:

*"We strongly agree that the independence of the judiciary is a fundamental value of the Republic. Indeed, long before we became a Republic, the Soulbury Constitution constitutionally recognized the principle of judicial independence by creating the Judicial Service Commission. Although the 1972 Constitution made no provision for a Judicial Service Commission, its re-introduction by the 1978 Constitution is evidence of the desire of the State to embed the independence of the judiciary as a functional and foundational constitutional principle. In fact, this Court in Industrial Disputes (Special Provisions) Bill [S.C.(S.D.) No. 30/2022] held that Sovereignty in Article 3 of the Constitution must be interpreted to include the right to an independent judiciary".*²⁹

The final decision that we wish to refer to is President, High Court Judges Association and others v Chief Accountant, Ministry of Justice and others³⁰ where Janak De Silva, J, having observed that the independence of the judiciary forms an integral part of the constitutional structure of modern democratic government and is essential to the rule of law and to the continuance of its own authority and legitimacy, stated as follows:

"The independence of the judiciary ought not to be understood or assessed solely through the prism of constitutional design or institutional architecture. A Constitution may provide the most robust structural framework and comprehensive institutional safeguards to secure judicial independence. Nevertheless, such safeguards, however

²⁷ Supra; at page 261.

²⁸ Supra.

²⁹ Supra.

³⁰ Supra; at page 29

elaborate, cannot by themselves guarantee the effective realization of that constitutional ideal. Where those entrusted with the judicial office lack integrity or permit themselves to be influenced by the interests of the Executive or the Legislature, rather than remaining steadfast in their fidelity to the Constitution and the rule of law, the independence of the judiciary is reduced to a mere abstraction, devoid of practical meaning and constitutional efficacy.

J.R. Jayawardene in the course of the debate on Basic Resolutions in the Constituent Assembly that framed the 1972 Constitution said:

*"You may have all the precautions to make the judiciary independent, but unless the men who man the judiciary are men of courage, men of wisdom, the judiciary will never be independent...Now the object of all of us is to see that in the future too, in the written constitution, we create the conditions for such men to live, thrive and prosper. If they feel that they will be subject to pressures from governmental forces or from those elected to Parliament, they will not be able to perform their duty." [A. Jeyaratnam Wilson, *The Gaullist System in Asia : The Constitution of Sri Lanka* (1978), The Macmillan Press Ltd., 1980, page 125]*

*According to Dr. Neelan Tiruchelvam [Dr. N. Thiruchelvam, *Constitutional Adjudication in Plural Societies*, Paper presented at the Eleventh Conference of the International Association of Historians of Asia, 1-5 August, 1988, Colombo, at page 20]:*

"The future of the judiciary as the custodian of the public conscience in strife ridden Sri Lanka does not rest in abstract constitutional principles or arrangements. It depends on the quality of those who assume the judicial mantle and their capacity to be morally outraged by injustice and discriminatory practices and to be drawn on the armoury of their legal power to redress their grievances."

We unequivocally express our agreement with the views expressed in the above decisions on judicial independence.

The Petitioners, relying on certain views expressed by this Court in the Inland Revenue (Amendment) Bill³¹ submitted that this Court has already held that “*Any Constitutional amendment to the retirement age or the period of office impacting on the incumbent judges, whether directly or indirectly, will impinge on the independence of the judiciary and violative of Article 3 which requires a Referendum*”³².

While it is correct that this Court has said so, and while it is correct that that would be the position if the age of retirement is reduced, the context in which the above statement was made clearly establishes that this Court was not referring to an increase in the age of retirement by any stretch of imagination. Since the Petitioners have cited the above statement out of context and sought to misrepresent what was actually stated, it is paramount that we re-produce below the above paragraph together with the preceding paragraph that would very clearly demonstrate the correct legal picture and clear the negative public perception that was sought to be created by such misrepresentation:

“However, before parting with this determination, it is necessary to address the third point made i.e. the narrower approach fails logically if the same approach is applied to judges’ tenure. It was submitted that if only a targeted reduction which discriminates against judges violates the Constitution, is applied broadly to tenure as well, this approach would permit a rule of general application that incidentally also reduces the tenure of a judge. An example was provided where if for instance, a constitutional amendment was to stipulate that all those holding office under the Constitution (whether it be public office, judicial office or otherwise in the executive, legislature and judiciary) must retire at 60 years, the narrow approach would by extension countenance and permit such a limitation on tenure. The claim would be that the reduction is not targeted at judges but is a rule of general application. Another example is where a Constitutional amendment seeks to limit the number of years a judge of the Supreme Court or Court of Appeal can hold office independent of the age of retirement.

However, this overlooks the fact that unlike public officers and others holding office under the Constitution, the retirement age of the judges of the Supreme Court and Court of Appeal are specified in the Constitution. Any Constitutional amendment to the

³¹ Supra; at page 290.

³² Supra; at pages 289-290.

*retirement age or the period of office impacting on incumbent judges, whether directly or indirectly, will impinge on the independence of the judiciary and violative of Article 3 which requires a Referendum.”*³³

Thus, reading the relevant paragraphs together would clearly show that the views expressed by this Court in that case is limited to a situation where the Government intends to reduce the tenure of the incumbent Judges since such a reduction is a threat to the independence of the judiciary. This however, cannot apply when the Government seeks to increase the age of retirement of Judges as such an increase is neither a threat on the independence of the Judges nor would it have an adverse impact on the independence of the Judges.

Indeed, we must be mindful here that the argument put forward by the Petitioners is not on the basis that there would be an adverse effect but on the basis that it confers a positive inducement and/or favour to the incumbent Judges. Diminution and increase are two different things. We have already adverted in this Determination to the reasoning to show how the latter cannot violate the independence of the judiciary.

In support of their argument that an extension in the age of retirement of a Judge by the executive is unconstitutional, the learned Counsel for the Petitioners also relied on the judgment of the Constitutional Court of South Africa in Justice Alliance of South Africa v President of the Republic of South Africa³⁴ where that Court unanimously struck down Section 8(a) of the Judges' Remuneration and Conditions of Employment Act, No. 47 of 2001 which allowed the President to permit a Chief Justice to continue in office until he attains the age of 75 years.

The learned Solicitor General however submitted that even though the Constitutional Court arrived at such a finding, the said judgment does not support the argument that has been placed before this Court and that in fact, the background circumstances of that case support the view set out in the impugned Bills. He submitted that prior to its amendment in 2001, Section 176 of the South African Constitution provided that a Constitutional Court judge is appointed for a non-renewable term of 12 years but must retire at the age of 70. The amendment introduced in 2001 conferred on Parliament the power to extend the term of office

³³ Supra; at pages 289-290.

³⁴ [2011] ZACC 23].

of a Constitutional Court judge by providing in Section 176(1) that, "*A Constitutional Court judge holds office for a non-renewable term of 12 years, or until he or she attains the age of 70, whichever occurs first, except where an Act of Parliament extends the term of office of a Constitutional Court judge.*"

This amendment to the Constitution of South Africa was not the subject of challenge in the said case. The background fact that is relevant to the issue before us is whether Parliament can extend the age of retirement. Therefore, the background facts of the South African case supports what is sought to be done by the two Bills. What is important is that the said case deals with an ordinary law passed by Parliament which sought to confer a discretion on the President with regard to an extension of service of the Chief Justice which was later held to be contrary to the Constitution.

While Section 4 of the Judges' Remuneration and Conditions of Employment Act, No. 47 of 2001, provided that a Constitutional Court judge, whose 12-year term of office expires or who reaches the age of 70 years before completing 15 years active service, must continue in office until the completion of 15 years' active service or until that judge attains the age of 75 years, whichever is the sooner, Section 8(a) thereof provided that, "*A Chief Justice who becomes eligible for discharge from active service in terms of section 3(1)(a) or 4(1) or (2), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as Chief Justice of South Africa for a period determined by the President, which shall not extend beyond the date on which such Chief Justice attains the age of 75 years.*"

Acting in terms of Section 8(a), the then President of South Africa extended the term of the serving Chief Justice. This decision was challenged before the Constitutional Court, which held that the Constitution empowered *Parliament* to extend the retirement age *via* legislation of general application and that the power to extend the tenure of an individual judge has not been delegated to the President. The Court emphasized that allowing the Executive discretion over whether a judge gets to stay past retirement age fundamentally destroys judicial independence, as it creates an inducement for Judges to please the Executive to secure a contract extension and for that reason, the Court held that the delegation of power to the President was unconstitutional.

In arriving at the said decision, the Constitutional Court held, *inter alia*, that:

*"It follows that in exercising the power to extend the term of office of a Constitutional Court judge, Parliament may not single out the Chief Justice. The provision does not allow any member of the category of Constitutional Court judge to be singled out, whether on the basis of individual characteristic, idiosyncratic feature or the incumbency of office. Age is an indifferent criterion that may be applied in extending the term of office of a Constitutional Court judge. Age is an attribute that everyone attains. Previous judicial service is another criterion that may be indifferently applied to all the judges of this Court."*³⁵ [emphasis added]

While Articles 107 and 108 protects and safeguards (a) against any reduction of the tenure, (b) the security of tenure, and (c) financial security, Article 111C (1) introduced by the 17th Amendment to the Constitution recognises that Judges shall enjoy administrative independence to work without fear or favour by providing that every Judge entrusted by law with judicial powers or functions shall exercise and perform such powers and functions without being subject to any direction or other interference proceeding from any other person except a superior Court, tribunal, institution or other person entitled under law to direct or supervise such Judge, in the exercise or performance of such powers or functions. The independence so provided by Article 111C (1) is further protected by Article 111C (2) in terms of which every person who, without legal authority, interferes or attempts to interfere with the exercise or performance of the judicial powers or functions of any Judge shall not only be guilty of an offence punishable by the High Court with a term of imprisonment of either description and/or fine but shall be disqualified for a period not exceeding seven years from being an elector, from holding any public office, and from being employed as a public officer.

During the course of the hearing, many of the Petitioners referred to Article 108 of the Constitution which provides constitutional protection against diminution of the salaries and the pension entitlements of a Superior Court Judge. This is a salutary provision put in place to safeguard the independence of the judiciary. Does this however mean that the salaries and the pension entitlements of the Judges cannot be increased? The answer is in the negative as the constitutional prohibition is against the diminution since it is a diminution that serves as a threat. On the other hand, an argument that the Judges have to work for the same salary

³⁵ Ibid; paragraph 91.

they get without it being increased from time to time because such an increase would amount to conferring an inducement and/or favour to the incumbent Judges which would violate the norms of the independence of the judiciary, would clearly be an absurd argument. The same position would apply to the pension entitlement of the Judges with the prohibition in Article 108 being against the reduction, since it is a reduction or the threat of a reduction that may make the Judges beholden to the executive and threaten their independence.

Even the learned Counsel for the Petitioners conceded that any increase of salaries of the Judges is an obviously necessary requirement, and hence any increase of salaries of the Judges cannot amount to conferring an "inducement and/or favour" to the incumbent Judges. Therefore such a step cannot violate the norms of the independence of the judiciary.

Before we proceed further, it must be stated that the Petitioners did not seek to argue or point to any fact which indicates that any Judge or a group of Judges have requested that their retirement age be increased. Therefore, this is not an instance where the Government has acceded to, or granted a benefit upon the request of one or some Judges.

Let us now consider the most contentious provision in the two Bills, that being the extension of the age of retirement of all Judges currently serving in all Courts by a uniform period of two years. In doing so, it is important that we bear in mind two important distinctions that were referred to by the learned Solicitor General, that being the extension is non-discriminatory, in that it applies to all Judges, and it is non-discretionary, in that the extension is not at the whim and fancy of the Executive.

Clause 2 of the Bill titled the 22nd Amendment to the Constitution seeks to increase the age of retirement of the Judges of the Supreme Court and of the Judges of the Court of Appeal by two years. The proposal is not to reduce the age of retirement of Judges. Therefore even the Petitioners do not state that the proposal is an attack on the judiciary in a negative sense. The argument of the Petitioners is that the proposed increase would operate as conferring "an inducement and/or favour and/or benefit" to the incumbent Judges. It is on that basis that the Petitioners seek to argue that the proposed increase in the age of retirement of Judges, even though non-discriminatory and non-discretionary, violates the independence of the judiciary enshrined in Article 107.

It is not difficult for us to conclude that the increase of salaries of Judges would be a "direct benefit" (as opposed to an increase in the age of retirement) that would be conferred on the incumbent Judges. Does the increase in the age of retirement confer an inducement to the incumbent Judges? Would such increase violate the norms of the independence of the judiciary? We are of the view that these questions must be answered in the negative. On the other hand, if one answers these questions in the affirmative, then no Government can increase the salaries of Judges nor can any Government increase the age of retirement of the Judges in order to provide the People of this Country a more efficient and effective system of Justice. The resultant position would be that Judges shall be compelled to work for the same salary they have first received when they joined the judicial service and the People of this Country would have to wait years and years to resolve their disputes since the Government cannot take any positive steps to improve the efficiency and effectiveness of the justice system.

The proposed increase of the retirement age applies to all sitting Judges of all Courts across Sri Lanka – i.e., Magistrates, District Judges, the Judges of the High Court, Judges of the Court of Appeal and Judges of the Supreme Court, without any discrimination. The Petitioners' complaint is that the Government has proposed to give a "legislative bribe" to all the Judges in the country. Petitioners appear to be thinking that the Judges of this country belong to a group of persons who, like Oliver Twist in Charles Dickens' legendary book, will always want more money, more food, more power, and more possessions than they need or deserve. This is very unfortunate, even though the precedents that we have referred to demonstrate otherwise. These arguments are unfair, unrealistic and artificial and would only demoralize all sitting Judges of this country. Bringing or upholding such an argument would be to the detriment of the judicial service of the country at all levels.

We have to apply one yardstick to both. If the increase of salaries or pensions of Judges cannot be taken as an inducement and/or favour to the incumbent Judges, then there is no basis to hold that any increase in their retirement age would amount to conferring an inducement to the incumbent Judges. Therefore, we conclude that any increase in the age of retirement of Judges cannot amount to conferring an inducement and/or favour to the incumbent Judges.

We have already stated that any increase of salaries is a direct benefit than any increase in the age of retirement but such benefit is not an inducement. The Government provides the Judges whatever the benefits it can, and varies from time to time. For instance, sometime back, the Judges were not provided with official cars. Later, little by little, the Government, recognising the importance of maintaining the dignity of office of Judges provided cars to Judges. Thereafter, on several occasions the Government provided lands to the then serving Judges of this Country. The said occasions came under different Governments since it happened at different times for different groups of Judges. During some Governments, Judges were given new cars but each time when this was done not all the Judges in the country received such benefits. Obviously, Judges well understood the limitations of the Government resources and never opted to complain. In such occasions, some drove new cars and others drove old cars. It did not matter to those who did not receive new cars. Even those who received new cars never considered it as a benefit given to them by the Government over the others. The Government provides security to Judges and their houses. Government schools admit children of Judges (vide Chathurika Silva vs. Secretary, Ministry of Education).³⁶ Government funds foreign training for Judges. Can all these things provided to the Judges under the normal course of events by the Government be taken as 'legislative bribes' as alleged by the Petitioners? **Certainly not.** This is clearly established by the fact that nobody, not even the Bar Association of Sri Lanka has ever complained nor has there ever been an allegation or an iota of suspicion that the Judges of this Country, whether it be the Chief Justice or the junior most Magistrate surrendered their much cherished independence in return for such benefits. As submitted by a learned Counsel for one of the Petitioners, the position may be different in other jurisdictions but as the learned Counsel for the Petitioners are fully aware, the reality in Sri Lanka is otherwise.

If these arguments are accepted whatever the benefit the Government provides to the Judges have to be stopped forthwith, as all of them could also be seen as provisions of inducements and/or favours to the incumbent Judges. We strongly reject these arguments advanced by the Petitioners.

The Constitution having set the benchmark, any amendment of the provisions of Articles 107 and 108 in such a manner as to pose a threat to the independence of the judiciary shall be a violation of the judicial power of the People and result in a violation of the sovereignty of the

³⁶ SC FR No. 22/2008; SC minutes of 18th June 2020.

People. The impugned Bill to amend the Constitution and the Bill to amend the Judicature Act does not alter that structure in such a manner where the Judiciary becomes dependent on the Executive or the Legislature for their future existence as Judges. Nor does the said increase in the age of retirement serve as a threat to the independence of the Judiciary as a whole or as a threat to the independence of each Judge. Furthermore, the increase in the existing ages of retirement of all Judges across the entire judiciary on a non-discriminatory and non-discretionary basis does not pose a threat to any of the safeguards on which the independence of the Judiciary stands.

We shall now address four further arguments that were relied upon by the Petitioners in support of their argument that the amendment is a violation of the independence of the Judiciary.

The argument that the Bills as a whole are a project aimed at 'Court Capture'.

Let us now consider the argument that the Bills as a whole is a project aimed at 'Court Capture'. It is their submission that one tool of 'Court Capture' is 'Court Packing', in which a Government seeks to fill the Court with Judges who may be ideologically aligned with the Government in Office, or to 'lock in' the composition of a Court seen to be favourable to the Government of the day.

The incumbent Judges of this Court whose age of retirement would be increased if this Bill is passed into law are Judges who have been serving in the judiciary well before the present Government came to power. Indeed these are Judges who have worked in the judiciary during previous successive Governments and have discharged their duty independently without any fear or favour. Those Governments were formed by different political parties and sometimes jointly to a certain extent. Therefore, if what the Government intends is 'Court Packing', then it has to pack the Court only with the incumbent Judges. We therefore see no merit in this submission. We strongly reject that the Government seeks to fill the Court with Judges who may be ideologically aligned with the Government. To the contrary, if the Government intends to engage in "Court Packing", and appoint Judges who may be ideologically aligned with the Government, it can do so only if it permits the retirement of the incumbent Judges. The increase in the age of retirement would only block such opportunity for the Government, if that was the intention of the Government as claimed by some of the Petitioners. As has been mentioned by Mr. Nigel Hatch PC in the course of his submissions and in the written

submissions, David Landau's article³⁷ relied upon by some of the Petitioners is a reference to unconstitutional maneuvers which may have happened in certain other countries which are totally inapplicable to this country. Disparaging our Country to advance an argument at the expense of our national reputation is unfortunate and regrettable.

The argument that the increase in the retirement age of Judges would be a process to bypass the Constitutional Council.

Another argument the Petitioners have advanced is that the increase in the retirement age of Judges would amount to a process which by-passes the appointment of Judges with the approval of the Constitutional Council and therefore would amount to a usurpation of the power of the executive President and that of the Constitutional Council.

In Sri Lanka, Judges to the Apex Courts are selected on merit. Their competence and ability to work hard are factors taken into account. The appointment process is devoid of considerations of Judges' political views. The President nominates a Judge, and the Constitution Council can approve or disapprove of such nomination. If the Constitution Council disapproves, the President's nominee cannot be appointed. The Constitutional Council contains ten members. They are as follows:

- (1) the Prime Minister;
- (2) the Speaker;
- (3) the Leader of the Opposition in Parliament;
- (4) one Member of Parliament appointed by the President;
- (5) five persons appointed by the President, upon being nominated as follows:
 - (i) one Member of Parliament nominated by agreement of the majority of the Members of Parliament representing the Government;
 - (ii) one Member of Parliament nominated by agreement of the majority of the Members of Parliament of the political party or independent group to which the Leader of the Opposition belongs; and

³⁷ "Abusive Constitutionalism" [47 UC Davis Law Review 189].

- (iii) three persons nominated by the Speaker by agreement of the Prime Minister and the Leader of the Opposition.
- (6) one Member of Parliament nominated by agreement of the Members of Parliament other than those representing the Government and those belonging to the political party or independent group to which the Leader of the Opposition belongs, and appointed by the President.

The incumbent Judges of the Superior Courts whose age of retirement would be increased if this Bill is passed into law are Judges whose appointments have been approved by the Constitutional Council after due process. We have already adverted to the fact that they have been serving in the judiciary well before the present Government came to power. We therefore reject the argument that the increase in the retirement age of Judges of the Superior Courts would amount to a process to by-pass the appointment of Judges with the approval of the Constitutional Council.

The argument that the public at large would perceive the increase in the age of retirement of Judges to be an interference with the judiciary.

Let us now turn to the argument advanced by the Petitioners that there is a possibility that the public at large would perceive the increase of the retirement age of Judges to be an interference with the judiciary.

In the Special Determination relating to the Welfare Relief Benefits Bill, this Court held that, "*It is not within the jurisdiction of the Court to speculate as to what would happen in the implementation of the scheme*".³⁸ A similar approach was taken by this Court in the Determination in relation to the Twentieth Amendment to the Constitution Bill when the majority decision expressed the view that '*a decision on the inconsistency or consistency with a Constitutional provision cannot be based on surmise and conjecture*'.³⁹

³⁸ Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Volume VII, 282.

³⁹ Decisions of the Supreme Court on Parliamentary Bills (2019-2020), Volume XV, 87; at page 133.

In any case, we are not in agreement with the submissions made by the learned Counsel for the Petitioners that there is a possibility that the public at large would perceive the increase of retirement age of Judges to be an interference with the judiciary. We have already explained the reasons relevant to this issue.

In the case of Hettiarachchi vs. Seneviratne, Deputy Bribery Commissioner and Others (No. 02),⁴⁰ this Court stated that public criticism should not deter Judges from doing what they believe is right in the following terms:

"That the case may be of great interest to the public, or even sensational, is beside the point. As far as a court of law is concerned, there are no unimportant matters. The status and position of the persons before us, whether as petitioners or respondents, are of no consequence. In the words of Deuteronomy 1:16 -17:

"And I charged your Judges at that time, saying hear the causes between your brethren and judge righteously between every man and his brother, and the stranger that is with him. Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man....."

And we might also say with Lord Denning (Ex parte Blackburn [1968] 2 QB 150, 155):

"Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right."

Our pulses do not beat any faster either because of the persons before us or because of public comments by any person."⁴¹

On the question of public perception and public reaction to judgments of a Court, Dame Victoria Sharp, President of the King's Bench Division of England, speaking on the topic, "Without Fear or Favour: Judicial Independence, Past, Present and Future" on 22nd June 2026 made the following pertinent observations:

⁴⁰ Supra.

⁴¹ Ibid; at page 297.

"The judicial path is certainly not one for those who want a quiet life or to be popular, because those pressures can come from all quarters: from the Executive branch of the State, from the Media, from the general public and of course from the litigants themselves. Depending on the decision made, we can be excoriated as "out of touch" or attacked as dangerously radical. Sometimes we are said to be both at the same time. The internet, and social media has been of considerable assistance to those who wish to take public issue with decisions they dislike, and keyboard warriors, as they are sometimes called, frequently express themselves in very strong terms, which can be picked up and amplified by those with particular agendas to pursue; or picked on by particular groups as confirming their own views – the information age has led to a proliferation of echo chambers, social media influencers and confirmation bias if you like.

However, judges up and down the land every day of the week make decisions they think are the right ones to make, in the light of the facts they find and the applicable law. Judges give their reasons for what they do, and open justice means this is visible to the litigants and to the public. Judges work under the spotlight. ... So, what judges do is visible. If judges get it wrong, the appellate system is there to put things right. And it is by that means that legal rights or wrongs are decided in this country. Legal disputes are not decided by the court of public opinion. Cases must be decided according to their merits – on the evidence presented in court, applying the relevant law laid down by Parliament and its elected representatives, without regard to the clamouring voices of interest groups be they ever so powerful or ever so low.

Such voices may be of legitimate interest to the media and politicians, and they may be effective in bringing about legislative change; but they cannot and should not affect the way judges make their individual decisions or approach the task of judging more generally.

Sometimes the voices are off stage. Sometimes, they can be more direct. ...

There are some aspects of the rule of law on which, among ourselves, we take different views...But one aspect of the rule of law on which we would certainly agree is the independence of the judiciary. It is secured in part by laws which give the judges security of tenure and in part by ensuring that as far as possible they are persons of integrity,

appointed on merit rather than by reason of political connection. Independence here means more than independence from government direction. It means also that judges in making their decisions should as far as humanly possible not be influenced by public opinion, or by any sense of obligation to the government or to any individual, party, or pressure group. There is a particular threat to judicial independence which should concern us: that is, the growing tendency for politicians and the press to attack in intemperate and even vituperative terms judges who have given decisions with which they disagree. Newspapers all too often respond to an unpopular decision with personal attacks on the judges concerned. Judges must accept strong criticism, even unfounded criticism. Lord Atkin's statement that justice is not a cloistered virtue has become a legal cliché. As Lord Judge, the Lord Chief Justice of England and Wales, has recently said, one of the attributes we expect of an independent judge is the moral courage to make decisions which will be unpopular with politicians or the media or the public.

Judges, it has also been said, must have broad backs, and usually they have. The real mischief of unwarranted attacks on the motives or integrity of the judges, however, is not any hurt to the judge's feelings; it is that they undermine that respect for the judiciary without which, as I have suggested, the foundations of the rule of law are undermined."

We can only reiterate that the judiciary of this Country consists of men of courage and men of wisdom who have always and who will always maintain the independence of the judiciary under varying circumstances.

The argument that the Government has failed to conduct a consultative process.

Let us next consider the argument advanced by the Petitioners that the Government has failed to conduct a consultative process with the relevant stakeholders on the proposed '22nd Amendment to the Constitution Bill', before it decided to gazette it as a Bill and subsequently decided to place it in the Order Paper of Parliament. The Petitioners also sought to argue that the increase of the retirement age of Judges or the increase of the composition of the Court of Appeal were never mentioned in the election manifesto of the Government. Once again, we need to demarcate our jurisdictional mandate with regard to this argument.

Let us reproduce below, Article 124:

"Save as otherwise provided in Articles 120, 121 and 122, no court or tribunal created and established for the administration of justice or other institution, person or body of persons shall in relation to any Bill, have power or jurisdiction to inquire into, or pronounce upon, the constitutionality of such Bill or its due compliance with the legislative process, on any ground whatsoever."

The Petitioners failed to show any legal provision which has made it incumbent upon the Government to 'conduct a consultative process with the relevant stakeholders' before it decides to gazette this Bill and placing it in the Order Paper of Parliament.

This Court in the case of M. A. Sumanthiran v Mahinda Yapa Abeywardana and the Attorney General⁴² set out in detail, the procedure to present bills in Parliament. We observe that these Bills, unlike a Bill which comes under Article 152 and Article 154 G of the Constitution, only seeks to increase the retirement age of all Judges, increase the number of Judges in the Court of Appeal and the High Court and certain safeguards with regard to an individual occupying the position of Chief Justice. Therefore, we see no merit in that submission.

Proviso appearing in Clause 2 of the 22nd amendment to the Constitution Bill

Some of the Petitioners have challenged the proviso appearing in Clause 2 of the Bill. The effect of the said proviso is to limit the tenure of any person holding the office of Chief Justice to a maximum term of 06 years even when such person's age of retirement lies ahead of that period.

If the 22nd Amendment to the Constitution Bill is enacted, the retirement age of the person currently holding the office of Chief Justice and that of any other Judge of the Supreme Court shall be the same and that is 67 years. Therefore, we think it would be clearer if the phrase 'හැට හතට එළඹෙන දිනය' in the Sinhala text of the above proviso is replaced with the phrase 'හැට හත සම්පූර්ණ කළ දිනය'. This is because the other criterion, namely the completion of 06 years has been mentioned in Sinhala in the same proviso as 'වසර හයක කාල සීමාවක් සම්පූර්ණ

⁴² SC FR No. 37/2024; SC minutes of 29th February 2024.

එන දිනය'. In any case, the proviso does refer to the same age referred to in the main section of Clause 2 of the Bill.

Let us first consider the rationale for the introduction of the proviso. The Chief Justice is the head of the Supreme Court and the entire judiciary. He is also one amongst the Judges of the Supreme Court. The Chief Justice is the *ex officio* Chairman of the Judicial Services Commission, the Chairman of the Council of Legal Education, the Chairman of the Superior Courts Complex Board of Management and the Chairman of the Board of Management of the Sri Lanka Judges Institute. As pointed out by the learned Solicitor General, the term of Office of the Chief Justice is defined in some of the other jurisdictions.⁴³ These jurisdictions include Germany, France and Bhutan.

The rationale for the same is that it is best that one person vested with such power and functions does not hold office for lengthy periods of time. Such a step would prevent the concentration of such powers and functions in one individual for a long period. Rather than leaving one person who is vested with such powers of varied nature, imposing a limitation for the term of office for such person is a positive step taken in the right direction. Such a step would no doubt enhance the independence of the judiciary. We must remember that both the executive and the members of the legislature also have such limitations for their terms of offices. Imposing a limitation for the term of office of the Chief Justice would in our view, further enhance the independence of the judiciary. Such provision is salutary.

Therefore, if a younger person who would have more than 06 years to hold office in the position of Chief Justice is appointed as Chief Justice, then such person is appointed by law only for that period (i.e., for 06 years). It would be the same as any other judge being appointed for a post which has a set retirement age, and would not in such circumstances pose a constitutional conundrum.

The argument advanced by the Petitioners was on the basis that it would amount to a reduction of tenure of the Chief Justice if a younger person who would have more than 06 years to hold office in the position of Chief Justice is appointed to such office.

⁴³ Vide Paragraph 11.9 at page 64 of the Written Submissions filed by AG.

The Petitioners however did not seek to argue that the proviso would amount to a reduction of tenure of the incumbent Chief Justice. In fact, in the post-hearing written submissions, the learned Solicitor General has "*emphasised that a reading of such proviso would make it clear the application of this provision is prospective.*" We have carefully considered the said proviso and are in agreement with the submission of the learned Solicitor General. If the intention was to reduce the tenure of the present Chief Justice, that, in our view, would be a violation of the Constitutional safeguards that we have already referred to in this Determination.

We are of the view that the prospective operation of this proviso will not be violative of any provision for the reason that a future appointment will be made and the appointee may accept such appointment subject to the said condition or limitation. Hence, when the appointment is made and accepted it being subject to the mandatory maximum or the upper cap, there is no and can be no reduction or diminution of the tenure as far as such future appointee is concerned.

Notwithstanding the absence of such challenge in the present cases by any of the Petitioners, it is incumbent upon this Court to ensure that the principle of non-reduction of the tenure of sitting Judges is unequivocally established. Even though the amendment proposed does not result in the reduction of the term of the present Chief Justice, and as such only poses a purely conceptual concern, it is important for this Court to recommend an amendment to the Bill that places it on a solid constitutional foundation and thus safeguard the independence of the Judiciary. Therefore, while concluding that the proviso appearing in Clause 2 of the Bill is not violative of Article 3 of the Constitution since it shall only apply to those who are appointed to the said Office after the Bill is enacted into law, we recommend that a clause to the following effect be included at the Committee stage as the second proviso appearing in Clause 2 of the Bill:

"Provided further that the term limit of six years set out in the first proviso will not apply to any person holding the office of Chief Justice as at the date of coming into operation of this Act"

Although few Petitioners made submissions before us mentioning about Buddhism and Article 9 of the Constitution, they failed to place any matter of substance which warrants consideration by us.

The Petitioners in these cases have challenged the 22nd Amendment to the Constitution Bill which, when read with the Bill titled "Judicature (Amendment) Act No. of 2026" seeks to extend the retirement age of all the Judges across the country by two years on a non-discriminatory, non-discretionary basis; increase the number of Judges in the Court of Appeal and the High Court, and provide certain safeguards with regard to an individual occupying the position of Chief Justice for an extended period of time. The international practices also show that such measures are taken in support of the security of tenure of Judges. Petitioners could not cite even a single case from any jurisdiction which has held that the increase of the retirement age of Judges on a non-discriminatory, non-discretionary basis would amount to an attack on the independence of the judiciary.

Having taken into consideration the totality of the submissions made by all learned Counsel, it is clear that the provisions of the two Bills apply on a non-discriminatory and non-discretionary basis and will only provide for all Judges presently serving in all Courts in all parts of the country to continue for two more years beyond their present retirement age. We therefore reject the argument of the Petitioners that the provisions of the Bills as a whole or part thereof is a project of abusive constitutionalism because it is not done in good faith. For the foregoing reasons, we hold that the provisions of the two Bills do not impinge on the independence of the Judiciary as sought to be argued by the Petitioners.

Conclusion and Summary of the Determination

In the above circumstances, we determine as follows:

- (A) The provisions of the 22nd Amendment to the Constitution Bill or any part thereof does not require approval by the People at a Referendum by virtue of the provisions of Article 83 of the Constitution;
- (B) The provisions of the Judicature (Amendment) Bill are not inconsistent with the Constitution and may be passed by the simple majority of Parliament;
- (C) In the proviso appearing in Clause 2 of the 22nd Amendment to the Constitution Bill, the phrase, 'හැට හතට එළඹෙන දිනය' appearing therein shall be replaced with the phrase, 'හැට හත සම්පූර්ණ කළ දිනය';

(D) The following to be added as the second proviso to Clause 2 of the Bill:

"Provided further that the term limit of six years set out in the first proviso will not apply to any person holding the office of Chief Justice as at the date of coming into operation of this Act".

We place on record, our appreciation of the assistance given by the learned President's Counsel and other learned Counsel who appeared for the Petitioners, the learned President's Counsel and other Counsel who appeared for the Intervient Petitioners and the learned Solicitor General who represented the Hon. Attorney-General.

P. PADMAN SURASENA

CHIEF JUSTICE

ACHALA WENGAPPULI

JUDGE OF THE SUPREME COURT

ARJUNA OBEYSEKERE

JUDGE OF THE SUPREME COURT

SAMPATH B. ABAYAKOON

JUDGE OF THE SUPREME COURT

K.M.GIHAN.H.KULATUNGA

JUDGE OF THE SUPREME COURT