

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

THE BILLS TITLED "POISONS, OPIUM AND DANGEROUS DRUGS (AMENDMENT)"

In the matter of Applications in terms of Article 121 read with Article 120, of the Constitution to determine whether the Bills (Bill No. 79 and Bill No. 80) titled "Poisons, Opium and Dangerous Drugs (Amendment)" or any part thereof is inconsistent with the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC SD No. 120/2026
SC SD No. 121/2026

Petitioner: Ambika Satkunanathan,
No 27,
Rudra Mawatha,
Colombo 06.

Counsel: Pulasthi Hewamanna,
with Ms. Fadhila Fairoze

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

Counsel: Suharshie Herath Jayaweera, SDSG
with Yuresha Fernando DSG, Yothini
Selvananthan SC and Senal
Senevirathne SC

Before: **P. PADMAN SURASENA, CJ.**
ACHALA WENGAPPULI, J,
ARJUNA OBEYESEKERE, J.

The Bench assembled for hearing the Petitions on 01-10-2026.

Bill No. 79 and Bill No. 80 titled " Poisons, Opium and Dangerous Drugs (Amendment)" bearing the L. D. - O No. 08/2026 and the L. D. - O No. 11/2026 respectively (hereinafter sometimes referred to as Bill No. 79 and Bill No. 80) were published in the Gazette on 24-08-2026 and were placed on the Order Paper of Parliament on 08-09-2026.

The above-mentioned Petitioner has filed two Petitions (SC/SD/120/2026 and SC/SD/121/2026) on 21-09-2026 invoking the jurisdiction vested in this Court by virtue of Article 120 read with Article 121(1) of the Constitution in respect of the aforementioned Bills. The Petitioner has prayed for a determination from this Court under Article 123 of the Constitution.

Upon receipt of the said Petitions, Court issued notices on the Hon. Attorney General as required by Article 134 (1) of the Constitution. The Court commenced and concluded the hearing on 01-10-2026.

The Petitioner has prayed for a determination that some clauses of these Bills and/or the Bills in their totality are inconsistent with the provisions of the Constitution including the provisions entrenched in Article 83 and therefore cannot be enacted into law, unless approved by the People at a Referendum and the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members of Parliament (including those not present).

Both Bills propose to amend the principal enactment which is the Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218) (hereinafter sometimes referred to as the PODO Ordinance or the Principal Enactment). The said Ordinance has subsequently been amended from time to time by several amendments passed by Parliament. Both the learned Senior Deputy Solicitor General and the learned counsel for the Petitioner made one composite submission setting out their arguments respectively for and against both Bills. This is despite

the fact that the Petitioner has chosen to file separate Petitions in respect of each Bill. However, some of the arguments both parties advanced in their respective submissions are of common application to both Bills and relevant to the enforcement of provisions in the Principal Enactment PODD Ordinance. Both the learned counsel for the Petitioner and the learned Senior Deputy Solicitor General in the course of their submissions sought to explain to us the practical difficulties faced both by the suspects under custody and those involved in the law enforcement mechanism in relation to the items seized under the PODD Ordinance. In the above circumstances, we think it is not advisable to formulate two different Determinations merely because the Petitioner has filed two separate Petitions to challenge two Bills. Thus, this Determination will apply to both Bills i.e., Bill No. 79 (L. D. - O No. 08/2026) and Bill No. 80 (L. D. - O No. 11/2026) titled "Poisons, Opium and Dangerous Drugs (Amendment)". However, to maintain clarity, we will deal with the challenges by the Petitioner in respect of several Clauses in these two Bills separately. Let us first deal with Bill No. 79 (L. D. - O. No. 08/2026).

BILL No. 79 (L. D. - O. No. 08/2026)

Bill No. 79 consists of the following clauses:

- Clause 1 – Short title
- Clause 2 – Amendment of section 77A of Bill No. 79 (Chapter 218)
- Clause 3 - Sinhala text to prevail in case of inconsistency

Out of the above clauses in the Bill, the Petitioner has challenged Clause 2 of Bill No. 79.

Since it is Section 77A of the Principal Enactment that Clause 2 of Bill No. 79 proposes to amend, let us briefly examine the genesis of that Section (Section 77A).

Section 77A was brought in to the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984 as a new insertion immediately after Section 77 of the Principal Enactment. It originally had four subsections which are meant to serve the following purposes:

1. To make provisions for any police officer to submit any seized drug substance article or preparation (hereinafter referred to as the seized items) or any portion thereof or any sample to the Government Analyst for examination;

2. To make provisions for the Government Analyst to forward such examination report setting out the results of his examination to the Police Narcotics Bureau;
3. To make provision for such Government Analyst report to be received in evidence in an inquiry, trial or other proceeding;
4. To make provisions for the Government Analyst to destroy the seized items after examination upon an order issued in that regard by the Magistrate.

We observe that before Section 77A came into existence, under Section 116 of the Code of Criminal Procedure Act No. 15 of 1979 any Officer in Charge of a Police Station was required to first take steps to handover the seized items to the Magistrate's Court having jurisdiction in the case, and then move such Magistrate's Court to forward such seized items to the Government Analyst for analysis and report. The law-enforcement authorities found this process a time-consuming one as the Magistrate's Courts were flooded with various kinds of cases on a daily basis. Therefore, the process which then existed caused immense delays in the investigations. A necessary consequence of such delay was the continuous incarceration of the suspects arrested in relation to such seized items, in remand. This was because the quantity of the substance such suspects were alleged to have possessed remained uncertain without the Government Analyst's reports.

Although the next amendment i.e. the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 26 of 1986¹ did not alter anything in Section 77A, the Amendment Act No. 41 of 2022 did make changes to section 77A. The Amendment Act No. 41 of 2022 repealed sub sections (2), (3) and (4) of Section 77A and substituted them with the presently existing sub sections. The main purpose of that amendment was to make provision for the Government Analyst to forward the examination report within 12 months to the Magistrate or any other competent Court, which has the jurisdiction to try relevant offences. The said section required the Government Analyst also to forward the copies of such examination report to the police officer who submitted such seized items and to the Police Narcotics Bureau. Furthermore, the newly substituted sub section

¹ This Amendment Act only amended S. 35 of the Principal Enactment.

(4) made provision to shift the burden of proof on the person who raises an issue in respect of the opinion of the Government Analyst in relation to his examination report submitted to Court.

We observe that instead of the earlier provision in Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984 which had given powers for the Government Analyst to destroy productions after analysis upon an order of the Magistrate, the Amendment Act No. 41 of 2022 has made provision to ensure preserving photographs of such productions, including their packages and seals before their destruction.

We observe that the next Amendment Act i.e. the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 07 of 2026² did not alter anything in Section 77A of the Principal Enactment.

Thus, Section 77A of the Principal Enactment as it stands at present reads as follows:

- (1) Notwithstanding anything to the contrary in section 116 of the Code of Criminal Procedure Act, a police officer may submit any drug, substance, article or preparation seized by him or any portion thereof or any sample taken by him in relation to an offence committed under Chapter III or Chapter V of this Ordinance to the Government Analyst for examination.
- (2) Where the Government Analyst has made an examination of any drug, substance, article or preparation submitted to him under subsection (1), he shall, within a period not exceeding twelve months from the date of such submission, send a report setting out the result of his examination to the Magistrate or any other competent court which has the jurisdiction to try an offence committed under Chapter III or Chapter V of this Ordinance, with copies to the police officer who submitted such drug, substance, article and preparation or any portion or sample for examination and to the Police Narcotics Bureau.

² This Amendment Act only inserted Section 54AA amended S. 54B, 78, 83, 84, 85, 86 and 87 of the Principal Enactment.

- (3) A report submitted to the Magistrate or any other competent court under subsection (2) shall be prima facie evidence in any inquiry, trial or other proceeding conducted under this Ordinance.
- (4) Where any person raises an issue in respect of the opinion of the Government Analyst specified in the report referred to in subsection(3) in any inquiry, trial or other proceeding, the burden of proving the fact that such report is inaccurate shall lie on the person who raises such issue.
- (5)
- (a) Where the Magistrate or the judge of any competent court having the jurisdiction to try the offence committed under Chapter III or Chapter V, is of the opinion that such drug, substance, article or preparation would become necessary in evidence during the proceedings before such court in respect of any offence, he shall order the Police Narcotics Bureau or any person authorized by the Magistrate or the Judge of such competent court to photograph such drug, substance, article or preparation, including the packages and seals, and to preserve the necessary evidence including packages and seals and to order the Police Narcotics Bureau or any person authorized by the Magistrate or the Judge of such competent court to destroy the same in the presence of the Registrar of such court, the prosecuting Counsel or the Police Officer who conducts the prosecution or his representative and the defence Counsel or his representative.
- (b) The Police Narcotics Bureau or the person authorized by the Magistrate or the judge of the competent court, as the case may be, shall take the photographs in terms of the order made under paragraph (a) and forward such photographs and the necessary evidence including packages and seals forthwith to the relevant court.
- (c) The Police Narcotics Bureau or any person authorized by the Magistrate or the judge of such competent court shall under the supervision of the Magistrate or the judge of the competent court, as the case may be, destroy or cause to be destroyed such drug, substance, article or preparation in compliance with the order

made by such Magistrate or the judge as the case may be, under paragraph (a) within a period of two months of the date of such order and shall forthwith submit a report relating to such destruction to the relevant court.

- (6) The Minister assigned the subject of Justice may, with the concurrence of the Judicial Service Commission prescribe by regulation, the mechanism of disposal of such drug, substance, article or preparation specified in subsection (5).

Let us now turn to Clause 2(1) of Bill No. 79 which is reproduced below:

Clause 2(1):

Section 77A of the Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218) (hereinafter referred to as the "principal enactment") is hereby amended as follows: (1) by the repeal of subsection (1) of that section and substitution therefor, of the following subsection:-

- (1) Any investigator who seizes any drug, substance, article or preparation in relation to an offence committed under Chapter V of this Ordinance shall, forthwith-
- (a) take photographs of such drug, substance, article or preparation in its original form, including the packages and seals thereof, with video recordings where possible; and
 - (b) submit or transmit such photographs both in printed and electronic form and video recordings to the relevant Magistrate with a report containing the quantity of such drug substance, article or preparation.

Clause 2(1) of Bill No. 79 proposes to repeal the existing Section 77A (1) and substitute therefor a new Section 77A (1) which has provided for the immediate taking of photographs of seized prohibited substances, their packaging and seals before transmitting them to the relevant Magistrate with a report.

The learned Counsel for the Petitioner has specifically informed Court that the Petitioner does not challenge the Clause 2(1) of Bill No. 79.³ i.e., the Petitioner does not challenge the new Section 77A(1) which Bill No. 79 proposes to introduce to the Principal Enactment.

The Clause 2(2) of Bill No. 79 then proposes to insert four new sections named 1A, 1B, 1C, 1D immediately after the proposed new Section 77A(1). We re-iterate here that the Petitioner has not challenged the new Section 77A(1) which Bill No. 79 has proposed to introduce. However, the Petitioner has challenged the new Section 77A (**1A**).

Proposed Section 77A (**1A**) is as follows:

Notwithstanding anything to the contrary in subsection (3) of section 116 of the Code of Criminal Procedure Act, No. 15 of 1979, where an investigator seizes any drug, substance, article, or preparation in relation to an offence under Chapter V of this Ordinance, such investigator shall⁴ submit the same to the Government Analyst for examination if –

(a) the investigator is of the opinion that the suspect is liable to be indicted before the High Court for an offence under section 54A; or

(b) the Magistrate, if he considers it appropriate, orders that such drug, substance, article, or preparation be submitted to the Government Analyst for examination.

The learned counsel for the Petitioner sought to argue that the limb (a) in the proposed new Section 77A (**1A**): “*the investigator is of the opinion that the suspect is liable to be indicted before the High Court for an offence under section 54 A*’ has given a wide and

³ vide paragraph 1.2 of the Written Submissions filed by the Senior Deputy Solicitor General also.

⁴ Emphasis is mine.

unregulated power to the investigator in making his decision whether to submit the seized drug, substance, article or preparation (the seized items) to the Government Analyst for examination.

We observe that Section 77A (1) of the Principal Enactment as it stands at present, has given power to a Police Officer to submit the seized items to the Government Analyst for examination. Therefore, the proposed new Section 77A (1A) has not sought to confer a hitherto non-existent wide and unregulated power to the investigator. Indeed the proposed new Section 77A (1A) has qualified the hitherto existed power of the Police Officer. Therefore, we are unable to accept the argument of the learned counsel for the Petitioner that the proposed new Section 77A (1A) has conferred a wide and unregulated power to the investigator.

The learned counsel for the Petitioner next sought to argue that there is no adequate safeguards in limb (b) in the proposed new Section 77A (1A) which states as follows:

"the Magistrate, if he considers it appropriate, orders that such drug, substance, article, or preparation be submitted to the Government Analyst for examination".

It was his submission that according to the wording of this new Section, (i.e., *"the Magistrate, if he considers it appropriate, .."*), the Magistrate has a discretion either to submit or not to submit the seized items to the Government Analyst for examination.

However, we observe that there could well be situations where there is no requirement of analysis of the seized items by the Government Analyst. Indeed, such analysis by the Government Analyst is necessary only if there is a suspect who has been arrested in connection with such items. This is because the sentence to be imposed on such accused will depend on the pure quantity of the seized items according to the Third Schedule of the Ordinance. There could well be situations where the investigators have seized a big quantity of prohibited items without arresting anyone in relation to those items. In such a scenario, why should the investigators burden the already over-burdened Government Analyst Department as there is no one who can be liable to be indicted before the High Court.

This Court in its Determination regarding the Bureau of Rehabilitation Bill,⁵ proceeded to state as follows:

"In considering the application of a bill or its provisions, it is only plausible and real-world possibilities that would be entertained by this Court. The threat of potential abuse should not be based on fanciful hypotheses, and should always be guided by the perspective of the proverbial reasonable person. There should be a realistic possibility that the provisions of the Constitution would be abused through the provisions of the law."

We see no such real possibility of abuse of this provision by either the investigators or by the Magistrates. On the other hand, as has already described above, such provision is necessary and would be beneficial to every one concerned. Thus, this is merely a fanciful argument by the Petitioner. Therefore, we see no merit in this argument.

Proposed Section 77A (1B):

The learned counsel for the Petitioner next sought to argue that the proposed new Section 77A 1B: *"Notwithstanding anything to the contrary in subsection (1A), where the investigator seizes Cannabis sativa L., the investigator shall submit only a sample thereof to the Government Analyst for examination, and the remaining quantity shall, pursuant to an order of the Magistrate, be destroyed forthwith. A report of such destruction shall thereafter be submitted to the Magistrate."* has given rise to a danger as no-one would know the pure quantity of "Cannabis sativa L" as only a sample from the seized bigger quantity is submitted to the Government Analyst for examination.

We are aware that in this country from time immemorial, it is only a sample of 'Cannabis sativa L' that is always forwarded to the Government Analyst for examination. Therefore, it is wrong to state that it is the proposed new Section 77A 1B that has proposed this for the first

⁵ SC SD No. 54- 61/2022 (at page 9).

time. The forwarding of only a sample from a bigger quantity seized is not something happening without a basis. Section 26 of the Act shows clearly that '*Cannabis sativa L*' is a name of a plant (Hemp Plant). Therefore, even in a situation where the investigator seizes a big quantity of such plants, the suspect has to be charged for the gross quantity of the stock of such plants. Thus, no question or necessity arises for the investigator to ascertain "the pure quantity" because the whole stock consists of Hemp Plants. The only necessity or requirement is to get the Government Analyst to confirm that the items seized are Hemp Plants.

This Court in its Determination regarding the Third Amendment to the Constitution Bill,⁶ proceeded to state as follows:

"Further, a clear distinction must be borne in mind between the law and the administration of the law. A law cannot be struck down as discriminatory because of the fear that it may be administered in a discriminatory manner. Mere possibility of abuse of power is insufficient ground to hold that a law offends the fundamental right of equality."

We cannot see how the proposed new Section 77A (1B) can be abused. We are not aware that any such instance of abuse has been reported in the past. We are aware that when an investigator has taken into custody a big quantity of Hemp Plants such stock consists of many big bags, each of which is the size of a bag of 50 Kg of rice, which is generally seen transported in stocks in lorries. We see no justification to compel transportation of such big quantities of Hemp Plants to the Government Analyst when the same purpose can be achieved by sending only a sample. Therefore, we reject the above argument advanced by the Petitioner.

Proposed Section 77A (1C):

The challenge posed by the learned Counsel for the Petitioner in respect of the proposed new Section 77A (1C) is the same argument which he advanced in respect of the proposed new Section 77A (1B). For the reasons set out above, we have already decided to reject the said

⁶ SC SD No. 02- 05/1982.

argument. Therefore, the same reasons must apply for the rejection of the argument advanced by the Petitioner in respect of the proposed new Section 77A (1C) also.

The learned Counsel for the Petitioner has also specifically informed Court that the Petitioner would not challenge the proposed new Section 77A (1D) in Clause 2 of Bill.⁷ I.e., the Petitioner does not challenge the proposed new Section 77A (1D) which the Bill proposes to introduce to the principal enactment.

The learned Counsel for the Petitioner has also specifically informed Court that the Petitioner does not challenge the Clause 3 of Bill No. 79.⁸

Clause 4 of Bill No. 79:

The learned Counsel for the Petitioner submitted that the absence of clarity as regards the point of time commencing the fifteen days period in the proposed new Section 77A (5). The learned Senior Deputy Solicitor General, both in the course of her oral submissions as well as in the written submissions has already undertaken to address the concerns of the Petitioner. Accordingly, the learned Senior Deputy Solicitor General has undertaken to insert at the Committee Stage the following amendments namely:

- (i) to insert the phrase 'where the suspect is present in court' at the beginning of limb (a) of the proposed new Section 77A (5); and
- (ii) to insert the phrase "from the date on which such report was handed over to the suspect or his counsel in terms of paragraph (a)" at the end of limb (b) of that section to substitute the phrase 'from such first calling date' thereof.⁹

⁷ vide paragraph 1.2 of the Written Submissions filed by the Senior Deputy Solicitor General also.

⁸ Ibid.

⁹ Paragraphs 9:17 and 9:18 of the Written Submissions filed by the Senior Deputy Solicitor General.

We are of the view that the above insertions will take away the absence of clarity in that part of the proposed new Section 77A (5) and render it consistent with Article 12(1) of the Constitution.

The learned Counsel for the Petitioner has also specifically informed Court that the Petitioner does not challenge the proposed new Section 77A (5A) in Clause 4 of the Bill.¹⁰

Proposed Section 77A (5B):

The challenge posed by the learned Counsel for the Petitioner in respect of the proposed new Section 77A (5B) is based on the presence of the word “**shall**” in the main body of that Section. It is his submission that the presence of the word “shall” thereof causes the Magistrate to order the destruction of the seized items even where an issue has been raised in terms of Section 77A (4) of the Act.

Section 77A (4) of the Act is as follows:

“where any person raises an issue in respect of the opinion of the Government Analyst specified in the report referred to in subsection (3) in an inquiry, trial or other proceeding, the burden of proving the fact that such report is inaccurate shall lie on the person who raises such issue”.

Thus, we observe that the issue one can raise in terms of Section 77A (4) of the Act is limited to an issue in respect of the opinion of the Government Analyst specified in the report referred to in Section 77A (3). The said report is also the report referred to in Section 77A (2) which is the report prepared by the Government Analyst upon the examination of the seized items sent to him. This report sets out the results of the examination by the Government Analyst. We observe that it is open for any person to raise an issue in respect of the opinion of the Government Analyst specified in the above report when the Magistrate fixes a date for the orders to destroy the seized items. This is before making such an order to destroy the seized items. According to the proposed new Section 77A (5)(b) the date for making the orders to

¹⁰ vide paragraph 1.2 of the Written Submissions filed by the Senior Deputy Solicitor General also.

destroy the seized items is necessarily a date after handing over a copy of the Government Analyst's report to the suspect or his counsel. Moreover, we also observe that where any such issue has been raised, the Magistrate shall record the same and retain a sample of the seized items before making the order on the Government Analyst to destroy such seized items. This is in addition to the order, the Magistrate would anyway make on the Government Analyst to preserve the evidence as specified in such order, including photographs, video recordings, packages and seals in terms of the proposed new Section 77A (5B). We are of the view that the safeguards described above adequately provide an opportunity for raising the issues in respect of the opinion of the Government Analyst specified in his report before the Magistrate makes the order to the destroy the seized items.

This Court in its Determination relating to the Twentieth Amendment to the Constitution Bill,¹¹ observed by majority that *"a decision on the inconsistency or consistency with a Constitutional provision cannot be based on surmise and conjecture."*

In any case, as stated above, the Government Analyst is bound to preserve the evidence specified in the order to be made by the Magistrate in terms of Section 77A (5B). Moreover, we also observe that in terms of the proposed new Section 77A (5C) it is mandatory that the Magistrate shall make the afore-said orders [orders under the proposed new Section 77A (5B)] in the presence of the defence counsel or the suspect (if any). We therefore hold that there is no merit in the argument advanced by the Petitioner that the presence of the word "**shall**" in the main body of the proposed new Section 77A (5B) has prejudiced the rights of an accused to a fair trial.

Proposed Section 77A (5C)

The challenge posed by the leaned Counsel for the Petitioner in respect of the proposed new Section 77A (5C) is the same argument which he advanced in respect of the proposed new Section 77A (5B). For the reasons set out above, we have already decided to reject the said argument. Therefore, the same reasons must apply for the rejection of the argument advanced by the Petitioner in respect of the proposed new Section 77A (5C) also.

¹¹ SC SD No. 1-39/2020.

Proposed Section 77A (5D)

According to the proposed new Section 77A (5D) *'the orders made under subsection 5B shall be final and conclusive, and shall not be called in question in any court'*. We observe that a person aggrieved with such order is not without a remedy as it is open for such person to file an application for a writ in an appropriate Court which has jurisdiction to issue such writ. We have already held that the proposed new Section 77A (5B) has not prejudiced the right of an accused to a fair trial. Furthermore, the orders that the Magistrate would be making in terms of the proposed new Section 77A (5B) would be the orders to destroy seized items after taking all the precautions and safeguards. We have described them in detail before. Therefore we see no merit in the argument advanced by the Petitioner in respect of the proposed new Section 77A (5D).

The learned Counsel for the Petitioner has also specifically informed Court that the Petitioner does not challenge the proposed new Section 77A (5E); the proposed new Section 77A (5F) and the proposed new Section 77A (5G) in Clause 4 of Bill No. 79.¹²

Clause 5 of Bill No. 79:

The challenge posed by the learned Counsel for the Petitioner in respect of Clause 5 of the Bill [i.e., the proposed amendment to Section 77A (6)] is the submission that the Parliament itself must enact these rules by way of an Act of Parliament rather than leaving the rule making power to the Minister in charge of the subject of justice.

However, we observe that as per the proposed amendment to Section 77A (6), the Minister in charge of the subject of justice can prescribe regulations only with the concurrence of the Judicial Service Commission. We are of the view that the subject matters such as specifications relating to the photographs and video recordings; the quantity of the samples to be retained; the mechanism of destruction of seized items are things that are subject to continuous changes. These are the subjects in respect of which the Minister is empowered to prescribe regulations.

¹² vide paragraph 1.2 of the Written Submissions filed by the Senior Deputy Solicitor General also.

Therefore, it is our view that it would not be practicable or advisable to have a set of fixed rules by way of an Act of Parliament. Moreover, as the Judicial Service Commission comprises the Chief justice, the next senior most Judge of the Supreme Court and the Senior most career Judge, the condition attached to this rule making power of the Minister that such regulations can be prescribed only with the concurrence of the Judicial Service Commission would operate as a safeguard. Therefore, we are unable to agree with the submission that the Parliament itself must enact these rules by way of an Act of Parliament.

The learned Counsel for the Petitioner has also specifically informed Court that the Petitioner does not challenge Clause 6 and Clause 7 of Bill No. 79.¹³

Let us now address the issues raised with regard to Bill No. 80 (L. D. O. No. 11/2026).

BILL No. 80 (L. D. O. No. 11/2026)

Bill No. 80 consists of the following clauses:

- Clause 1 – Short title
- Clause 2 – Amendment of section 54A of Chapter 218
- Clause 3 – Amendment of section 54AA of the principal enactment
- Clause 4 – Amendment of section 83 of the principal enactment
- Clause 5 – Amendment to Third schedule to the principal enactment
- Clause 6 – Sinhala text to prevail in case of inconsistency

Out of the above clauses in Bill No. 80, the Petitioner has challenged its Clauses 2(1), 2(2), 3, 4 and 5.

Clause 2 of Bill No. 80:

Section 54A (1) of the PODD Ordinance as amended is the provision of law which has made manufacturing of Heroin or Cocaine or Morphine or Opium, an offence punishable with a

¹³ vide paragraph 1.2 of the Written Submissions filed by the Senior Deputy Solicitor General also.

sentence of death or life imprisonment. Methamphetamine is at present not in this list of substances. One of the amendments Clause 2 of Bill No. 80 has proposed is to include Methamphetamine in the list of items in Section 54A (1). This is to make the manufacturing of Methamphetamine also an offence under Section 54A (1) of the POOD Ordinance.

It is the submission of the learned Counsel for the Petitioner that imposing a death sentence amounts to 'Torture' and hence Clause 2 of Bill No. 80 is inconsistent with Article 11 of the Constitution.

Amerasinghe J in the case of Mrs. W. M. K. De Silva Vs. Chairman of Ceylon Fertilizer Corporation,¹⁴ defined Torture as follows:

"In my view Article 11 of the Constitution prohibits any act by which severe pain or suffering (emphasis added), whether physical or mental is, without lawful sanction in accordance with a procedure established by law,¹⁵ intentionally inflicted on a person (whom I shall refer to as the 'victim') by a public official acting in the discharge of his executive or administrative duties or under colour of office,¹⁶ for such purposes as obtaining from the victim or a third person a confession or information, such information being actually or supposedly required for official purposes, imposing a penalty upon the victim for an offence or breach of a rule he or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person to do or refrain from doing something which the official concerned believes the victim or the third person ought to do or refrain from doing, as the case may be."

¹⁴ (1989) 2 SLR 393.

¹⁵ Emphasis added by me.

¹⁶ Emphasis added by me.

In Herath Mudiyanseelage Yohan Indika Herath Vs. Attorney General and six others,¹⁷

Shirani Tilakawardane J stated as follows:

“Article 11 of the Constitution states that:

“No person shall be subjected to torture cruel, inhuman or degrading treatment or punishment.”

The Fundamental Rights provision is also supplemented by the Torture Act No. 22 of 1994 which provides criminal sanctions for torture. This Court wishes to draw from the said act, the definition of torture in order to establish whether the alleged conduct of the Respondents and the injuries reported by the Petitioner amounts to torture. Section 12 of the said act defines torture in accordance with Article 1 of the Torture Convention as follows:

“Torture, with its grammatical variations and cognate expressions, means any act which causes severe pain, whether physical or mental, to any other person, being an act which is-

(a) Done for any of the following purposes:

- I. Obtaining from such person or a third person any information or confession;*
- II. Punishing such other person for any act which he or a third person has committed, or is suspected of having committed; or*
- III. Intimidating or coercing such other person or a third person; or*

(b) Done for any reason based on discrimination, and being in every case, an act, which is, done by, or at the instigation of, or with the consent or

¹⁷ SC FR 555/2009 SC Minutes on 18-02-2014.

acquiescence of, public officer or other person acting in an official capacity'

Having set out the definition of Torture as in Article 1 of the Torture Convention, Shirani Tilakawardane J went on to state that the said definition of torture has been supplemented by the definition adopted by this Court in *Mrs. W. M. K. De Silva's case* by Amarasinghe J.

Eva Wanasundera J in *Chaminda Sampath Kumara Wickremapathirana Vs. SI Salwatura and eight others*,¹⁸ also adopted the definition of Torture as defined in Section 12 of the Torture Act No. 22 of 1994 to hold that the 1st to 5th Respondents in that case had violated the fundamental rights guaranteed to the Petitioner in that case under Article 11 of the Constitution.

All these authorities point to the fact that Torture in Article 11 is something which calls for penal sanctions on the doer. The doer must have done the relevant acts of torture exercising executive or administrative powers. Moreover, the doer must have committed such acts of torture without lawful sanction and outside the procedure established by law. Further, the doer must have done such act for one of the above-mentioned purposes. Then only such acts would fall under the above definitions. Then only such acts would come under the purview of Article 11 of the Constitution.

Moreover, the presence of Article 13(4) which states that '*no person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law. ...*' further clarifies this position.

The 'death sentence' is present in our law as a form of punishment. Courts even at present impose death sentences on the accused upon conviction where it is mandated by law to so impose. Appellate Courts including this Court, affirm such death sentences where they ought to do so. This is mere implementation of the existing law by Courts. This is just a lawful sanction in accordance with the procedure established by law. Therefore imposing death sentences by

¹⁸ SC FR 244/2010 SC Minutes on 30-05-2017.

Courts in accordance with law cannot amount to 'Torture' under Article 11 of the Constitution. We therefore reject the submission of the learned Counsel for the Petitioner that imposing a death sentence amounts to 'Torture' and hence Clause 2 of Bill No. 80 is inconsistent with Article 11 of the Constitution.

Clause 2(2) of Bill No. 80:

Clause 2(2) of Bill No. 80 has proposed to bring in a new limb to be numbered as (aa) immediately after paragraph (a) of Section 54A (1). This is with a view to make the manufacturing of any dangerous drug set out in Groups A, B, C, D and E in part 1 of the Third Schedule other than Heroin, Cocaine, Morphine, Opium and Methamphetamine, an offence punishable with a punishment lesser than a sentence of death or life imprisonment which sentence has been specified for manufacturing Heroin, Cocaine, Morphine, Opium and Methamphetamine. In our view, this is a normal provision of law which has been proposed to cater to the present needs of the society. The learned Senior Deputy Solicitor General in the course of her submissions, explained to us the ground situation with regard to the escalation of the use and distribution of dangerous drugs in the country. Therefore, it is a necessary step that the Government has to take with a view of protecting the society at large from the drug related problems. It is the submission of the learned Counsel for the Petitioner that an application of a mandatory sentencing band between 5 different drug groups does not allow Court to meaningfully exercise its discretion when sentencing accused persons in relation to various kinds of dangerous drugs.

In the Foreign Exchange Bill,¹⁹ this Court held as follows:

"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."

¹⁹ SC SD 1-4/2017.

In re the Nation Building Tax (Amendment) Bill,²⁰ this Court has adopted the observation of Warrington LJ in *Short v. Poole Corporation*:²¹ *"with the question whether a particular policy is wise or foolish the Court is not concerned"*

The question before us is not whether Parliament could have responded to the narcotics problem differently, nor whether the Petitioner's preferred emphasis on quantifying the punishment to be meted out to the convicted persons is more desirable as a matter of policy. But the question before us is whether Clause 2(2) of Bill No. 80 is inconsistent with the Constitution. Having regard to the above, We see no merit in the submission of the learned Counsel for the Petitioner with regard to the Clause 2(2) of Bill No. 80.

Clause 3 of Bill No. 80:

Section 54AA (1) of the PODD Ordinance as amended is the provision of law which has made manufacturing Heroin or Cocaine or Morphine or Opium by any person (whether he is a citizen of Sri Lanka or not), on the high seas, while on board a ship registered in Sri Lanka or a stateless ship, an offence punishable with sentence of death or life imprisonment. Methamphetamine is at present not in the above list of substances. The amendment the Clause 3 of Bill No. 80 has proposed is to include Methamphetamine in the list of items in Section 54A (1). This is to make the manufacturing of Methamphetamine in the above circumstances also an offence under Section 54AA (1) of the PODD Ordinance.

The learned Counsel for the Petitioner advanced the same argument as he did in his submission with regard to the Proposed amendment to Section 54A (1)(a) (i.e., Clause 2(1) of Bill No. 80). That is the argument that imposing a death sentence amounts to 'Torture' and hence the Clause 3 of Bill No. 80 is also inconsistent with Article 11 of the Constitution. For the reasons set out above, we have already decided to reject the said argument. Therefore, the same reasons must apply for the rejection of the argument advanced by the Petitioner in respect of the Clause 3 of Bill No. 80 also.

²⁰ SC SD 34/2016.

²¹ (1926) CH Division 60 at 91.

Clause 4 of Bill No. 80:

The Clause 4 of Bill No. 80 proposes to amend the present Section 83 of the PODD Ordinance. That is the provision of law which provides for the circumstances under which a person suspected or accused of an offence under Sections 54 A, 54 AA and 54 B of the Ordinance can be enlarged on bail. According to the present Section 83 of the Ordinance:

- (1) Subject to the provisions of sections 84, 85 and subsection (2) of that section, a person suspected or accused of an offence under sections 54 A, 54 AA and 54 B of the Ordinance, shall not be released on bail by the High Court except in exceptional circumstances.
- (2) Notwithstanding the provisions of sections 84 and 85, a person suspected or accused of an offence under Section 54 A (1), Section 54 AA (1), Section 54 AA (2), and Section 54B of the PODD Ordinance of which the pure quantity of the dangerous drug, trafficked, imported, exported or possessed, is **10 grammes** or above in terms of the Government Analyst's report and is punishable with death to life imprisonment, shall not be released on bail except by the Court of Appeal in exceptional circumstances.

Clause 4 of Bill No. 80 proposes to repeal only the subsection (2) of Section 83 of the PODD Ordinance and substitute it with the clause it has proposed. The primary effect of this proposed amendment is to increase the **10 grammes** mentioned in the present Section 83(2)(a) to **100 grammes**. We observe that the effect of this is that more people in remand suspected or accused of an offence under Section 54 A (1), Section 54 AA (1), Section 54 AA (2), and Section 54B of the PODD Ordinance would be able to file applications for bail in the respective High Courts as the Bill would enhance the jurisdiction of High Courts to grant bail under the specified circumstances. This must be welcome as a step to ease the congestion in the Prisons in the country. We see no reason or basis as to how this Clause would be inconsistent with any provision of the Constitution.

Clause 5 of Bill No. 80:

Clause 5 of Bill No. 80 proposes to amend Section 1 of Group B of Part 1 of the Third Schedule of the PODD Ordinance as amended by Act No. 41 of 2022. At present, *Cannabis* stands in the list as item No. 26. The primary change the Bill proposes to do is to add *Cannabis sativa L* as item No. 26A and add any galenical preparation of *Cannabis sativa L* as item No. 26B to the list immediately after item No. 26 thereof. There is no doubt that all three items *Cannabis*, *Cannabis sativa L* and any galenical preparation of *Cannabis sativa L* fall under the category of dangerous drugs. Therefore, we see no basis as to why the two items *Cannabis sativa L* and any galenical preparation of *Cannabis sativa L* also should not fall under the Third Schedule of the PODD Ordinance so that the existing provisions of law would be clearer to all including the wrong doers. Further, this is the policy the Government has formulated after many deliberations through a long consultative process as demonstrated by the learned Senior Deputy Solicitor General.²² we have already adverted to above that the policy matters must best be left to those who are entrusted with it unless such policy is found to be manifestly unreasonable. We cannot see any unreasonableness in this policy and hence we cannot see how this Clause would be inconsistent with any provision of the Constitution.

For the foregoing reasons, we determine that the Clauses in Bill No. 79 (L. D. O. No. 08/2026) titled " Poisons, Opium and Dangerous Drugs (Amendment)" can be passed by simple majority of Parliament after making the following amendments (already undertaken by the learned Senior Deputy Solicitor General) at the Committee Stage:

- (i) insertion of the phrase 'where the suspect is present in court' at the beginning of limb (a) of the proposed new Section 77A (5); and
- (ii) insertion of the phrase "from the date on which such report was handed over to the suspect or his counsel in terms of paragraph (a)" at the end of limb (b) of that section in place of the phrase 'from such first calling date'.²³

²² Paragraph 5 of the Written Submissions filed by the Senior Deputy Solicitor General.

²³ Paragraphs 9:17 and 9:18 of the Written Submissions filed by the Senior Deputy Solicitor General.

We also determine that the Clauses of Bill No. 80 (L. D. O. No. 11/2026) titled " Poisons, Opium and Dangerous Drugs (Amendment)" are not inconsistent with any provision of the Constitution and can be passed by simple majority of Parliament.

We place on record, our appreciation of the assistance given by the learned Counsel for the Petitioner and the learned Senior Deputy Solicitor General who represented the Hon. Attorney-General.

P. PADMAN SURASENA
CHIEF JUSTICE

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ACHALA WENGAPPULI
JUDGE OF THE SUPREME COURT

ARJUNA OBEYSEKERE
JUDGE OF THE SUPREME COURT