



DECISIONS OF THE
SUPREME COURT
ON
PARLIAMENTARY BILLS
1978-1983

Decisions of the Supreme Court of the Republic of Sri Lanka
under Article 120, Article 121 and Article 122 of the Constitution
of the Democratic Socialist Republic of Sri Lanka

VOLUME I

Published by
the Parliament Secretariat

CONTENTS

	PAGE
Bills Considered	
1978	
1. Universities ..	1
2. Tax Amnesty ..	11
3. Special Presidential Commissions of Inquiry (Special Provisions) ..	15
4. First Amendment to the Constitution ..	19
5. National Housing (Amendment) ..	23
6. Licensing of Produce Brokers ..	29
1979	
1. Compulsory Public Service (Amendment) ..	35
2. Local Authorities (Special Provisions) (Amendment) ..	39
3. Second Amendment to the Constitution ..	43
4. Monetary Law (Amendment) ..	47
5. Proscribing of Liberation Tigers of Tamil Eelam and Other Similar Organisations (Amendment) ..	51
6. Motor Traffic (Amendment) ..	55
7. Prevention of Terrorism (Temporary Provisions) ..	59
8. Essential Public Services ..	63
9. Supplementary Allowance of Workers ..	77
10. Criminal Trials (Special Provisions) ..	81
1980	
1. Passport (Regulation) and Exit Permit (Amendment) ..	85
2. Parliament (Powers and Privileges) (Amendment) ..	89
3. Foreign Loans (Amendment) ..	93
4. Inland Revenue (Amendment) ..	97
5. Development Councils ..	103
1981	
1. Third Amendment to the Constitution ..	109
2. Land Reform (Amendment) ..	115
3. Development Councils (Amendment) ..	121
4. Parliamentary Pensions (Amendment) ..	125

1982

1. Prevention of Terrorism (Temporary Provisions) (Amendment) ..	129
2. Offences Against Air Crafts ..	135
3. Third Amendment to the Constitution ..	139
4. Loans (Special Provisions) ..	151
5. Fourth Amendment to the Constitution ..	155
6. Criminal Procedure (Special Provisions) (Amendment) ..	159

1983

1. Fifth Amendment to the Constitution ..	163
2. State Lands (Recovery of Possession) (Amendment) ..	169
3. Sixth Amendment to the Constitution ..	173
Index ..	179

1. Prevention of Terrorism (Temporary Provisions) (Amendment) ..	129
2. Offences Against Air Crafts ..	135
3. Third Amendment to the Constitution ..	139
4. Loans (Special Provisions) ..	151
5. Fourth Amendment to the Constitution ..	155
6. Criminal Procedure (Special Provisions) (Amendment) ..	159
Index ..	179

UNIVERSITIES BILL

to establish a University Grants Commission and a University Services Appeals Board ;
to provide for the establishment, maintenance and administration of Universities with
their Campuses and Faculties, and other Higher Educational Institutions ; and for
matters connected therewith or incidental thereto.

1. This Bill may be cited as the Universities Bill. It is the intention of the
Government of India to establish a University Grants Commission and a University Services Appeals Board
and to provide for the establishment, maintenance and administration of Universities with
their Campuses and Faculties, and other Higher Educational Institutions ; and for
matters connected therewith or incidental thereto.

2. This Bill was introduced in the Senate on the 27th day of August, 1947, and was passed by the
Senate on the 27th day of August, 1947, and was passed by the Senate on the 27th day of August, 1947, and was
sent to the Lok Sabha for consideration. The Lok Sabha has passed the Bill on the 27th day of August, 1947, and was
sent to the President for his assent.

3. The Lok Sabha has passed the Bill on the 27th day of August, 1947, and was sent to the President for his assent.
The Lok Sabha has passed the Bill on the 27th day of August, 1947, and was sent to the President for his assent.

4. The Lok Sabha has passed the Bill on the 27th day of August, 1947, and was sent to the President for his assent.
The Lok Sabha has passed the Bill on the 27th day of August, 1947, and was sent to the President for his assent.

(6100) 572-PLC-A

UNIVERSITIES BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.C. No. 1 of 1978 P/Parl/1

Present :

N. D. M. SAMARAKOON, *Chief Justice*,

G. T. SAMARAWICKRAME, *Judge of the Supreme Court*,

V. T. THAMOTHERAM, *Judge of the Supreme Court*,

I. M. ISMAIL., *Judge of the Supreme Court*, and

R. S. WANASUNDERA, *Judge of the Supreme Court*.

S. Pasupathi, *Attorney-General* with G. P. S. de Silva, *Deputy Solicitor-General* and S. Ratnapala, *State Counsel*.

Court Assembled for the Hearing : At 10.30 a.m. on 23rd October, 1978.

A Bill titled " Universities " was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provisions thereof is inconsistent with the Constitution. The Attorney-General appeared before us and assisted us in the consideration of the Bill.

The University Grants Commission contemplated by the Bill falls within the definition of " Public Corporation " in Article 170 of the Constitution. One of the duties and functions of the Auditor-General in terms of Article 154 (1) is to audit the accounts of Public Corporations and in terms of Article 154 (2) the Minister in charge of any such Public Corporation with the concurrence of the Minister in charge of the subject of Finance and in consultation with the Auditor-General may appoint a qualified Auditor or Auditors to audit the accounts of the Public Corporation.

Clause 12 (1) of the Bill requires the Commission to have its accounts audited, each year by the Auditor-General. It further provides that for this purpose the Auditor-General may employ the services of any qualified Auditor or Auditors who shall act under his direction and control. " Qualified Auditor " is defined in Clause 12 (3) (a) as follows :

" (a) An individual who being a member of Chartered Accountants of Sri Lanka possesses a certificate to practice as an Accountant issued by the Council of that Institute."

Article 154 (8) of the Constitution confers a wider power of selection. In terms of Article 154 (8) (a) he is also entitled to call for the assistance of an individual qualified Auditor who is a member of " any other Institute established by law and possesses a certificate to practice as an Accountant issued by the Council of such Institute ". There is thus a restriction on the power of selection of Auditors granted by the Constitution to the Auditor-General.

Clause 12 (3) (b) of the Bill further provides for a firm of Chartered Accountants each of the partners of which is a member of that Institute and possesses a certificate to practice as an Accountant issued by the Council of that Institute.

Article 154 (8) (b) however restricts the choice to a resident partner but gives the Auditor-General a wider power of selection in that such partner may be a member "of any other Institute established by law (and) possesses a certificate to practice as an Accountant issued by the Council of such Institute". There is, therefore, a restriction of these powers by Clause 12 (3) (b) of the Bill.

Article 154 (2) which contains provisions relating to the manner of employment of qualified Auditors by the Auditor-General does not appear in Clause 12 of the Bill. We determine that in these respects Clause 12 of the Bill is inconsistent with the Constitution. These inconsistencies may be remedied by bringing the provisions of Clause 12 of the Bill in line with the provisions of Article 154 (2) and (8) of the Constitution.

There is a similar inconsistency between the provisions of Clause 107 (1) and (4) of the Bill with the provisions of Article 154 (2) and (8) of the Constitution. This inconsistency may also be similarly remedied.

We gave careful consideration to the question whether Clause 114 of the Bill offends the provisions in Article 14 (1) (c) of the Constitution relating to freedom of association. Two members of the Court are of the opinion that the provision in Clause 114 is too widely stated and drastic in as much as it prohibits affiliation with other Higher Educational Institutions and/or affiliations which may be beneficial and in no way objectionable. After some consideration and discussion we are unanimously of the view that Clause 114 does not offend the provisions in Article 14 (1) (c) for the reasons that the provisions in the first part of Part XIV of the Bill provides for the setting up of a Student Assembly by the Higher Educational Institution in terms of the Statute which is to be funded by Governing Authority of the Higher Educational Institution, and in such circumstances it is open to the authorities to lay down terms and conditions on which such Student Assemblies should be established and conducted. We also observe that other Unions, Societies and Associations may be recognised by the Higher Educational Institutions even though they have affiliations with other organisations and bodies outside the Higher Educational Institution.

We have considered the provisions of Clause 118 which appear to apply to all Associations whether recognised or not. This Clause confers a power on the principal executive of that Higher Educational Institution to suspend or dissolve any such Association which, in his opinion, conducts itself in a manner detrimental or prejudicial to the good name of that Institution or acts in contravention to the Act or any appropriate instrument. The right of the Association can be restricted in the manner provided in Article 15 (4) and (7) of the Constitution. The power of suspension or dissolution under Clause 118 is inconsistent with the provisions of the Constitution and if it is to be maintained requires the special majority provided in Article 84 (2) of the Constitution or else to be amended to conform to the provisions of Article 15 (4) and (7) of the Constitution.

We also considered the provisions of Clause 107 (5) (b) and (f), Clauses 125, 131 and 142 (4). We do not think that these Clauses confer any judicial power on any of the bodies of the Higher Educational Institution and think that they are therefore not inconsistent with the Constitution.

Clause 141 (3), (4) and (5) appear to confer a power on the Commission to determine to which Higher Educational Institution a prosecution, decree, appeal or other legal proceedings, civil or criminal, brought against the old University, shall relate. This to our minds appear to confer judicial power. However, the Attorney-General informed us that these provisions would be suitably amended so as to give the Commission only the right to inform Court as to the Educational Institution to which they should relate, but that the ultimate decision will remain with the Court, and if so amended these provisions will not be inconsistent with the Constitution.

We have set out above the provisions of the Bill which require consideration by the legislature from the standpoint as to whether the Bill is consistent or inconsistent with the Constitution.

N. D. M. SAMARAKOON,
Chief Justice,

G. T. SAMARAWICKRAMA,
Judge of the Supreme Court,

V. T. THAMOTHERAM,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

**Clauses of the UNIVERSITIES BILL considered in the Decision
of the Supreme Court**

Clause 12

(1) The Commission shall have its accounts audited each year by the Auditor-General. For the purpose of assisting him in the audit of such accounts, the Auditor-General may employ the services of any qualified auditor or auditors who shall act under his direction and control.

(2) For the purpose of meeting the expenditure incurred by him in auditing the accounts of the Commission, the Auditor-General shall be paid from the Fund of the Commission such remuneration as the Minister may, with the concurrence of the Minister in charge of the subject of Finance, determine. Any remuneration received from the Commission by the Auditor-General shall, after deducting any sums paid by him to any qualified auditor employed by him for the purpose of such audit, be credited to the Consolidated Fund.

(3) For the purpose of this section, the expression "qualified auditor" means --

- (a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka, possesses a certificate to practise as an Accountant, issued by the Council of that Institute ; or
- (b) a firm of Chartered Accountants each of the partners of which being a member of that Institute, possesses a certificate to practise as an Accountant issued by the Council of that Institute.

(4) The Auditor-General shall examine the accounts of the Commission and furnish a report --

- (a) stating whether he had or had not obtained all the information and explanations required by him ;
- (b) stating whether the accounts referred to in the report were properly drawn up so as to exhibit a true and fair view of the financial position of that Commission; and
- (c) drawing attention to any item in the accounts which in his opinion may be of interest to Parliament in any examination of the activities and accounts of that Commission.

(5) The Auditor-General shall transmit his report to the Commission.

(6) The Auditor-General's report referred to in subsection (5) shall be considered by the Commission and the Commission shall, within three months of the transmission of such report to the Commission, inform the Auditor-General of the steps taken or proposed to be taken with regard to the matters pointed out in such report.

(7) The Commission shall, each year, within three months of the receipt by it of the Auditor-General's report, transmit such report together with any comments made thereon by the Commission under subsection (6) and the statement of accounts to which the report relates, to the Minister who shall cause copies thereof to be tabled in Parliament, before the end of the year next succeeding the year to which such accounts and report relate, and the Chairman of the Commission shall attend and answer any questions arising therefrom before the Public Accounts Committee of Parliament.

CORRECTION

Interchange the contents
of this page with the contents of page 11

Clause 118

If any Student Assembly or union or society or other association of a Higher Educational Institution conducts itself in a manner, which, in the opinion of the principal executive officer of that Institution, is detrimental or prejudicial to the good name of that Institution, or acts in contravention to this Act or any appropriate Instrument, such principal executive officer may suspend or dissolve such Student Assembly, union, society or other association, as the case may be.

Clause 125

If any question arises as to whether any person has been duly elected, appointed, nominated or co-opted as, or as to whether any person is entitled to be, a member of any Authority or other body of a Higher Educational Institution, the question shall be referred to the Commission whose decision thereon shall be final.

Clause 131

(1) Where the presence of any person in the precincts of a Higher Educational Institution is, in the opinion of the governing authority of that Institution, undesirable, the principal executive officer of that Institution, after giving such person an opportunity of being heard, may, with the consent of that governing authority, by writing under his hand served on such person, prohibit such person from entering or remaining within such precincts or within such part thereof as may be specified in such writing. Such prohibition shall be and remain in force until revoked by such principal executive officer with the consent of such governing authority.

(2) A certificate under the hand of the principal executive officer of a Higher Educational Institution to the effect that any person named in the certificate has been prohibited, in accordance with the provisions of subsection (1) from entering or remaining within the precincts of a Higher Educational Institution or any specified part thereof, shall be received and accepted by a Court as evidence of the facts stated in such certificate until the contrary is proved.

(3) A document purporting to be a certificate issued by the principal executive officer of a Higher Educational Institution and signed by him shall be received in evidence and shall, until the contrary is proved, be deemed to be a certificate issued by such officer under subsection (2).

Clause 141

Subject to the provisions of this Act and of any appropriate Instrument, the following provisions shall apply as from the date of coming into operation of this Act —

(3) All debts, obligations and liabilities incurred and all contracts, deeds, bonds, agreements and other instruments executed or entered into, and all matters and things engaged to be done by, with, or for, the old University prior to the date of coming into operation of this Part of this Act shall be deemed to have been incurred, executed, entered into or engaged to be done by, with, or for, such Higher Educational Institution as the Commission shall determine.

(4) All suits, prosecutions, appeals, or other legal proceedings, civil and criminal, instituted or which might have been instituted, by, or against the old University prior to the date of coming into operation of this part of this Act shall be deemed to have been instituted by or against the Commission, and the Commission shall determine the Higher Educational Institution to which such suits, prosecution, appeals or other legal proceedings, civil or criminal shall relate.

(5) All decrees or orders made by a competent court in favour of, or against, the old University prior to the date of coming into operation of this Part of this Act shall be deemed to have been made in favour of, or against, such Higher Educational Institution as the Commission shall determine.

Clause 142

Subject to the provisions of this Act and of any appropriate Instrument, the following provisions shall apply to teachers, officers and other employees of the old University after the date of coming into operation of this Part of this Act —

(4) Any teacher, officer or other employee of the old University who is dissatisfied with the compensation payable to him under sub-section (1) or (3) of this section may appeal to the Appeals Board, whose decision thereon shall be final.

First Reading :

19.10.1978 (*Hansard* Vol. 1, No. 7; col. 588, 589)

Decision of the Supreme Court conveyed to Parliament :

01.11.1978 (*Hansard* Vol. 1, No. 9 ; col. 779 — 786).

Second Reading :

01.11.1978 (*Hansard* Vol. 1, No. 9 ; col. 795 — 862) 07.11.1978 (*Hansard* Vol. 1, No. 10 ; col. 885 — 1161).

Committee Stage and Third Reading :

07.11.1978 (*Hansard* Vol. 1, No. 10 ; col. 1161 — 1245).

Speaker's Certificate

21.12.1978.

Title : Universities Act, No. 16 of 1978.

Clause 107

(1) (a) Each Higher Education Institution shall have its accounts audited each year by the Auditor-General and, for the purpose of assisting him in the audit of such accounts, the Auditor-General may employ the services of any qualified auditor or auditors who shall act under his direction and control.

(b) The accounts of a Higher Educational Institution for each financial year shall, within four months after the closure of that financial year, be submitted by its principal executive officer, to the Auditor-General for audit.

(4) For the purpose of this section, the expression "qualified auditor" means —

- (a) a person who, being a member of the Institute of Chartered Accountants of Sri Lanka, possesses a certificate issued by the Council of that Institute to practise as an accountant, or
- (b) a firm of Chartered Accountants each of the partners of which, being member of that Institute, possesses of a certificate issued by the Council of that Institute to practise as an accountant.

Clause 107 (5)

(b) Before certifying any surcharge or disallowance against any officer, teacher or employee of a Higher Educational Institution under paragraph (a), the Auditor-General shall notify such person of such proposed surcharge or disallowance and inform such person of his right to make representations or be heard against such surcharge or disallowance, and fix a time and place for the hearing and inquiry into such representations not less than fourteen days from the date of despatch of such notice and, upon completion of such hearing and inquiry, the Auditor-General shall record the same and make his decision thereon giving the reasons for such decision, and inform such person and the Registrar of that University or Open University or the Secretary of the University College, as the case may be, of the same.

(f) Where —

- (i) an appeal has been confirmed by the Commission under paragraph (d) ; or
- (ii) no right of appeal is available to any person under the proviso to paragraph (c).

the principal executive officer or a person authorized by such officer in writing, shall institute in a court of competent jurisdiction, against the person against whom such surcharge or disallowance has been certified, an action for the recovery of the amount so certified to be recoverable, together with the costs thereon.

Clause 114

A Student Assembly shall have no affiliation with any organisation or body outside the Higher Educational Institution to which such Assembly belongs.

TAX AMNESTY BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.C. No. 2 of 1978 P/Parl./1.

Present :

N. D. M. SAMARAKOON, *Chief Justice*,
G. T. SAMARAWICKRAME, *Judge of the Supreme Court*,
V. T. THAMOTHERAM, *Judge of the Supreme Court*,
I. M. ISMAIL, *Judge of the Supreme Court*, and
R. S. WANASUNDERA, *Judge of the Supreme Court*.

G. P. S. de Silva, *Deputy Solicitor-General*, with S. Ratnapala, *State Counsel*, for the Attorney-General, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on 16th November, 1978.

A Bill titled "Tax Amnesty Act" was referred to us by His Excellency the President in terms of Article 122(1)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provisions thereof is or are inconsistent with the Constitution. The Deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill.

The main provisions of the Act deals with persons who are commonly referred to as "tax evaders". The provisions of the Act seek to grant such evaders an amnesty in regard to non-payment of taxes in respect of any profit and income arising or accruing on or before 31st March, 1977.

The provisions of this Bill do not apply to any person in relation to whom investigations have been commenced by the Commissioner-General or by any other officer of the Department of Inland Revenue for any alleged or suspected evasion of any tax payable under the provisions of the law for the time being relating to the imposition of income tax in respect of any profit and income arising or accruing on or before 31st March, 1977.

The provisions of this Bill will not benefit those tax evaders who have already been dealt with under the law or who have paid penalties. We have considered these provisions in the light of the fundamental rights of equality before the law and equal protection of the law as provided in Article 12(1) of the Constitution of Sri Lanka.

In view, however, of the provisions of Article 15 (7) of the Constitution and the permitted restriction of the exercise and operation of the fundamental rights in the interest of meeting the just requirements of the general welfare of a democratic society, we think that the purpose of this Bill justifies the restriction, if any, of the fundamental rights of equality.

We, therefore, determine that the Bill is not inconsistent with any provisions of the Constitution.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAME,
Judge of the Supreme Court.

V. T. THAMOTHERAM,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDRA,
Judge of the Supreme Court.

With regard to the Tax Amnesty Act, No. 5 of 1978, we think that the Bill is not inconsistent with any provisions of the Constitution and that the purpose of the Bill justifies the restriction, if any, of the fundamental rights of equality.

First Reading : 17.11.1978 (Hansard Vol. 2, No. 2 ; Col. 423).

Decision of the Supreme Court conveyed to Parliament :

17.11.1978 (Hansard Vol. 2, No. 2 ; col. 419 — 422).

Second Reading :

17.11.1978 (Hansard Vol. 2, No. 2 ; col. 427 — 432).

Committee Stage and Third Reading :

17.11.1978 (Hansard Vol. 2, No. 2 ; col. 432 — 436).

Speaker's Certificate :

24.11.1978.

Title : Tax Amnesty Act, No. 5 of 1978.

**SPECIAL PRESIDENTIAL COMMISSIONS OF INQUIRY
(SPECIAL PROVISIONS) BILL**

to provide for the resolution of certain doubts that have arisen as to the scope of the application of the Special Presidential Commissions of Inquiry Law, No. 7 of 1978, in view of the judgment of the Court of Appeal in Application No. 1/78, for that purpose to declare the intention of the legislature unequivocally, to amend the aforesaid law, to validate proceedings before the Special Presidential Commission of Inquiry established under that law, notwithstanding the judgment and writ issued in that application, and to provide for matters connected therewith or incidental thereto.

**SPECIAL PRESIDENTIAL COMMISSIONS OF INQUIRY
(SPECIAL PROVISIONS) BILL**

In the matter of a reference under Article 122 (1) (b) of the Constitution

S.C. No. 3 of 1978 P/Parl./I.

Present :

N. D. M. SAMARAKOON, *Chief Justice*,
G. T. SAMARAWICKRAMA, *Judge of the Supreme Court*,
V. T. THAMOTHERAM, *Judge of the Supreme Court*,
I. M. ISMAIL, *Judge of the Supreme Court*, and
R. S. WANASUNDERA, *Judge of the Supreme Court*.

S. Pasupathi, *Attorney-General*, with V. C. Gunatilleke, *Solicitor-General*, and
S. Ratnapala, *State Counsel*, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on 16th November, 1978.

A Bill titled "Special Presidential Commissions of Inquiry (Special Provisions)" Act was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provisions thereof is or are inconsistent with the Constitution. The Attorney-General appeared before us and assisted us in the consideration of the Bill.

The Bill bears a certificate under Article 84 of the Constitution, which states that the Cabinet of Ministers has certified that the Bill is intended to be passed by the special majority required by Article 84 of the Constitution.

We are not required to consider the nature and effect of the provisions of the Bill. In terms of Article 120 (c) of the Constitution, the only question which this Court has to determine is whether this Bill requires approval by the People at a Referendum by virtue of the provisions of Article 83 or whether such Bill is required to comply with paragraphs (1) and (2) of Article 82. Article 82 (1) of the Constitution does not apply, as this is not a Bill for the amendment of any provision of the Constitution; nor does Article 82 (2) apply, as this is not a Bill for the repeal of the Constitution or any provision thereof. In our view it is also a Bill which is not required to comply with the provisions of Article 83 of the Constitution.

The Attorney-General in the course of his submissions stated that, should the proposed amendment to Article 140 of the Constitution be first passed, no question of inconsistency of this Bill with the Constitution can in any event arise.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAMA,
Judge of the Supreme Court.

V. T. THAMOTHERAM,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

20.11.1978 (*Hansard Vol. 2, No. 3 ; Col. 520, 521*).

Decision of the Supreme Court conveyed to Parliament :

20.11.1978 (*Hansard Vol. 2, No. 3 ; col. 509 — 514*).

Second Reading :

20.11.1978 (*Hansard Vol. 2, No. 3 ; col. 635 — 833*).

Committee Stage and Third Reading :

20.11.1978 (*Hansard Vol. 2, No. 3 ; col. 833 — 844*).

Speaker's Certificate :

22.11.1978.

Title : Special Presidential Commissions of Inquiry (Special Provisions) Act, No. 4 of 1978.

FIRST AMENDMENT TO THE CONSTITUTION BILL

to amend the Constitution of the Democratic Socialist Republic of Sri Lanka.

FIRST AMENDMENT TO THE CONSTITUTION

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.O. No. 4 of 1978 P/Parl/1.

Present :

N. D. M. SAMARAKOON, *Chief Justice*,
G. T. SAMARAWICKRAMA, *Judge of the Supreme Court*,
V. T. THAMOTHERAM, *Judge of the Supreme Court*,
I. M. ISMAIL, *Judge of the Supreme Court*,
R. S. WANASUNDERA, *Judge of the Supreme Court*.

S. Pasupathi, *Attorney-General*, with V. C. Gunatilleke, *Solicitor-General*, and S. Ratnapala, *State Counsel*, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on 16th November, 1978.

A Bill titled "First Amendment to the Constitution" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or provisions thereof is or are inconsistent with the Constitution. The Attorney-General appeared before us and assisted us in the consideration of the Bill.

The Bill in its long title is described as being for the amendment of the Constitution. In view of Article 120 (a) of the Constitution, the only question which this Court has to determine is whether this Bill requires the approval by the People at a Referendum by virtue of the provisions of Article 83. It is not inconsistent with any of the provisions of the Articles referred to in Article 83 and therefore in our opinion does not require the approval by the People at a Referendum.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAMA,
Judge of the Supreme Court.

V. T. THAMOTHERAM,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

20.11.1978 (*Hansard Vol. 2, No. 3 ; Col. 520*).

Decision of the Supreme Court conveyed to Parliament :

20.11.1978 (*Hansard Vol. 2, No. 3 ; col. 509 — 516*).

Second Reading :

20.11.1978 (*Hansard Vol. 2, No. 3 ; col. 525 — 627*).

Committee Stage and Third Reading :

20.11.1978 (*Hansard Vol. 2, No. 3 ; col. 628 — 629*).

Speaker's Certificate :

20.11.1978.

Title : First Amendment to the Constitution.

Amendment to the Constitution of India, 1978, by the First Amendment to the Constitution of India, 1978.

Amendment to the Constitution of India, 1978, by the First Amendment to the Constitution of India, 1978.

Amendment to the Constitution of India, 1978, by the First Amendment to the Constitution of India, 1978.

Amendment to the Constitution of India, 1978, by the First Amendment to the Constitution of India, 1978.

NATIONAL HOUSING (AMENDMENT) BILL

to amend the National Housing Act.

NATIONAL HOUSING (AMENDMENT) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 5 of 1978 P/Parl./5.

Present :

N. D. M. SAMARAKOON, *Chief Justice*,
G. T. SAMARAWICKRAME, *Judge of the Supreme Court*,
V. T. THAMOTHERAM, *Judge of the Supreme Court*,
I. M. ISMAIL, *Judge of the Supreme Court*, and
R. S. WANASUNDERA, *Judge of the Supreme Court*.

K. M. M. B. Kulatunga, *Additional Solicitor-General* with D. C. Jayasuriya, *State Counsel* for the Attorney-General, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on 27th November, 1978.

Bill titled "An Act to Amend the National Housing Act" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provisions thereof is or are inconsistent with the Constitution. The Additional Solicitor-General appeared before us and assisted us in the consideration of the Bill.

We have considered the provisions in Clause 60A (2) (a) (ii) and Clause 60A (2) (b) of the amendment. Sub-clause (2) (b) gives a person if he is dissatisfied with the order of the Commissioner, a right of appeal therefrom to the Minister. That is the only remedy provided. This Clause, in our opinion, confers on the Minister, Judicial Power which is inconsistent with the Constitution, and may be passed only by a special majority as required by the provisions of paragraph (2) of Article 84. It will, however, cease to be inconsistent if it is amended by granting the appeal either to a Court of Law, to a Tribunal or to an Institution established by law. For example a Board of Review may be constituted under this law for the purpose of deciding an appeal.

Clause 2 (a) (ii) directs the Commissioner to order payment of such sum "as is in the opinion of the Commissioner, reasonable compensation for improvements, if any, effected by such person on such land". The terms of the provisions appear to us to be in such form as to preclude an appellate body from deciding the adequacy, correctness or otherwise of the compensation ordered. As it stands the provisions appear to confer on the Commissioner himself a Judicial Power to decide the quantum of compensation. This could be remedied by wording the provision in objective terms, directing the Commissioner to make an award of reasonable compensation for the improvements ; such award being subject to an appeal as suggested by us.

We therefore determine that the provisions of Clause 60A (2) (a) (ii) and 60A (2) (b) are inconsistent with the Constitution but would cease to be inconsistent if amended in the manner suggested by us.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAMA,
Judge of the Supreme Court.

V. T. THAMOTHERAM,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

**Clauses of the NATIONAL HOUSING (AMENDMENT) BILL
considered in the Decision of the Supreme Court**

Clause 60A

(2) (a) Where the Commissioner cancels any agreement in the exercise of the powers conferred on him by subsection (1), he shall —

(ii) order the payment to such person of such sum as is in the opinion of the Commissioner, reasonable compensation for improvements, if any, effected by such person on such land.

(b) Any person dissatisfied with an order made by the Commissioner under sub-paragraph (ii) of paragraph (a) may appeal therefrom to the Minister.

First Reading :

28.11.1978 (*Hansard* Vol. 2, No. 10 ; col. 2200).

Decision of the Supreme Court conveyed to Parliament :

28.11.1978 (*Hansard* Vol. 2, No. 10 ; col. 2191 — 2194).

Second Reading :

28.11.1978 (*Hansard* Vol. 2, No. 10 ; col. 2250 — 2258).

Committee Stage and Third Reading :

28.11.1978 (*Hansard* Vol. 2, No. 10 ; col. 2258 — 2261).

Speaker's Certificate :

29.11.1978.

Title : National Housing (Amendment) Act, No. 9 of 1978.

LICENSING OF PRODUCE BROKERS BILL

to provide for the regulation and control of the carrying on of the business of produce broker by the introduction and operation of a system of licensing, and for matters connected therewith or incidental thereto.

LICENSING OF PRODUCE BROKERS BILL

In the matter of an Application under Articles 120 and 121 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. No. 3 of 1978.

Present :

N. D. M. SAMARAKOON, *Chief Justice*,

G. T. SAMARAWICKRAMA, *Judge of the Supreme Court*,

V. T. THAMOTHERAM, *Judge of the Supreme Court*,

I. M. ISMAIL, *Judge of the Supreme Court*, and

R. S. WANASUNDERA, *Judge of the Supreme Court*.

H. L. de Silva with E. D. Wickramanayake and C. Chakradaran for the *Petitioner*

P. R. P. Perera, *Deputy Director of Public Prosecutions* with P. Gnanakaran for the *Attorney-General*.

Court Assembled for the Hearing : At 10.30 a.m. on 15th December, 1978.

This application by the Petitioner in terms of Articles 120 and 121 of the Constitution of the Democratic Socialist Republic of Sri Lanka, is in respect of a Bill titled "Licensing of Produce Brokers Act", and we were invited to determine whether the Bill or any provisions thereof is or are inconsistent with the Constitution. Counsel for the Petitioner and the Deputy Director of Public Prosecutions who appeared for the Attorney-General, assisted us in the consideration of the Bill.

Counsel for the Petitioner contended that Clause 2 (2) (a) and (c) purported to take away a fundamental right granted by Article 14 (1) (g) and in that it excluded any individual or any body unincorporated in engaging in the occupation or trade of produce broking.

There is no doubt that under Article 14 (1) (g) every individual citizen and every unincorporated body had the freedom to engage in the business of produce broking. Clauses 2 (2) (a) and (c) preclude the exercise of this right in as much as an individual citizen or an unincorporated body of citizens are disqualified from obtaining a licence to act as produce brokers. The Deputy Director of Public Prosecutions conceded that these provisions violated the fundamental right. We determine that the provisions of Clause 2 (2) (a) and (c) are inconsistent with the provisions of Article 14 (1) (g) of the Constitution.

Counsel for the Petitioner next contended that the provisions of Clause 2 (1) which provide for a right to carry on the business of a produce broker, only in accordance with the terms and conditions of a licence issued in that behalf was unconstitutional in that this law did not set out the terms and conditions of the restrictions subject to which the licence could be issued. This has been left to be done by Regulations. The exercise of the fundamental right given by Article 14 (1) (g) can be made subject to such restrictions as may be prescribed by law in terms of Article 15 (5) of the Constitution. "Law" here "means any Act of Parliament and any law enacted by legislature at any time prior to the commencement of the Constitution and includes an Order in Council". Clearly regulations have been excluded. Therefore the Constitution does not contemplate the conferment of power on the executive to make restrictions by regulation except in terms of guidelines laid down in the Act itself. In the circumstances whatever restrictions that are to be placed upon the exercise of the fundamental right in terms of Article 15 (5) must be prescribed by this Act. We find no such restrictions for the issue of licence prescribed by this Act.

We, therefore, determine that the provisions of Clause 2 (1) in its present form are inconsistent with the Constitution.

Clause 5 (1) of the Bill gives the power to the appropriate authority to suspend or cancel a licence issued to a produce broker if he is "of opinion that such person is unfit to carry on such business". "Unfitness" in this context is too wide and general in character and is left largely to the whims and fancies of the appropriate authority and tends to confer unrestrained power. The grant of such a wide power is in excess of and cannot be justified by the power to make restrictions under the provisions of Article 15 (5).

For the above reasons we determine that the provisions of Clause 2 (1); Clause 2 (2) (a) and (c) and Clause 5 (1) are inconsistent with the Constitution and can only be passed by a special majority in terms of Article 82.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAMA,
Judge of the Supreme Court.

V. T. THAMOTHEBAM,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

**Clauses of the LICENSING OF PRODUCE BROKERS BILL considered in
the Decision of the Supreme Court**

Clause 2

(1) The Minister may, by Order published in the Gazette, declare that, with effect from such date as shall be specified in the Order (hereafter referred to as the appointed date), no person shall carry on business as a produce broker except under the authority or otherwise than in accordance with the terms or conditions of a licence issued in that behalf by any appropriate authority under this Act.

(2) No licence shall be issued under this Act —

- (a) to any individual ; or
- (c) to any body unincorporate.

Clause 5

(1) If the appropriate authority by whom a licence has been issued to any person to carry on business as a produce broker is of opinion that such person is unfit to carry on such business, he may, by order, suspend for any period specified in such order, or cancel, such licence.

First Reading :

22.11.1978 (*Hansard* Vol. 2, No. 5 ; col. 1056, 1057).

Decision of the Supreme Court conveyed to Parliament :
20.12.1978 (*Hansard* Vol. 2 No. 5 ; col. 1253 — 1258).

Second Reading :

04.01.1979 (*Hansard* Vol. 4, No. 1 ; col. 40, 41).

Committee Stage and Third Reading :

04.01.1979 (*Hansard* Vol. 4, No. 1 ; col. 41 — 49).

Speaker's Certificate :

09.02.1979.

Title : Licensing of Produce Brokers Act, No. 9 of 1979.

COMPULSORY PUBLIC SERVICE (AMENDMENT) BILL

to amend the Compulsory Public Service Act, No. 70 of 1961.

COMPULSORY PUBLIC SERVICE (AMENDMENT) BILL

In the matter of a reference under 122 (1) (b) of the Constitution.

S.D. No. 1 of 1979 P/Parl/1

Present :

N. D. M. SAMARAKOON, *Chief Justice*,

G. T. SAMARAWICKRAME, *Judge of the Supreme Court*,

I. M. ISMAIL, *Judge of the Supreme Court*, and

R. S. WANASUNDERA, *Judge of the Supreme Court*.

G. P. S. de Silva, *Deputy Solicitor-General*, with S. Ratnapala, *State Counsel*, for the Attorney-General, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on 1st February, 1979.

A Bill titled "An Act to Amend the Compulsory Public Service Act, No. 70 of 1961" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provisions thereof is or are inconsistent with the Constitution. Subsequently by a communication dated 31st January, 1979, His Excellency the President informed the Chief Justice that the Cabinet of Ministers at a meeting held on that date has certified that this Bill is intended to be passed by the special majority required by Article 84 of the Constitution. The Deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill.

In view of the latter communication by His Excellency the President, the only question which the Supreme Court has to determine is whether the said Bill requires the approval by the People at a Referendum in terms of the provisions of Article 83 or whether such Bill is required to comply with paragraphs (1) and (2) of Article 82 of the Constitution. On an examination of the Bill we find that it is not one within the contemplation of Article 83 (a) or (b), nor is it a Bill for the amendment of any provisions of the Constitution within the contemplation of Article 82 (1), nor is it a Bill for the repeal of the Constitution in terms of Article 82 (2) of the Constitution.

We, therefore, determine that this Bill is not one that requires the approval of the People at a Referendum, nor is it a Bill which is required to comply with paragraph (1) or (2) of Article 82.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAME,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading : 06.02.1978 (Hansard Vol. 4, No. 4 ; col. 487).

*Decision of the Supreme Court conveyed to Parliament :
06.02.1979 (Hansard Vol. 4, No. 4 ; col. 434 - 438).*

Second Reading :
06.02.1979 (*Hansard* Vol. 4, No. 4 : col. 491 - 536).

Committee Stage and Third Reading:
06.02.1979 (Hansard Vol. 4, No. 4; col. 536-538).

Speaker's Certificate : 09.02.1979

Title : Compulsory Public Service (Amendment) Act. No. 11 of 1979.

LOCAL AUTHORITIES (SPECIAL PROVISIONS) (AMENDMENT) BILL

to amend the Local Authorities (Special Provisions) Act, No. 3 of 1979.

LOCAL AUTHORITIES (SPECIAL PROVISIONS) (AMENDMENT) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 2 of 1979 P/ Parl.

Present :

N. D. M. SAMARAKOON, *Chief Justice*,

G. T. SAMARAWICKRAME, *Judge of the Supreme Court*,

I. M. ISMAIL, *Judge of the Supreme Court*, and

R. S. WANASUNDERA, *Judge of the Supreme Court*.

G. P. S. de Silva, *Deputy Solicitor-General*, with S. Ratnapala, *State Counsel*, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on 19th February, 1979.

A Bill titled "An Act to amend the Local Authorities (Special Provisions) Act, No. 3 of 1979" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provisions thereof is or are inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is intended to be passed by the special majority required by Article 84 (2) of the Constitution. The Deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill.

In view of the certificate of the Cabinet of Ministers, the only question which the Supreme Court has to determine is whether the said Bill requires the approval by the People at a Referendum in terms of the provisions of Article 83 or whether such Bill is required to comply with paragraphs (1) and (2) of Article 82 of the Constitution. On an examination of the Bill we find that it is not one within the contemplation of Article 83 (a) or (b), nor is it a Bill for the amendment of any of the provisions of the Constitution within the contemplation of Article 82 (1), nor is it a Bill for the repeal of the Constitution in terms of Article 82 (2) of the Constitution.

We, therefore, determine that this Bill is not one that requires the approval of the People at a Referendum, nor is it a Bill which is required to comply with paragraph (1) or (2) of Article 82.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAME,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading : 22.02.1979 (Hansard Vol. 4, No. 7; col. 791)

Decision of the Supreme Court conveyed to Parliament : 22.02.1979 (Hansard Vol. 4, No. 7 ; col. 736 – 738).

Second Reading : 22.02.1979 (Hansard Vol. 4, No. 7 ; col. 926 – 933).

Committee Stage and Third Reading : 22.02.1979 (Hansard Vol. 4, No. 7 ; col. 933,934).

Speaker's Certificate : 26.02.1979 ;

Title : Local Authorities (Special Provisions) (Amendment) Act, No. 12 of 1979.

SECOND AMENDMENT TO THE CONSTITUTION BILL

to amend the Constitution of the Democratic Socialist Republic of Sri Lanka.

SECOND AMENDMENT TO THE CONSTITUTION BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 3 of 1979 P/Parl.

Present :

N. D. M. SAMARAKOON, *Chief Justice.*

G. T. SAMARAWICKRAME, *Judge of the Supreme Court,*

I. M. ISMAIL, *Judge of the Supreme Court, and*

R. S. WANASUNDERA, *Judge of the Supreme Court.*

S. Pasupathy, *Attorney-General*, with G. P. S. de Silva, *Deputy Solicitor General* and S. Ratnapala, *State Counsel*, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on 19th February, 1979.

A Bill titled "An Act to amend the Constitution of the Democratic Socialist Republic of Sri Lanka" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provisions thereof is or are inconsistent with the Constitution. The Attorney-General appeared before us and assisted us in the consideration of the Bill.

Article 75 confers legislative power on Parliament and expressly confers the power to repeal or amend any provision of the Constitution or to add any provision to the Constitution. But there is a difficulty as to whether this provision expressly and unambiguously confers the power to repeal or amend any provision of the Constitution with retrospective effect. However, it is not necessary to express our view on this question in view of the provision of Article 120, the relevant portion of which reads as follows :—

" 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 ;"

This amendment is not inconsistent with any of the provisions referred to in Article 83 (a) or (b) and therefore does not require the approval of the People at a Referendum.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAMA,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

22.02.1979 (*Hansard Vol. 4, No. 7 ; col. 790*).

Decision of the Supreme Court conveyed to Parliament :

22.02.1979 (*Hansard Vol. 4, No. 7 ; col. 736 - 740*).

Second Reading :

22.02.1979 (*Hansard Vol. 4, No. 7 ; col. 800 - 922*).

Third Reading and Committee Stage :

22.02.1979 (*Hansard Vol. 4, No. 7 ; col. 922 - 925*).

Speaker's Certificate :

26.02.1979.

Title : Second Amendment to the Constitution.

MONETARY LAW (AMENDMENT) BILL

to amend the Monetary Law Act.

MONETARY LAW (AMENDMENT) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 4 of 1979 P/Parl./10.

Present :

N. D. M. SAMARAKOON, *Chief Justice.*
G. T. SAMARAWICKRAME, *Judge of the Supreme Court, and*
R. S. WANASUNDERA, *Judge of the Supreme Court.*

G. P. S. de Silva, *Deputy Solicitor-General*, with S. Ratnapala, *State Counsel*, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on 2nd March, 1979.

A Bill titled "An Act to Amend the Monetary Law Act" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provisions thereof is or are inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers have certified that the Bill is urgent in the national interest. The Deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill. On an examination of the Bill we find that it is not inconsistent with the Constitution. The Bill seeks to make the use of currency coin otherwise than as legal tender, or the melting, breaking up, perforating or mutilating currency coin an offence under the Monetary Law Act.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAME,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

06.03.1979 (*Hansard Vol. 4, No. 9 ; col. 997*).

Decision of the Supreme Court conveyed to Parliament :
on 06.03.1979 (*Hansard Vol. 4, No. 9 ; col. 990 – 992*).

Second Reading :

06.03.1979 (*Hansard Vol. 4, No. 9 ; col. 1000 – 1002*).

Committee Stage and Third Reading :

06.03.1979 (*Hansard Vol. 4, No. 9 ; col. 1002 – 1003*).

Speaker's Certificate :

07.03.1979.

Title : Monetary Law (Amendment) Act, No. 14 of 1979.

**PROSCRIBING OF LIBERATION TIGERS OF TAMIL EELAM AND
OTHER SIMILAR ORGANIZATIONS (AMENDMENT) BILL**

to amend the Proscribing of Liberation Tigers of Tamil Eelam and Other Similar
Organizations Law, No. 16 of 1978.

**THE PROSCRIBING OF LIBERATION TIGERS OF TAMIL EELAM
AND OTHER SIMILAR ORGANISATIONS (AMENDMENT) BILL**

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.C. No. SD/5/79.

Present :

G. T. SAMARAWICKRAME, *Judge of the Supreme Court,*

I. M. ISMAIL, *Judge of the Supreme Court,*

J. G. T. WEERARATNE, *Judge of the Supreme Court,*

G. P. S. de Silva, *Deputy Solicitor-General*, with S. Ratnapala, *State Counsel*, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on 9th May, 1979.

A Bill titled "The Proscribing of Liberation Tigers of Tamil Eelam and Other Similar Organisations (Amendment) was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka, for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill.

The Bill seeks to extend the period of operation of Law No. 16 of 1978 for the period of another year. It was therefore necessary for us to consider the provisions of the original Law, in as much as if the provisions of the original law is inconsistent with the Constitution, this Bill too would be inconsistent with the Constitution.

Section 7 of Law No. 16 of 1978 confers on the Minister the power to effect a forfeiture to the State of moneys, securities or credits and movable or immovable property of the prescribed organisations in the hands of any persons. The power to make such an order of forfeiture is, in our view, the exercise of judicial power. Section 7 is therefore in conflict with Section 4 (1) (c) of the Constitution, which sets out that the judicial power of the people should be exercised by Courts, Tribunals and institutions created and established or reorganised by the Constitution or created by law. We, therefore, determine that the Bill under consideration by us is inconsistent with the Constitution and requires to be passed by a special majority.

We also considered Section 11 of Law No. 16 of 1978. This provision confers on the Minister power to detain persons for periods of 3 months at a time and for an aggregate period not exceeding one year. Article 13 (2) of the Constitution provides —

"Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law."

Prima facie, Section 11 appears to be in conflict with Article 13 (2) but Article 15 (7) of the Constitution provides that the exercise and operation of all the fundamental rights declared and recognized, inter alia, by Article 13 (2) shall be subject to such restriction as may be prescribed by law in the interests of national security, public order etc. We are, therefore, of the view that Section 11 is not inconsistent with the Constitution as its enactment was justified under Article 15 (7).

As already stated, in view of the inconsistency between Section 7 of Law No. 16 of 1978, which is sought to be kept in force for another year by this Bill and Article 4 (1)(c) of the Constitution, we determine that the Bill is inconsistent with the Constitution and requires to be passed by a special majority.

G. T. SAMARAWICKRAMA,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

J. G. T. WEERARATNE,
Judge of the Supreme Court.

First Reading :

21.05.1979 (*Hansard Vol. 5, No. 2 ; col. 125*).

Decision of the Supreme Court conveyed to Parliament :

21.05.1979 (*Hansard Vol. 5, No. 2 ; col. 77 - 82*).

Second Reading :

21.05.1979 (*Hansard Vol. 5, No. 2 ; col. 128- 213*).

Committee Stage and Third Reading :

21.05.1979 (*Hansard Vol. 5, No. 2 ; col. 213 - 217*).

Speaker's Certificate :

21.05.1979.

Title : Proscribing of Liberation Tigers of Tamil Eelam and Other Similar Organizations (Amendment) Act, No. 30 of 1979.

MOTOR TRAFFIC (AMENDMENT) BILL

to amend the Motor Traffic Act.

MOTOR TRAFFIC (AMENDMENT) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.
S.D. No. 6 of 1979 P/Parl./12.

Present :

V. T. THAMOTHERAM, *Judge of the Supreme Court,*

I. M. ISMAIL, *Judge of the Supreme Court, and*

R. S. WANASUNDERA, *Judge of the Supreme Court.*

Sarath Silva, *Deputy Director of Public Prosecutions, for Attorney-General, on notice.*

Court Assembled for the Hearing : At 10.30 a.m. on 18th May, 1979.

A Bill titled "An Act to amend the Motor Traffic Act" was referred to us by His Excellency the President in terms of Article 122(1)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provisions thereof is or are inconsistent with the Constitution. The Deputy Director of Public Prosecutions appeared before us for the Attorney-General and assisted us in the consideration of the Bill.

We note that the main amendment is to substitute the words "after he has consumed alcohol" in place of "when he is under the influence of alcohol" in section 151 (1) of the Motor Traffic Act, which is already an offence. All the other provisions of the amending Act are connected and consequential to the main amendment referred to above.

We determine that none of the provisions of the amending Bill are inconsistent with the Constitution.

V. T. THAMOTHERAM,
Judge of the Supreme Court.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

21.05.1979 (*Hansard Vol. 5, No. 2 ; col. 125*).

Decision of the Supreme Court conveyed to Parliament :

21.05.1979 (*Hansard Vol. 5, No. 2 ; col. 81 - 84*).

Second Reading :

21.05.1979 (*Hansard Vol. 5, No. 2 ; col. 215 - 216*).

Committee Stage and Third Reading :

21.05.1979 (*Hansard Vol. 5, No. 2 ; col. 216 - 217*).

Speaker's Certificate :

21.05.1979.

Title : Motor Traffic (Amendment) Act, No. 31 of 1979.

Act No. 31 of 1979, an Act to amend the Motor Traffic Act, 1973, and to make related and incidental provisions. It is hereby enacted as follows:

1. The Motor Traffic Act, 1973, is hereby amended by inserting the following section immediately after section 10:

10A. *Prohibition of driving a motor vehicle while under the influence of alcohol.*

1. *Prohibition of driving a motor vehicle while under the influence of alcohol.*

2. *Penalty for driving a motor vehicle while under the influence of alcohol.*

3. *Penalty for driving a motor vehicle while under the influence of alcohol.*

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) BILL

to make temporary provision for the prevention of acts of terrorism in Sri Lanka, the prevention of unlawful activities of any individual, group of individuals, association, organization or body of persons within Sri Lanka or outside Sri Lanka and for matters connected therewith or incidental thereto.

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) BILL¹

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 7 of 1979 P/Parl./13.

Present :

N. D. M. SAMARAKOON, *Chief Justice*,

G. T. SAMARAWICKRAME, *Judge of the Supreme Court*, and

R. S. WANASUNDERA, *Judge of the Supreme Court*.

G. P. S. de Silva, *Deputy Solicitor-General*, with T. J. Marapana, *Senior State Counsel*, and S. Ratnapala, *State Counsel*, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on 17th July, 1979.

A Bill titled "An Act to make temporary provision for the prevention of acts of terrorism in Sri Lanka, the prevention of unlawful activities of any individual, group of individuals, association, organization or body of persons within Sri Lanka or outside Sri Lanka and for matters connected therewith or incidental thereto" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is or are inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest and that it is intended to be passed by the special majority required by Article 84 (2) of the Constitution. The Deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill.

Article 120 (c) reads thus :

"(c) where the Cabinet of Ministers certifies that a Bill which is not 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, is intended to be passed with the special majority required by Article 84, 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 or whether such Bill is required to comply with paragraphs (1) and (2) of Article 82 ;".

The Bill is not described in its long title as being for the amendment or repeal of any provision of the Constitution. Therefore, the only question which this Court has to decide is whether such Bill requires approval by the People at a Referendum

by virtue of the provisions of Article 83 or whether it must comply with paragraphs (1) and (2) of Article 82. We are of opinion that this Bill does not require the approval of the People at a referendum, nor is it one within the contemplation of Article 83 of the Constitution.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAME,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

19.07.1979 (*Hansard Vol. 5, No. 13 ; col. 1422*).

Decision of the Supreme Court conveyed to Parliament :

19.07.1979 (*Hansard Vol. 5, No. 13 ; col. 1412 – 1414*).

Second Reading :

19.07.1979 (*Hansard Vol. 5, No. 13 ; col. 1428 – 1589*).

Committee Stage and Third Reading :

19.07.1979 (*Hansard Vol. 5, No. 13 ; col. 1589 – 1595*).

Speaker's Certificate :

20.07.1979.

Title : Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979.

ESSENTIAL PUBLIC SERVICES BILL

to provide for the declaration of Services provided by certain Government Departments, Public Corporations, Local Authorities and Co-operative Societies as Essential Public Services ; and for matters connected therewith or incidental thereto.

ESSENTIAL PUBLIC SERVICES BILL

In the Matter of an Application under Article 121 of the Constitution of the
Democratic Socialist Republic of Sri Lanka

S.C. Application No. 58/79

Ratnasiri Wickramanayaka, General Secretary, Sri Lanka Freedom Party

..... *Petitioner*

Vs.

The State..... *Respondent.*

Before : SAMARAKOON C. J., THAMOTHERAM J., ISMAIL J., SHARVANANDA J., and
WANASUNDERA J.

Counsel :

H. L. de Silva with V. W. Kularatne and Gomin Dayasiri for the Petitioner.

Shiva Pasupathy, A. G., with V. C. Goonetilleke, S. G., G. P. S. de Silva,
Addl. S. G., and S. Ratnapala, S. C., for the State.

Argued on : September 24, 1979.

Decided on : October 2, 1979.

This is a petition to the Supreme Court under Article 121 of the Constitution invoking our jurisdiction in respect of a Bill entitled the Essential Public Services Bill. It has been filed by Mr. Ratnasiri Wickramanayaka, General Secretary of the Sri Lanka Freedom Party, and he has petitioned this Court on his own behalf as well as on behalf of his party which he claims is one of the largest in the country. The Bill has been placed on the Order Paper of Parliament and the Cabinet of Ministers have certified that the Bill is intended to be passed by the special majority required by Article 84 of the Constitution.

The petitioner has alleged that certain provisions of the Bill contravene Articles 14 (1) (g), 14 (1) (h), 14 (1) (a) read with 14 (1) (d) and Article 11 of the Constitution which guarantee certain fundamental rights. He has contended that a Bill "which is inconsistent with the exercise and enjoyment of the Fundamental Rights of the People requires not merely its passage by a two-thirds majority, but also approval by the People at a Referendum". The petitioner has relied on Article 83 in support of his argument and has submitted that Article 83, when it refers to Articles 3 and 11, has the effect of entrenching all those fundamental rights which are declared and recognised by the Constitution.

Counsel for the petitioner sought to establish his case, namely, the violation of fundamental rights, by claiming an irrebuttable presumption based on the Cabinet certificate and thereby sought to avoid any serious discussion of Article 15 of the Constitution in its relation to the facts of this case. He submitted that, once the certificate is given by the Cabinet, the only question for this Court to decide is whether the Bill requires approval by the People at a Referendum and the Court, without further examination, must proceed on the basis that the Bill contravened the provisions relating to fundamental rights. It was in fact his view that the certificate would imply that the Bill was inconsistent with the provisions relating to fundamental rights and that this interpretation by the Cabinet would be binding on us.

On the other hand, the learned Attorney-General submitted that there is nothing in the constitutional provisions to indicate that such a certificate should be given only in the case of an inconsistency and, even if it was so, there is nothing in the certificate to indicate what the particular inconsistency is, that is, whether it relates to a matter of fundamental rights or to some other provision of the Constitution. He also pointed out that the certificate merely states that the Bill is intended to be passed by the special majority required by Article 84 and nothing more.

We have considered these submissions and find that the matter has to be approached somewhat differently. When the provisions of Chapter XII of the Constitution and other relevant provisions are considered, it would appear that the Constitution has drawn a distinction between the amendment and repeal of the Constitution on the one hand, and Bills which are merely inconsistent with the Constitution on the other. Article 84 indicates that Bills inconsistent with the Constitution stand in a class by themselves. They would not affect the integrity and the continued operation of the Constitution in its totality, except that the particular piece of legislation would be a deviation from the constitutional provisions and that too to the extent to which it is inconsistent. Such legislation is also not required to comply with the provisions of Article 82 (1) and (2). Although such legislation has to be passed by the special majority of two-thirds of the whole number of members, this fact however is not adequate to confer on such laws the dignity or force of a constitutional amendment, for they can be repealed by a bare majority like any other ordinary legislation.

Since such legislation would be inconsistent with the constitutional provisions and can be enacted in respect of any matter or matters and any person or class of persons, it will be noted that they can make serious inroads into the guarantees and safeguards secured by the Constitution.

The present Constitution, therefore, unlike the previous Republican Constitution of 1972, has placed some limitations on the exercise of this power. These restrictions are contained in Article 83, which deals with both amendments to the Constitution and also with Bills that are merely inconsistent with the Constitution. We find a number of Articles entrenched in Article 83, and the Constitution requires that a Bill relating to any of them must not only be passed by a two-thirds majority, but must also be approved by the People at a Referendum. The Cabinet Certificate may imply that in its view there are provisions in the Bill inconsistent with the Constitution but that fact does not absolve this Court from its duty and function if the Bill is inconsistent with any of the Articles of the Constitution, especially the Articles,

mentioned in Article 83, namely, Articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 30 (2), 62 (2) and 83. To put it in another way, the Cabinet certificate merely indicates the intention of the Government to pass this Bill with the two-thirds majority. But the certificate is not conclusive on the question whether the proposed legislation conflicts with any of the provisions of the Constitution. The Cabinet certificate, far from asserting or implying this, actually negatives it. We are therefore of the view that it is our duty to examine the provisions of the Bill in relation to the Constitution and see whether, in fact, the Bill is inconsistent with any one or more of the specified Articles.

The only two Articles mentioned in Article 83 on which the petitioner relies are Articles 3 and 11. Let us, in the first instance, deal with the petitioner's argument based on Article 3. The petitioner has submitted that the entrenched Article 3 attracts Article 4, and Article 4 brings in *inter alia*, the entirety of the fundamental rights enshrined in the Constitution. It is a well known principle of constitutional law that a Court should not decide a constitutional issue unless it is directly relevant to the case before it. We are of the view that this case, when properly approached, makes it irrelevant for us to give a ruling on some of the matters referred to by counsel for the petitioner.

Adopting his argument that the entrenched Article 3 attracts Article 4, we find that Article 4 itself provides for the abridgement and restriction of the fundamental rights. This would take us to the provisions of Article 15, which sets out the manner and extent in respect of restrictions that can be placed on the fundamental rights. Article 4 (d) is worded as follows :—

“(d) the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided ;”.

Probably, having regard to his legal submissions, the petitioner thought it was unnecessary to delve into the factual aspects of this matter in any great depth. We are however inclined to deal with these matters at some length, not only because of their importance but also because we feel that the issues before us would be a matter of concern to the public and in particular to the large number of persons who may be directly affected by this legislation.

The petitioner has submitted that Clause 2 (2) of the Bill has the effect of compelling persons who were employed in any Government Department, Public Corporation, Local Authority, or Co-operative Society engaged in providing the services specified in the order made under section 2 (1), to remain in that employment during the subsistence of that order and of working on compulsion under pain of criminal prosecution, whether or not they have reasonable cause for not doing so. The petitioner argues that this provision violates Article 14 (1) (g) of the Constitution, which grants every citizen the freedom to engage in any lawful occupation, profession, trade, business or enterprise, and that this freedom includes the freedom not to be employed and the freedom to choose another employment at any time.

Article 14 (1) (g) grants every citizen the freedom to engage by himself, or in association with others, in any lawful occupation, profession, trade, business or enterprise.

¹ The Bill provides for the declaration of specified services provided by certain (but not all) Government Departments, Public Corporations, Local Authorities, and Co-operative Societies as Essential Public Services, and makes provision, including sanctions and punishments, to ensure that those services are carried out unimpeded and uninterrupted. These services are specified in the Schedule. Undoubtedly all the services specified in the Schedule are essential for maintaining the life of the community, and a break-down in these services would cause a service disruption and break-down of organised society. Nearly all these items have heretofore been rightly regarded as services essential to maintain the life of the community. Other countries have also similar legislation.

¹ Article 14 (1) (g) must be read in the light of the restrictions that are permitted by the Constitution. The exercise and operation of the fundamental right can be limited by law enacted in terms of either Article 15 (5) or Article 15 (7). Such legislation is permitted in the interests of national economy, national security, public order, and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirement of the general welfare of a democratic society. In this context Article 28 is also relevant. It states that the exercise and enjoyment of the rights and freedoms is inseparable from the performance of duties and obligations, and accordingly it is the duty of every person to work conscientiously in his chosen occupation. Could it be said that the objects of the Bill do not come within one or more of the matters specified above? These services specified in the Schedule are of a vital nature and necessary for the maintenance of the life of the community; and it is the bounden duty of the State to ensure that such services are provided without any organised disruption.

Once enacted, the law would be placed on the statute book, but a perusal of the Bill shows that it would be invoked and applied only in an "emergency" situation. The President is empowered, in consultation with the appropriate Minister, to declare one or more of the public services specified in the Schedule as an essential service or services when the two conditions in Clause 2 of the Bill are satisfied. The President must be of opinion that any such service is likely to be impeded or interrupted and that the service is essential to the life of the community. The learned Attorney-General submitted that any abuse of this discretion could be challenged in the Courts. In these circumstances we are of the view that the restrictions placed by this Bill on the fundamental right contained in Article 14 (1) (g) are reasonable.

We are of opinion that this conclusion would be valid even if we are to interpret Article 14 (1) (g) in the extended sense, as containing the negative right contended for by counsel. But reliance however on this negative right may lead to some other problems which the petitioner has in no way sought to resolve. The Bill speaks of the persons employed in the Scheduled Services impeding or interrupting such services. These words are sufficient to include a variety of trade union action by employees, and will naturally include a strike. The petitioner has not referred us to any authority to show that, in the situation contemplated by the Bill, there is such a determination of the contract of service of the employees concerned as would enable the workman to be regarded as a person free of all his contractual obligations and is in the identical position of a person who is absolutely free to choose his employment or not to continue in employment untrammelled by any legal obligations.

In this connection certain other provisions of the Bill may also be noted. Every order of the President invoking this law is operative only for a period of one month without prejudice to the earlier revocation or the making of a further order. The order is also limited, in the first instance, to only 14 days and has to be placed before Parliament forthwith, and if Parliament stands adjourned, Parliament must meet within 10 days to have it approved, on which occasion a debate on its necessity should be possible.

The above provisions are reminiscent of certain provisions of the Public Security Ordinance, which can be invoked in the interest of public order. The scope of the Public Security Ordinance can be seen by a perusal of a set of past regulations which had been made from time to time by successive governments, in periods of emergency, even those promulgated from 1972 onward when the 1972 Constitution was in operation. Under these regulations, provision had been made for declaring any service to be a public utility or to be essential to the public safety or to the life of the community, and this can include any department of Government or branch. All such services would be designated as an "Essential Services". An order in terms of these regulations may be made generally for the whole Island or for any area or place specified in the order.

As in the present case, there was provision making the failure or refusal of an employee to attend to his work, once a service is declared to be an essential service, an offence. Further, by reason of such failure, or refusal, the employee is deemed to have forthwith terminated or vacated employment. It may be noted that these provisions applied notwithstanding that the failure or refusal was in furtherance of a strike.

Persons impeding, obstructing and delaying the carrying on of such service, or inciting others to do so, were made guilty of an offence. The penalty imposed for a violation of this regulation was the forfeiture of all property, movable and immovable, of the offender, in addition to his liability to imprisonment. All transfers of property after the date on which the regulations were brought into force were made null and void.

The regulations also make provision for preventing disaffection among those, engaged in the performance of essential services and for preventing incitement of any section, class, or group of persons to create discontent, disaffection, hatred, hostility, or the use of violence. Power was also given to proscribe any organisation when there is a danger of action by such organisation or by its members. Picketing was also prohibited.

There was even a controversial provision bordering on industrial conscription that empowered the Prime Minister, by order under his hand, to require any person to do any work or render any personal service in aid of or in connection with the maintenance of the public safety, or the maintenance of essential services.

Part III of the Public Security Ordinance introduced in 1959 also contains somewhat similar provision for a situation falling short of a declaration of a state of emergency, where the Prime Minister is empowered to act in a somewhat similar manner in such a situation. But these provisions contain a significant feature which appears to nullify much of its effectiveness, namely, an exception from liability

from those provisions where the cessation of work is in consequence of a strike by a registered trade union, solely in pursuance of an industrial dispute (Section 17(2)—Part III).

The clauses of the present Bill also approximate to the provisions in Part III of the Public Security Ordinance and are intended to deal with a similar kind of situation. The presence of the exemption referred to in Part III and its absence here can be of no avail to the petitioner in respect of the constitutional matters before us. It is a matter of some significance that the petitioner has not read into the fundamental rights enshrined in the Constitution a fundamental right to strike. The right to strike is essentially a political and economic concept, but has been conceded in some countries as a legal right. At the most, it may be claimed as a mere common law right without being raised to the level of a fundamental right, *Leavie Collymore Vs. A.G.*, (1970) 38 F.J.R. 79, where the Privy Council held that "it is inaccurate to contend that the abridgement of the right to free collective bargaining and the freedom to strike leaves the assurance of its freedom of association empty of worthwhile content". Vide also *Radhey Vs. P.M.G.*, Nagpur, 1965 A.I.R. (S.C.) 311; *All India Bank Employees Association Vs. National Industrial Tribunal*, 1962 A.I.R. (S.C.) 171.

In fact, even under the ordinary provisions of the Industrial Disputes Act, certain limitations have been placed on the right to strike or the continuation of a strike. Those provisions appear to apply to some of the categories of persons coming within the ambit of this Bill. Vide sections 32 and 40—Industrial Disputes Act. It may also be mentioned that, even the I.L.O. seems to incline to the view that limitation placed on the right to strike in essential industries do not infringe the freedom of association if there are satisfactory alternate arrangements for the redress of grievances.

Some of the employees covered by the Bill will undoubtedly come within the ambit of the Industrial Disputes Act, which contains the statutory framework for the settlement of disputes between employer and employee. However, public officers in the service of the Government have been excluded from the provisions of the Industrial Disputes Act. Many of them enjoy trade union rights. Although there is no statutory machinery for settlement of their grievances, it is well known that such disputes are the subject of discussion and negotiation in terms of informal procedures, which usually reach up to the highest government levels. Although this aspect of the matter has no controlling influence on our decision, we take the liberty of observing that it may be desirable that such informal procedures be institutionalised, and formal procedures for the settlement of such grievances, on a basis as favourable as the legal provisions that are now applicable to non-public servants, (modified, of course, to meet the exigencies of the public service) be made available to them, so that this category of employees will have no cause whatsoever for complaint.

The other provision relied on by the petitioner is Article 14(1)(h). It is his submission that Clause 2(2)(a), which provides for "compulsory service" at the existing places of work and prohibits non-attendance, violates the freedom of movement and of choosing one's residence guaranteed by Article 14(1)(h). In

view of the conclusion we have arrived at in respect of Article 14(1)(g), this submission is without substance. In any event, such restrictions could have been imposed under Article 15.

A third provision relied on by the petitioner is Article 14(1)(a) read with Article 14(1)(d). The petitioner has contended that Clause 2(2)(c) provides that any person who, by any speech or writing, incites or encourages any person employed in a public department or corporation to refrain from attending his place of work, or incites or encourages such person to depart from his place of work, shall be guilty of an offence. The petitioner has argued that the impact of this prohibition against freedom of expression has a close inter-relationship with another fundamental right, namely, the freedom to form and join a trade union which has as its very object and purpose the protection of their rights and privileges as workers. This freedom is effectively negatived, he has submitted, if the end or object of the formation of a trade union is frustrated by prohibiting any discussions which may encourage any person engaged in such public service to refrain from attending at his place of work or to depart therefrom.

This argument is presented undoubtedly on the assumption that Clause 2(2) of the Bill, which seeks to ensure unimpeded and uninterrupted service in respect of the services provided by the categories of persons employed in the services set out in the Schedule, contravenes the Constitution and is therefore unlawful. We have already held that this ground is untenable. This is sufficient to dispose of this matter. But we would like to add that the restriction complained of, is speech or writing, inciting, inducing or encouraging the commission of the offence set out in Clause 2(2)(b). *Vide Article 15(2), and Radhey, Vs. P.M.G., Nagpur (Supra).* This restriction appears to us to have a real, proximate and direct connection to the relevant grounds in Article 15(5) and 15(7) under which the restrictions have been made. Further, it is clear that the right of association does not carry with it a fundamental right, that the union so formed should be entitled to achieve every objective for which it was formed. *Raghubar Dayal Vs. Union of India, 1962 A.I.R. (S.C.) 263 ; Gesh Vs. Joseph, 1963 A.I.R. (S.C.) 812.*

We therefore hold that the relevant clauses of the Bill fall within the ambit of the permitted restriction contained in Article 15(5) and 15(7). In view of these findings that the restrictions imposed by the Bill are lawful and fall within the ambit of Article 15(5) and 15(7), it is unnecessary, as stated earlier, for us to consider the question as to how many of the fundamental rights in Article 14 and to what extent they can be regarded as being entrenched for the purposes of Article 83. That situation would have arisen only if we found that the restrictions now imposed were in excess of those permitted under Article 15(5) and 15(7).

We now turn to the argument that the Bill contravenes Article 11 of the Constitution. Article 11 is admittedly one of the entrenched Articles mentioned in Article 83. It is directed against torture and cruel, inhuman or degrading treatment or punishment.

Clause 4 of the Bill provides for punishment for the offences created by the Bill. An offender would be liable, on conviction, to imprisonment ranging from a minimum of two years to a maximum of five years, or to a fine ranging from two thousand rupees to a maximum of five thousand rupees, or to both imprisonment and fine.

To these punishments there is superadded two more punishments, namely, the mandatory forfeiture of all movable and immovable property of the offender and, in the event the offender is a registered practitioner under any law for practising his profession or vocation, the mandatory removal of his name from such register. This piling up of punishment on punishment makes these penal provisions one of extreme severity. We also think that there is justification for the petitioner's complaint that Clause 4 is a blanket provision covering all offenders, irrespective of the kind of offence they are involved in, or their degree of blameworthiness.

The question is whether these provisions contravene Article 11. The learned Attorney-General, relying on Article 16 (2), has submitted that all these punishments are forms of punishment recognised by existing written law, and their imposition on the order of a competent court takes them out of the operation of Article 11. In our view, the piling of punishment on punishment indiscriminately, as in this case, whether they be old forms of punishment or new, must pass the test of Article 11, if they are to be valid. In our view, this is not a case of the mere excessiveness of the punishment, but one of inhuman treatment and punishment. The learned Attorney-General stated that these terms suggested some wrongful and wicked application of physical force on the prisoners. We are unable to agree.

This guarantee against cruel, inhuman and degrading treatment and punishment could be traced to the English Bill of Rights, 1688. At the early stages, this guarantee presented problems which were certainly concerned solely with the degree of severity with which a particular offence was punishable, or with the element of cruelty present. Since then, courts and tribunals have taken the view that the expression contained in the guarantee "is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice". In *Trop Vs. Dulles*, 356 U.S. 86, the U.S. Supreme Court, in interpreting the corresponding guarantee contained in the English Amendment, had occasion to say that "the Article must draw its meaning from the evolving standards of decency that marks the progress of a maturing nation".

In this case, the U.S. Supreme Court held that a statutory provision for forfeiture of citizenship, on conviction by a Court Martial for desertion in time of war, could not be validly applied to a citizen by birth, whose Court Martial conviction was based solely on one day's absence without leave from his base. The Court said that the sole purpose of forfeiting citizenship was to punish for desertion, and punishment of such magnitude was "cruel and unusual" within the bar of the English Amendment. In *Robinson Vs. California*, 370 U.S. 660, the U.S. Supreme Court, in interpreting the English Amendment again, said —

"The question presented in the earlier cases concerned the degree of severity with which a particular offence was punished or the element of cruelty present. A punishment out of all proportion to the offence may bring it within the bar against cruel and unusual punishment."

We are of the opinion that the compulsory forfeiture of property and the erasure of the offender's name from his professional register, in addition to compulsory imprisonment or fine, constitute excessive punishment and savours of cruelty. In our view, Clause 4 (2) of the Bill contravenes Article 11 of the Constitution. It is not our view that the mandatory confiscation of property or the removal from the

register of a profession is inherently bad, or that at all these punishments cannot be applied together in a serious and fit case. Our objection is to their mandatory nature and to their indiscriminate application *ad terrorem*, irrespective of the nature of the offence or the culpability of the offender.

For the reasons given above, we determine that Clause 4 (2) of the Bill is inconsistent with Article 11 of the Constitution. We also state that the Bill, in its present form, is therefore required to be passed by the special majority required under the provisions of paragraph (2) of Article 84 and approved by the People at a Referendum by virtue of the provisions of Article 83. We are also of the opinion that if Clause 4 (2) of the Bill can be amended on the lines suggested below, the Bill will not be inconsistent with Article 11 of the Constitution.

We suggest that the punishments set out in Clause 4 (2) should not be mandatory but that they should be left to the Court to be imposed at its discretion in fit cases. They can be justified in certain eventualities, where the culpability of the offender for certain grave consequences can be established. We have in mind particularly instances where an act or omission of the offender endangers human life, exposes persons to serious bodily injury, or exposes valuable property to damage or destruction, or causes other injury, damage or mischief of such a magnitude as to warrant the imposition of these additional punishments.

N. D. M. SAMARAKOON,
Chief Justice.
(S.C. Application No. 58/79).

V. T. THAMOTHERAM,
Judge of the Supreme Court.

J. M. ISMAIL,
Judge of the Supreme Court.

S. SHARVANANDA,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

**Clauses of the ESSENTIAL PUBLIC SERVICES BILL considered in the
Decision of the Supreme Court**

Clause 4

(1) Every person who commits an offence under this Act shall, on conviction after summary trial before a Magistrate, be liable to rigorous imprisonment for a term not less than two years and not exceeding five years or to a fine not less than two thousand rupees and not exceeding five thousand rupees or to both such imprisonment and fine.

(2) Where any person is convicted by any court for any offence under this Act, then, in addition to any other penalty that the court shall impose for such offence, the court shall make order —

- (a) that all property, movable or immovable, of the person convicted shall be forfeited to the Republic ; and
- (b) in any case where the person convicted is registered in any register maintained under any written law as entitling such person to practice any profession or vocation, that the name of such person be erased from such register.

(3) Where the court makes order under paragraph (a) of subsection (2) in respect of any person, every alienation or disposal of property made by such person after the date of publication of an Order under subsection (1) of section 2 in relation to any service provided by such person, shall be deemed to have been, and to be, null and void.

Clause 2 (2)

During the continuance in force of an Order made under subsection (1) declaring the service provided by any category of persons employed in a Government department or public corporation or local authority or co-operative society or branch thereof being a department or public corporation or local authority or co-operative society engaged in the provision of any of the services specified in the Schedule to this Act, to be an essential public service —

- (a) any person who, on the day immediately preceding the date of such Order, was employed in that department or public corporation or local authority or co-operative society for the purposes of that service or who after that date is employed by that department or public corporation or local authority or co-operative society for the purposes of that service, fails or refuses to attend at his place of work or at such other place as may from time to time be designated by the head of that department or public corporation or local authority or co-operative society or a person acting under the authority of such head or fails or refuses to perform such work as he may be directed by the head of the department or public corporation or local authority or co-operative society or by a person acting under the authority of such head to perform or fails or refuses to perform such work within such time as is in the opinion of the head of that department or public corporation or local authority or co-operative society reasonable for the performance of such work ; or

(b) any person who in any manner —

- (i) impedes, obstructs, delays or restricts the carrying on of that service ; or
- (ii) impedes, obstructs or prevents any other person employed in that department or public corporation or local authority or co-operative society for the purposes of that service from attending at his place of work ; or
- (iii) incites, induces or encourages any other person employed in that department or public corporation or local authority or co-operative society for the purposes of that service to refrain from attending at his place of work ; or
- (iv) compels, incites, induces or encourages any other person employed in that department or public corporation or local authority or co-operative society for the purposes of that service to depart from his place of work ; or
- (v) prevents any other person from accepting employment in, or in connection with, the carrying on of that service ; or

(c) any person who, by any physical act or by any speech or writing incites or encourages any other person to commit any act specified in paragraph (b) of this subsection (whether or not such other person commits in consequence any act so specified),

shall be guilty of an offence under this Act.

First Reading :

07.09.1977 (Hansard Vol. 6, No 3 : col. 208)

Announcement in Parliament of the filing of a petition to the Supreme Court :

20.09.1979 (Hansard Vol. 6, No. 4 ; col. 208).

Decision of the Supreme Court conveyed to Parliament :

02.10.1979 (Hansard Vol. 6, No. 6 ; col. 406 — 422).

Second Reading :

02.10.1979 (Hansard Vol. 6, No. 6 ; col. 447 — 835).

Committee Stage and Third Reading :

02.10.1979 (Hansard Vol. 6, No. 6 ; col. 835 — 838).

Speaker's Certificate :

08.10.1979.

Title : Essential Public Services Act, No. 61 of 1979

SUPPLEMENTARY ALLOWANCE OF WORKERS BILL

to provide for the payment of a supplementary allowance by employers to certain categories of workers in the private sector and for matters connected therewith or incidental thereto.

7-♂ 72029 (83/08)

SUPPLEMENTARY ALLOWANCE OF WORKERS BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 9 of 1979 P/Parl/16

Present :

N. D. M. SAMARAKOON, *Chief Justice*,
V. T. THAMOTHERAM, *Judge of the Supreme Court* and
R. S. WANASUNDERA, *Judge of the Supreme Court*.

S. W. B. Wadugodapitiya, *Deputy Solicitor-General* for Attorney-General.

Court Assembled for the Hearing : At 10.30 a.m. on 30th October, 1979.

A Bill titled "An Act to provide for the payment of a supplementary allowance by employers to certain categories of workers in the private sector and for matters connected therewith or incidental thereto" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest. The Deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill. On an examination of the Bill we find that it is not inconsistent with the provisions of the Constitution.

N. D. M. SAMARAKOON,
Chief Justice.

V. T. THAMOTHERAM,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

06.11.1979 (*Hansard* Vol. 6, No. 10 ; col. 1245)

Decision of the Supreme Court conveyed to Parliament :

06.11.1979 (*Hansard* Vol. 6, No. 10 ; col. 1190, 1191).

Second Reading :

06.11.1979 (*Hansard* Vol. 6, No. 10 ; col. 1249 - 1282).

Committee Stage and Third Reading :

06.11.1979 (*Hansard* Vol. 6, No. 10; col. 1282, 1283).

Speaker's Certificate :

09.11.1979 ;

Title : Supplementary Allowance of Works Act, No. 65 of 1979.

CRIMINAL TRIALS (SPECIAL PROVISIONS) BILL

to provide for matters in connection with verdicts, reasons therefor and sentences relating to trials commenced under provisions of law in force between January 1, 1974 and July 2, 1979 and for matters connected therewith or incidental thereto.

CRIMINAL TRIALS (SPECIAL PROVISIONS) BILL

S.C. No. 8 of 1979 P/Parl/15

In the matter of a reference under Article 122 (1) (b) of the Constitution.

Present :

V. T. THAMOTHERAM, *Judge of the Supreme Court,*

S. SHARVANANDA, *Judge of the Supreme Court, and*

R. S. WANASUNDERA, *Judge of the Supreme Court.*

G. P. S. de Silva, *Additional Solicitor-General, with S. Ratnapala, State Counsel,* for the Attorney-General, on notice.

Court Assembled for the Hearing : At 10.30 a.m. on October 22, 1979.

A Bill titled "An Act to provide for matters in connection with verdicts, reasons therefor and sentences relating to trials commenced under provisions of law in force between January 1, 1974 and July 2, 1979 and for matters connected therewith or incidental thereto" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provisions thereof is or are inconsistent with the Constitution. The Additional Solicitor-General appeared before us for the Attorney-General and assisted us in the consideration of the Bill.

The Bill seeks to ensure the validity of any verdict, reasons for the verdict or sentence which was or were required to be recorded within a period specified in any law which was in force from January 1, 1974 to July 2, 1979, but which was not so recorded within the stipulated time, unless failure to so record had occasioned substantial miscarriage of justice.

We have considered the provisions of the Bill and we determine that the Bill is not inconsistent with any provisions of the Constitution.

V. T. THAMOTHERAM,
Judge of the Supreme Court.

S. SHARVANANDA,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

PASSPORT (REGULATION) AND EXIT PERMIT (AMENDMENT) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. 10/79 P/Parl/17

(C - 1.160 ; P. 1.167 ; D. 1.167) 0301.10.20

Present :

G. T. SAMARAWICKRAMA, *Judge of the Supreme Court.*

J. G. T. WEERARATNE, *Judge of the Supreme Court.*

S. SHARVANANDA, *Judge of the Supreme Court.*

K. M. M. B. Kulatunga, *Additional Solicitor-General with S. Ratnapala, State Counsel, for Attorney-General.*

Court Assembled for the Hearing : At 10.30 a.m. on 20th December, 1979.

A Bill titled "An Act to amend the Passport (Regulation) and Exit Permit Act No. 53 of 1971" was referred to this Court by His Excellency the President, in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka, for the special determination whether the Bill or any provisions is inconsistent with the Constitution. The Bill contains the certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest. The learned Additional Solicitor-General appeared before us and assisted us in the consideration of this Bill.

Paragraph 2 of the Bill provides for the amendment of Section 5 (1) of Act, No. 53 of 1971 to enlarge the duration of the validity of a passport or emergency certificate and for the enlargement of the period for which a passport or an emergency certificate may be renewed. There is also provision to ensure that a Competent Authority does not act arbitrarily in fixing the duration of the validity of the passport or emergency certificate or the renewal thereof. Paragraph 3 of the Bill provides for the amendment of Section 9 of Act No. 53 of 1971 to provide for increase in the fees payable in respect of issue or renewal of a passport or emergency certificate. The amendments are made retrospectively. We have considered these provisions and we determine that the Bill or any of its provisions are not inconsistent with any provision of the Constitution.

G. T. SAMARAWICKRAMA,
Judge of the Supreme Court.

J. G. T. WEERARATNE,
Judge of the Supreme Court.

S. SHARVANANDA,
Judge of the Supreme Court.

First Reading :

08.01.1980 (*Hansard* Vol. 9 No. 1 ; col. 11, 12)

Decision of the Supreme Court conveyed to Parliament!

08.01.1980 (*Hansard* Vol. 9 No. 1 ; col. 1 - 3).

Second Reading :

08.01.1980 (*Hansard* Vol. 9, No. 1 ; col. 13 - 17).

Committee Stage and Third Reading :

08.01.1980 (Hansard Vol. 9, No. 1 ; col. 17, 18.)

Speaker's Certificate :

10.01.1980.

Title : Passport (Regulation) and Exit Permit (Amendment) Act, No. 1 of 1980.

PARLIAMENT (POWERS AND PRIVILEGES) (AMENDMENT) BILL

to amend the Parliament (Powers and Privileges) Act

PARLIAMENT (POWERS AND PRIVILEGES) (AMENDMENT) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.
S.C. No. SD/1/80

Present :

G. T. SAMARAWICKRAMA, *Judge of the Supreme Court.*

I. M. ISMAIL., *Judge of the Supreme Court,*

S. SHARVANANDA, *Judge of the Supreme Court.*

V. C. Gunatilake, *Solicitor-General* with S. Ratnapala, *State Counsel for Attorney-General.*

Court Assembled for the Hearing : At 10.30 a.m. on 7th April, 1980.

A Bill entitled "An Act to Amend the Parliament (Powers and Privileges) Act" was referred to this Court by His Excellency the President, in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for the special determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a Certificate by which the Cabinet of Ministers has certified that in its view it is urgent in the national interest. Learned Solicitor-General appeared before us and assisted us in the consideration of this Bill.

The Bill provides for an amendment to Part A of the Schedule to the Parliament (Powers and Privileges) Act as amended by Law No. 5 of 1978. The effect of this amendment is to make it an offence to wilfully publish any report of a debate or proceeding of Parliament containing words or statements which the Speaker has ordered to be expunged from the Official Report of Parliamentary Debates (HANSARD). This provision is a restriction on the freedom of speech and expression including publication provided for in Article 14 (1) (a) of the Constitution of the Democratic Socialist Republic of Sri Lanka, but Article 15 (2) of the Constitution provides that the exercise and operation of the fundamental rights set out in Article 14 (1) (a) shall be subject to such restrictions as may be prescribed by law, *inter alia*, in relation to Parliamentary privilege. It would appear that the right to control publication of debates in Parliament has always been considered a privilege of Parliament, vide Erskine May, "Parliamentary Practice", 19th Edition, page 79. Standing Order No. 77 passed by Parliament on the 5th March, 1980, provides that the Speaker may, in certain circumstances, order words or statements used in debate to be expunged from the Official Report of Parliamentary Debates (HANSARD) and that those words or statements shall then be regarded as unspoken. It is in respect of the publication of such words or statements that the provision contained in the amendment sought to be introduced by this Bill is proposed to be enacted.

In as much as the offences set out in Part A of the Schedule to the Parliament (Powers and Privileges) Act as amended by Law No. 5 of 1978 are punishable by Parliament, this provision provides for the exercise of judicial power directly by

Parliament. We find, however, that Article 4(c) of the Constitution provides as an exception to the general rule that the judicial power of the people shall be exercised through Courts, tribunals and institutions, that such judicial power may be exercised directly by Parliament according to law in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members.

We are, therefore, of the view and determine that neither the above Bill nor any of its provisions is inconsistent with the Constitution.

G. T. SAMARAWICKRAME,
Judge of the Supreme Court

L. M. ISMAIL,

Judge of the Supreme Court.

S. SHARVANANDA.

Judge of the Supreme Court.

First Reading: *John 1:1-18* (A reading from the New Testament in English, Revised Standard Version, © 1952, 1962, 1971 by the Division of Christian Education of the National Council of the Churches of Christ in the United States of America. Used by permission of the Division of Christian Education of the National Council of the Churches of Christ in the United States of America.

19.04.1980 (Hansard Vol. 10, No. 10 ; col. 1047)
Decision of the Supreme Court conveyed to Parliament ;
08.04.1980 (Hansard Vol. 10, No. 9; col. 956 - 960).

Second Reading: The bill was read a second time and agreed to be read a third time on 09.04.1980 (Hansard Vol. 10, No. 10; col. 1048-1051).

Committee Stage and Third Reading: 22-24-1928 (X) Vol. 12, No. 10 (col. 1051-1053)

>Title : Parliament (Powers and Privileges) (Amendment) Act, No. 17 of 1989.

FOREIGN LOANS (AMENDMENT) BILL

to amend the Foreign Loans Act, No. 29 of 1957.

to amend the Foreign Loans Act, No. 29 of 1957.

in the matter of its FOREIGN LOANS (AMENDMENT) BILL and referred to the High Court of Sri Lanka with regard to the constitutionality of the procedure

In the matter of a reference under Article 122 (1) (b) of the Constitution, and a certificate of the Cabinet of Ministers to the effect that the Bill is not inconsistent with the Constitution, and was submitted S.C. No. SD/2/80 - received on and with the certificate that the Bill is not inconsistent with the Constitution.

Present : Col. Bandaranaike, the Minister of Finance and Economic Affairs, and the Minister of

G. T. SAMARAWICKRAMA, *Acting Chief Justice*, and the Judges of the Supreme Court.

V. T. THAMOTHERAM, *Judge of the Supreme Court*, and the Judges of the High Court.

R. S. WANASUNDERA, *Judge of the Supreme Court*, and the Judges of the High Court.

In view of the above, the Court has decided to hear the matter on 21st May 1980, at 10.00 a.m. and the Court Assembled for the Hearing : At 10.00 a.m. on 21st May 1980

A Bill entitled "An Act to amend the Foreign Loans Act No. 29 of 1967" was referred to this Court by His Excellency, the President, in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka, for the special determination whether the Bill or any provisions thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that, in its view, it is urgent in the national interest. Learned Solicitor-General appeared before us and assisted us in the consideration of the Bill.

The Bill provides for amendments to the Foreign Loans Act No. 29 of 1967. The new Section 2 intended to be introduced by the amendment provides for agreements relating to foreign loans of the Government of Sri Lanka or a guarantee by the Government of Sri Lanka in respect of a foreign loan to a public Corporation or public enterprise and the documents required by such agreement or guarantee to be executed by the Government of Sri Lanka to be signed by the President or any person specially authorised by him. The new Section 3 provides for sums payable by the Government of Sri Lanka under agreements and guarantees to be charged to the Consolidated Fund of the country.

The new Section 4 proposed to be introduced by the amendment reads as follows :

"4 (1) The Minister in charge of the subject of Finance may, by order published in the *Gazette*, make such provision as may be necessary to give effect to an agreement relating to a foreign loan to the Government of Sri Lanka or to a guarantee given by the Government of Sri Lanka relating to a foreign loan to a public corporation or public enterprise.

(2) Every Order made and published under subsection (1) shall have the force of law."

In view of the provisions in Section 4 (2) that an order made by the Minister shall have the force of law, the question arises whether this provision is inconsistent with Article 76 (1) of the Constitution. Article 76 (1) provides that "Parliament shall

not abdicate or in any manner alienate its legislative power and shall not set up any authority with any legislative power". Subsection (3) provides "It shall not be a contravention of paragraph I of the Article for Parliament to make any law containing any provision empowering any person or body to make subordinate legislation for prescribed purposes". The learned Solicitor-General submitted to us that the proposed Section 4 empowers the Minister in charge of the subject of Finance to make an order in the nature of subordinate or delegated legislation. It appears to us that the submission is well-founded. The power of the Minister of Finance is limited to making orders for such provisions as may be necessary to give effect to an agreement by or guarantee given by the Government of Sri Lanka. The provision that such an order shall have the force of law is no different to those commonly made in respect of by-laws and rules that they shall have the force of law. In the circumstances, we are of the view that the enactment of the proposed Section 4 is not a contravention of the provisions of paragraph I of Article 76 by reason of the provisions of paragraph 3 thereof which has been set out above.

We accordingly determine that neither the Bill entitled "An Act to amend the Foreign Loans Act No. 29 of 1976" nor any of its provisions are inconsistent with the Constitution or any provision thereof.

G. T. SAMARAWICKRAMA,
Acting Chief Justice.

V. T. THAMOTHERAM,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

03.06.1980 (*Hansard* Vol. 10, No. 16 ; col. 1373)

Decision of the Supreme Court conveyed to Parliament :

03.06.1980 (*Hansard* Vol. 10, No. 16 ; col. 1348 – 1350).

Second Reading :

03.06.1980 (*Hansard* Vol. 10, No. 16 ; col. 1389 – 1397).

Committee Stage and Third Reading :

03.06.1980 (*Hansard* Vol. 10, No. 16 ; (col. 1398 – 1400).

Speaker's Certificate :

06.06.1980.

Title to Foreign Loans (Amendment) Act, No. 23 of 1980.

INLAND REVENUE (AMENDMENT) BILL

to amend the Inland Revenue Act, No. 28 of 1979.

INLAND REVENUE (AMENDMENT) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.
S.C. No. SD/3/80

Present :

G. T. SAMARAWICKRAME, *Acting Chief Justice,*

J. G. T. WEERARATNE, *Judge of the Supreme Court,*

R. S. WANASUNDERA, *Judge of the Supreme Court.*

S. W. B. Wadugodapitiya, *Deputy Solicitor-General* with S. Ratnapala, *State Counsel for Attorney-General.*

Court Assembled for the Hearing : At 10.00 a.m. on 4th June, 1980.

A Bill entitled "An Act to amend the Inland Revenue Act, No. 28 of 1979" was referred to this Court by His Excellency, the President, in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for the special determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has stated that in its view it is urgent in the national interest. Learned Deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill.

The Bill provides for amendments to the Inland Revenue Act to give effect to the Budget proposals of 1979. It appears to us that two provisions proposed to be enacted require consideration. Section 22 C provides for exemption from income tax on profits and income from certain undertakings. It reads :—

"The profits and income within the meaning of paragraph (a) of section 3 (other than any profits and income from the sale of capital assets) of any undertaking—

(a) carried on by a quoted public company ; and

(b) approved by the Minister, shall be exempt from income tax for a period of five years calculated from the date on which such undertaking commences to carry on business, if such undertaking was not formed by the splitting up, reconstruction or acquisition of any business which was previously in existence."

At first sight this provision would appear to confer on the Minister an unrestricted power to effect an exemption from income tax on the profits and income from an undertaking commenced to be carried on by a quoted public company. Learned Deputy Solicitor-General pointed out, however, that the words "approved by the Minister" must be given the meaning provided for in Section 163 of the principal enactment. Section 163 provides that—

"Approved by the Minister" when used in relation to an undertaking or a company or a public corporation or an institution or any fund means approved by the Minister as being essential for the economic progress of Sri Lanka ;"

We are conscious of the fact that a wide discretion is still left to the Minister in respect of which quoted public companies falling within the category referred to in the section he will grant approval. It has, however, been held that it is not possible for the Legislature to provide in the legislation itself for all contingencies and the grant of a discretion to a high official like the Minister is permissible. *OB. 4. 92*

Section 16 A which is proposed to be enacted reads :—

“(1) The profits and income within the meaning of paragraph (a) of section 3 (other than any profits and income from the sale of capital assets) of any undertaking referred to in sub-section (2) shall be exempt from income tax for a period of ten years such period of ten years being calculated from the date on which such undertaking commenced to carry on business.

(2) The provisions of sub-section (1) shall apply to any undertaking of operating hotels for tourists —

(a) which is on the recommendation of the Ceylon Tourist Board approved by the minister by order published in the gazette.

(b) which is carried on by a quoted public company incorporated on or after November 15, 1979 ; and

(c) the capital of which exceeds rupees five hundred million.

(3) For the purpose of sub-section (2) “ capital ” shall have the same meaning as in sub-section (5) of section 18.”

It may be considered that the exemption from income tax of profits and income of undertakings which has a capital of over Rs. 500 million when undertakings with more modest capital are liable to pay income tax on their profits and income is discriminatory and offends against the provisions relating to equality in the Constitution. This is, however, fiscal legislation and it is a matter for the Legislature to decide what considerations relating to the amelioration of hardship or to the interests of the economic progress of the people should be given effect to. Presumably, this provision is sought to be enacted on the basis of economic consideration in respect of which the decision must largely be left to the Legislature in view of the inherent complexity of fiscal adjustment of diverse elements that requires to be made.

We are, therefore, of the view that neither Section 22 C nor Section 16 A are inconsistent with the Constitution. We accordingly determine that the Bill “ An Act to amend the Inland Revenue Act, No. 28 of 1979 ” or any of its provisions are not inconsistent with the Constitution or any provision thereof.

G. T. SAMARWICKRAME,
Acting Chief Justice.

J. G. T. WEERARAJA,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

06.06.1980 (*Hansard* Vol. 10, No. 19 ; col. 1732)

Decision of the Supreme Court conveyed to Parliament :

06.06.1980 (*Hansard* Vol. 10, No. 19 ; col. 1710 – 1714).

Second Reading :

06.06.1980 (*Hansard* Vol. 70, No. 10 ; col. 1733 – 1769).

Committee Stage and Third Reading :

06.06.1980 (*Hansard* Vol. 10, No. 19 ; col. 1770, 1771).

Speaker's Certificate :

24.06.1980.

Title : Inland Revenue (Amendment) Act, No. 24 of 1980.

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
IN THE NAME OF THE STATE OF SOUTH AFRICA
BY THE POWER GRANTED TO IT BY THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA
AND THE INLAND REVENUE ACT, 1956, AS AMENDED, THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
DOES HEREBY MAKE THE FOLLOWING ORDER:

DEVELOPMENT COUNCILS BILL

to provide for the constitution and composition of Development Councils for the

purposes of accelerating development; to specify the powers, duties and functions of such Councils; to provide for the constitution and composition of Executive Committees of Development Councils; to specify the powers, duties and functions of such Committees; to specify the powers, duties and functions of the District Ministers in relation to such Councils and Committees; and to provide for all matters connected therewith or incidental thereto.

therewith or incidental thereto.

DEVELOPMENT COUNCILS BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 4 of 1980 P/Parl/21

Present :

N. D. M. SAMARAKOON, Chief Justice,

G. T. SAMARAWICKREMA, Judge of the Supreme Court, and

R. S. WANASUNDERA, Judge of the Supreme Court.

S. Pasupathi, Attorney-General with S. Ratnapala, State Counsel, on notice.

Court Assembled for the Hearing : At 10.00 a.m. on 6th August, 1980.

A Bill titled "An Act to provide for the Constitution and Composition of Development Councils for the purposes of accelerating development ; to specify the powers, duties and functions of such Councils ; to provide for the constitution and composition of executive Committees of Development Councils ; to specify the and powers, duties and functions of such Committees ; to specify the powers, duties and functions of the District Ministers in Relation to such Councils Committees ; and to provide for all Matters connected therewith or incidental thereto" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest. The Cabinet of Ministers has also certified that the Bill is intended to be passed by the special majority required by Article 84 of the Constitution.

The Attorney-General appeared before us and assisted us in the consideration of the Bill. He drew our attention to the provisions of Article 120 (c) which states that the only question this Court has to decide is whether the Bill requires approval by the People at a Referendum. We have examined the Bill, in particular Section 24 which reads as follows : "A Development Council shall have power to levy in the prescribed manner such taxes, rates or other charges as may be determined by the Council and approved by the Minister with the concurrence of the Minister in charge of the subject of Finance by Order published in the *Gazette*. Such Order shall come into force on the date of such publication, or on such later date as may be specified therein."

The power to levy taxes, rates or other charges contained here is wide and unfettered. It is left entirely to the Development Council to determine the nature of the tax to be imposed. The power thus given to the Council is unguided, uncanahsed

and vagrant for there is nothing in the Act to prevent the Council from imposing any tax it chooses — even an income tax. Such an omnibus conferment of legislative power cannot be supported as constitutional. The requirement for approval by the Minister in no way limits the nature of the tax that may be imposed nor does it constitute control by the legislature of the nature of such a tax.

It is undoubted that taxes may be imposed only under the authority of a legislative provision. The Attorney-General relied on Article 148 which reads thus :

“ 148. Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by Parliament or of any existing law.”

It appears to us that the latter part of this Article only permits the imposition of a tax, rate or other levy in some way specified in the law. The Attorney-General referred us to the powers granted to a Municipal Council to levy rates and taxes. He stated that the provisions of Part XII of the Municipal Council's Ordinance (Cap. 252) empowered a Council to levy taxes. An examination of this part shows clearly that the legislature has in the law specified the nature of the rates and taxes. Rates are to be levied on the annual value of houses and buildings (Section 230). Taxes are to be levied on vehicles and animals specified in the Fourth Schedule (Section 245). They include motor vehicles bicycles, carts, handcarts and on rickshaws, horses, ponies, mules and bullocks. In contrast the provisions of Section 24 of the Bill do not specify the kind of taxes, rates and levies and is unrestricted. The Attorney-General submitted that a limit is to be implied by the nature of the functions of the Development Council and that only taxes that bear a relation to the Development plan may be levied. This may well have been the intention of the authors of the Bill but they have failed to give effect to it and in our opinion it cannot be implied as contended by the Attorney-General.

A wide and sweeping power to impose taxes, rates and levies at will is an attribute of the Sovereign Legislature and the conferment of such power on any other body constitutes an abdication and alienation of legislative power.¹⁴ In the case of this Bill this is so only because the nature and kind of taxes, rates or levies that may properly be imposed by the Development Council have not been specified in any way. The conferment of an unrestricted power of imposing taxes, rates and levies effected by Section 24, and the vesting of it in another body, is such a fundamental departure from what may be done under our Constitution that it both contravenes Article 76 which reads as follows :—

“ 76 (1) Parliament shall not abdicate or in any manner alienate its legislative power, and shall not set up any authority with any legislative power.”¹⁵ and is inconsistent with Article 3 which reads as follows :—

" 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."

We, therefore, determine that, as it stands, the Bill can only become law if it is passed in the manner indicated in Article 83 and is approved by the People at a Referendum.

N. D. M. SAMARAKOON,
Chief Justice.

G. T. SAMARAWICKRAME,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

08.08.1980 (*Hansard Vol. 11, No. 6 ; col. 391 – 393*)

Decision of the Supreme Court conveyed to Parliament :

08.08.1980 (*Hansard Vol. 11, No. 6 ; col. 371 – 374*).

Second Reading :

08.08.1980 (*Hansard Vol. 11, No. 6 ; col. 396 – 434*); 21.08.1980 (*Hansard Vol. 11, No. 7 ; col. 478 – 581*).

Committee Stage and Third Reading :

21.08.1980 (*Hansard Vol. 11, No. 7 ; col. 581 – 624*).

Speaker's Certificate :

22.09.1980 :

Title : Development Councils Act, No.35 of 1980.

*Note.—*The impugned section 24 of the Bill was amended during the Committee Stage to read :

" 24. A Development Council shall, in relation to any development plan, have the power to levy by a by-law, such taxes, rates or other charges as may-be determined by the Council and approved by the Minister with the concurrence of the Minister in charge of the subject of Finance and such by-law shall, in accordance with section 68, have effect upon confirmation by Parliament and notification of such confirmation published in the *Gazette*."

THIRD AMENDMENT TO THE CONSTITUTION BILL

to amend the Constitution of the Democratic Socialist Republic of Sri Lanka

to succeed the Constitution of the Democratic Socialist Republic of Sri Lanka.

THIRD AMENDMENT TO THE CONSTITUTION BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.C. No. 5 of 1980 P/cf/185 (B)

Present : N. D. M. SAMARAKOON, *Chief Justice*, G. T. SAMARAWICKRAME, *Judge of the Supreme Court*, J. G. T. WEERRATNE, *Judge of the Supreme Court*, S. SHARVANANDA, *Judge of the Supreme Court*, and R. S. WANASUNDERA, *Judge of the Supreme Court*.

Counsel :

S. Nadesan, Q.C. with Miss Suriya Wickremasinghe, Mervyn Casiechetty and S. H. M. Reesa for *Petitioner*. Shiva Pasupathi, *Attorney-General with Suri Ratnapala, State Counsel on notice*.

Court Assembled for the Hearing : At 10.00 a.m. on 26th December, 1980.

A Bill titled "AN ACT TO AMEND THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

The Attorney-General and Mr. S. Nadesan, Q.C., who appeared for the petitioner, the Secretary, Civil Rights Movement, both assisted us in the consideration of this matter.

The preamble to the Bill states as follows :—

"Whereas the Constitution of the Democratic Socialist Republic of Sri Lanka provides in sub-paragraph (i) of paragraph (d) of Article 161 that where a vacancy in the membership of the first Parliament occurs otherwise than under the provisions of paragraph (b) of such Article, such vacancy shall be filled in the manner provided in sub-paragraph (iii) of paragraph (d) ;

"And whereas the Constitution does not provide that the seat of a Member under sub-paragraph (iii) of paragraph (d) of Article 161 to be a Member for the electoral district in respect of which such vacancy occurred shall become vacant if the election of a Member deemed to have been a Member of the first Parliament is declared void :

" And whereas, notwithstanding that the seat of the Member so declared under sub-paragraph (iii) of paragraph (d) of Article 161 has not become vacant, Parliament intends to make provision for the holding of an election and for the inclusion in the first Parliament of the person declared elected at such election : "

Clause 2 of the Bill which seeks to amend Article 161 of the Constitution provides in sub-paragraph (b) (ii) that its provisions shall be applicable " notwithstanding the provisions of paragraph (a) of this Article or any other provision of the Constitution or any law ", and that the President shall " notwithstanding that the Commissioner of Elections has under sub-paragraph (iii) of paragraph (d) of this Article declared any person to be a member for the same electoral district prior to the declaration of the election of a Member of the National State Assembly deemed to have been elected to the first Parliament as void " make order for a fresh election, and the person so elected shall be deemed to be a member of the first Parliament " without prejudice to the declaration by the Commissioner of Elections under sub-paragraph (iii) of paragraph (d) of this Article ". It is clear that this provision seeks to seat two members for one electorate — one nominated and the other reelected. The Attorney-General informed us that this Bill was particularly meant for the purpose of seating the person who will be elected to the electorate of Kalawana in the forthcoming by-election, in addition to the member already nominated. In view of the fact that the effect of this Bill is to seat two members for one and the same electorate, we are of opinion that it contravenes the provisions of Article 161 (a) of the Constitution, in that it increases the composition of the first Parliament and thereby affects the franchise referred to in Article 4 of the Constitution and also infringes the sovereignty of the people entrenched in Article 3 of the Constitution. In the result this Bill is inconsistent with the provisions of Article 3 of the Constitution and therefore can only become law if the number of votes cast in its favour amounts to not less than two-thirds of the whole number of Members of Parliament (including those not present) and thereafter approved by the People at a Referendum and endorsed by the President in accordance with Article 80.

N. D. M. SAMARAKOON,

Chief Justice.

G. T. SAMARAWICKRAME,

Judge of the Supreme Court.

S. SHARVANANDA,

Judge of the Supreme Court.

J. G. T. WEERARATNE,

Judge of the Supreme Court.

R. S. WANASUNDERA,

Judge of the Supreme Court.

First Reading :

06.01.1980 (*Hansard* Vol. 14, No. 1 ; col. 9)

Decision of the Supreme Court conveyed to Parliament :
(*Hansard* 06.01.1981 Vol. 14, No. 1 ; col. 1 - 6).

Second Reading :

06.01.1981 (*Hansard* Vol. 14, No. 1 ; col. 13 - 156).

Committee Stage and Third Reading :

06.01.1981 (*Hansard* Vol. 14, No. 1 ; col. 157, 158).

Certificate not endorsed by the Speaker.

LAND REFORM (AMENDMENT) BILL.

to amend the Land Reform Law, No. 1 of 1972.

LAND REFORM (AMENDMENT) BILL
In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 1 of 1981 P/Parl/22

Present : The Chief Justice, the Justices of the Supreme Court and the Justices of the High Court.

N. D. M. SAMARAKOON, Q.C., Chief Justice,

G. T. SAMARAWICKRAMA, Q.C., Judge of the Supreme Court, and

I. M. ISMAIL., Judge of the Supreme Court.

Counsel K. N. Choksy with Romesh de Silva instructed by Messrs. Julius & Creasy for Petitioner.

Shiva Pasupathi, Attorney-General with K. M. M. B. Kulatunga, Solicitor-General and Suri Ratnapala, State Counsel on notice.

Court Assembled for the Hearing : At 10.00 a.m. on 24th February, 1981.

A Bill titled "An Act to amend the Land Reform Law No. 1 of 1972" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

The Attorney-General and Mr. K. N. Choksy who appeared for the petitioner, Grand Central Company Limited, both assisted us in the consideration of this matter.

The Grand Central Company Limited is a Company incorporated under the law in force in Sri Lanka. Its shareholders are 12 in number, 5 of them, comprising the major shareholders, being Companies incorporated in the United Kingdom. Mr. Choksy contended that in view of the fact that these five Companies are foreign Companies, Grand Central Company is entitled to the benefits of a Treaty or Agreement entered into between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Democratic Socialist Republic of Sri Lanka dated 13th February, 1980, (Document marked X 7). He relied on Article 5 of the Agreement the relevant portion of which read as follows.

" Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as 'expropriation') in the territory of the other Contracting Party except for a public purpose related to the needs of that Party and against prompt, adequate and effective compensation. Such compensation shall amount to the value of the investment expropriated

immediately before the expropriation or impending expropriation became public knowledge and shall include interest at a normal commercial rate until the date of payment."

It is clear from this Article that when investments of nationals of either Party are expropriated such national shall be entitled to the market value of the property at the date of expropriation or immediately before expropriation. The proposed amendment to the Land Reform Law No. 1 of 1972 contained in this Bill seeks to give the amendment retrospective effect. In the result compensation paid on lands vested in terms of the amendment would not be the market value as at the date of expropriation but some other value which is provided for in the Land Reform Law No. 1 of 1972. Mr. Choksy therefore contended that the petitioner would receive an amount of compensation considerably less than what would be awarded in terms of Article 5 of the Agreement.

Mr. Choksy argued that the President of the Republic had entered into this Agreement 'X 7' in the exercise of executive powers conferred on him by Article 4 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, read with Article 33 (f) of the Constitution, and therefore the proposed amendment, by denying the award of compensation in terms of Article 5 of the Agreement, infringes the Sovereignty of the people referred to in Article 3 of the Constitution of 1978 read with Article 4 (1) (b). He therefore submitted that the Bill requires the approval of the People at a Referendum.

It is clear to us that the Agreement 'X 7' does not have the force of law and any rights conferred by such Agreement are not justiciable notwithstanding that the Agreement has been entered into by the President in the exercise of his executive powers. The provisions of this Agreement could have acquired force of law had it been approved by Parliament by Resolution in terms of Article 157 of the Constitution. As the Agreement does not even have legal effect its terms cannot detract from the legislative power of Parliament, which is part of the Sovereignty of the People. The proposed amendment does not affect in any way the executive power of the President to enter into a Treaty or Agreement. All it does is to depart from the provisions of one of the Clauses in the Agreement in respect of the transactions covered by the Bill. We are of the opinion that the Bill does not infringe the Sovereignty of the People. We therefore determine that the Bill incorporating the proposed amendment is not inconsistent with the Constitution or any provision thereof.

N. D. M. SAMARAKOON,
Chief Justice.

I. M. ISMAIL,
Judge of the Supreme Court.

G. T. SAMARAWICKRAMA,
Judge of the Supreme Court.

First Reading :
03.03.1981 (*Hansard* Vol. 14, No 8 ; col. 771)

Decision of the Supreme Court conveyed to Parliament :
03.03.1981 (*Hansard* Vol. 14, No. 8 ; col. 728-732).

Second Reading :
03.03.1981 (*Hansard* Vol. 14, No. 8 ; col. 778-846).

Committee Stage and Third Reading :
03.03.1981 (*Hansard* Vol. 14, No. 8 ; (col. 846-849).

Speaker's Certificate :
05.03.1981 .

Title : Land Reform (Amendment) Act, No. 14 of 1981.

DEVELOPMENT COUNCILS (AMENDMENT) BILL

to amend the Development Councils Act, No. 35 of 1980.

DEVELOPMENT COUNCILS (AMENDMENT) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.
S.D. No. 2 of 1981 P/Parl/23

Present :

N. D. M. SAMARAKOON, Q.C., *Chief Justice*,
I. M. ISMAIL., *Judge of the Supreme Court*, and
R. S. WANASUNDERA, *Judge of the Supreme Court*.

Counsel :

K. M. M. B. Kulatunga, *Additional Solicitor-General* with S. Ratnapala, *State Counsel* on notice.

Court Assembled for the Hearing : At 10.00 a.m. on 25th June, 1981.

A Bill titled "An Act to amend the Development Councils Act No. 35 of 1980" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

The Additional Solicitor-General appeared before us and assisted us in the consideration of the Bill. On an examination of the Bill we find that the amendments sought to be made are not inconsistent with any of the provisions of the Constitution.

N. D. M. SAMARAKOON,
Chief Justice.

I. M. ISMAIL,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

First Reading :

07.07.1981 (*Hansard* Vol. 15, No. 5 ; col. 527)

Decision of the Supreme Court conveyed to Parliament :

07.07.1981 (*Hansard* Vol. 15, No. 5 : col. 495-498).

Second Reading :

07.07.1981 (Hansard Vol. 15, No. 5 : col. 534-616).

Committee Stage and Third Reading:

07.07.1981 (Hansard Vol. 15, No. 5 : col. 616-620).

Speaker's Certificate:

Speaker's Ctr
07.07.1981.

Title : Development Councils (Amendment) Act, No. 45 of 1981.

PARLIAMENTARY PENSIONS (AMENDMENT) BILL

to amend the Parliamentary Pensions Law, No. 1 of 1977.

PARLIAMENTARY PENSIONS (AMENDMENT) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 3 of 1981 P/Parl/21

Present :

D. WIMALARATNE, *Judge of the Supreme Court*,
B. S. C. RATWATTE, *Judge of the Supreme Court*, and
R. VICTOR PERERA, *Judge of the Supreme Court*.

Counsel :

K. M. M. B. Kulatunga, *Additional Solicitor-General* with S. Ratnapala, *State Counsel*, on notice.

Court Assembled for the Hearing : At 10.00 a.m. on 17th December, 1981.

A Bill titled "An Act to Amend the Parliamentry Pensions Law No. 1 of 1977" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

The Additional Solicitor-General appeared before us and assisted us in the consideration of the Bill. On an examination of the Bill we find that the amendments sought to be made are not inconsistent with any of the provisions of the Constitution.

D. WIMALARATNE,
Judge of the Supreme Court.

B. S. C. RATWATTE,
Judge of the Supreme Court.

R. VICTOR PERERA,
Judge of the Supreme Court.

First Reading :

22.12.1981 (*Hansard* Vol. 18, No. 17 ; col. 4726)

Decision of the Supreme Court conveyed to Parliament :

22.12.1981 (*Hansard* Vol. 18, No. 17 ; col. 4711, 4712).

Second Reading :

22.12.1981 (*Hansard* Vol. 18, No. 17 ; col. 4727, 4728).

Committee Stage and Third Reading :

22.12.1981 (*Hansard* Vol. 18, No. 17 ; (col 4728, 4729).

Speaker's Certificate :

04.01.1982.

Title : Parliamentary Pensions (Amendment) Act, No.01 of 1982.

THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT, 1979

(An Act to amend the Prevention of Terrorism (Temporary Provisions) Act, 1979)

WHEREAS it is expedient to amend the Prevention of Terrorism (Temporary Provisions) Act, 1979, for the better protection of the State and the public from terrorism;

IT IS ENACTED AS FOLLOWS:—

1. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

2. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

3. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS)

(AMENDMENT) BILL

to amend the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979

WHEREAS it is expedient to amend the Prevention of Terrorism (Temporary Provisions) Act, 1979, for the better protection of the State and the public from terrorism;

IT IS ENACTED AS FOLLOWS:—

1. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

2. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

3. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

4. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

5. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

6. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

7. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

8. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

9. The Prevention of Terrorism (Temporary Provisions) Act, 1979, is hereby amended by inserting the following section after section 10:—

**PREVENTION OF TERRORISM (TEMPORARY PROVISIONS)
(AMENDMENT) BILL**

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 1 of 1982 P/Parl/13

Present :

N. D. M. SAMARAKOON, Q.C., *Chief Justice*,

D. WIMALARATNE, *Judge of the Supreme Court*, and

J. A. R. VICTOR PERERA, *Judge of the Supreme Court*.

Counsel :

V. S. A. Pullenayagam with S. C. Chandrasan, S. Perimpanayagam, Miss. Mangalam Kanapathipillai and T. Packiyanthan for Mr. Viswanathan.

T. Marapana, *Deputy Solicitor-General* with Suri Ratnapala, *State Counsel* for Attorney-General.

Court Assembled for the Hearing : At 10.00 a.m. on 5th March 1982.

A Bill titled "An Act to amend the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

The Deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill.

Section 15 A (1) of the Bill empowers the Minister to make order that a person be kept in the custody of any authority and thereby permits him to substitute his order of custody in place of the order of remand made by the High Court. In the result the person in custody is removed from judicial custody and placed under Ministerial custody. This constitutes an interference with a judicial order and is inconsistent with the provisions of Article 4 C read with Article 3 of the Constitution, and must therefore be passed by a 2/3rd majority and approved by the People at a Referendum as provided in Article 83 of the Constitution.

There could be no doubt that the Minister is the best judge of what is necessary or expedient in the interest of National Security or Public Order in any given circumstance. We suggest, therefore, that the Bill be amended to make the Ministerial Order an Administrative one subject to such directions as may be given by the High Court to ensure a fair trial of the person/persons in custody.

N. D. M. SAMARAKOON,
Chief Justice.

D. WIMALARATNE,
Judge of the Supreme Court.

J. A. R. VICTOR PERERA,
Judge of the Supreme Court.

**Clauses of the PREVENTION OF TERRORISM (TEMPORARY PROVISIONS)
(AMENDMENT) BILL considered in the Decision of the Supreme Court**

Insertion of new Section 15 A in the principal enactment.

*"Place of
detention
until
conclusion
of trial*

15 A. (1) Where any person is on remand under the provisions of sub section (2) of section 15, or section 19 (a), notwithstanding any other provision of this Act or any other law, the Minister may, if he is of opinion that it is necessary or expedient so to do, in the interests of national security or public order, make Order that such person be kept in the custody of any authority, in such place and subject to such conditions as may be determined by him having regard to such interests."

First Reading :

11.03.1982 (*Hansard* Vol. 19, No. 12 ; col. 1855)

Decision of the Supreme Court conveyed to Parliament :

11.03.1982 (*Hansard* Vol. 19, No. 12 ; col. 1823 – 1826).

Second Reading :

11.03.1982 (*Hansard* Vol. 19, No. 12 ; col. 1860 – 1947).

Committee Stage and Third Reading :

11.03.1982 (*Hansard* Vol. 19, No. 12 ; col. 1947 – 1950).

Speaker's Certificate :

15.03.1982

Title : Prevention of Terrorism (Temporary Provisions) (Amendment) Act, No. 10 of 1982

Note.—The impugned clause 3 (insertion of new Section 15 A in the Principal enactment) was amended during the Committee Stage consideration of the Bill and the section, as amended, now reads as follows :

Section 15 A (1) : Where any person is on remand under the provisions of subsection (2) of section 15, or section 19 (a), notwithstanding any other provision of this Act or any other law, the Secretary to the Ministry of the Minister in charge of the subject of Defence may, if he is of opinion that it is necessary or expedient so to do, in the interests of national security or public order, make Order, subject to such directions as may be given by the High Court to ensure a fair trial of such person, that such person be kept in the custody of any authority, in such place and subject to such conditions as may be determined by him having regard to such interests.

(2) Any Order made under subsection (1) shall be communicated to the High Court and to the Commissioner of Prisons and it shall be the duty of such Commissioner, to deliver the custody of such person to the authority specified in such Order and the provisions of the Prisons Ordinance shall cease to apply in relation to the custody of such person.

OFFENCES AGAINST AIRCRAFT BILL

to give effect to certain Conventions relating to the safety of aircraft to which Sri Lanka has become a party, namely—

- (a) the Convention on offences and certain other acts committed on board aircraft, signed at Tokyo on September 14, 1963 ;
- (b) the Convention for the suppression of unlawful seizure of aircraft, signed at the Hague on December 16, 1970 ;
- (c) the Convention for the suppression of unlawful acts against the safety of Civil Aviation signed at Montreal on September 23, 1971

and to provide for matters connected therewith.

OFFENCES AGAINST AIRCRAFT ACT

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 2 of 1982 P/Parl/22

Present :

N. D. M. SAMARAKOON, Q.C., *Chief Justice*,
J. G. T. WEERARATNE, *Judge of the Supreme Court*,
S. SHARVANANDA, *Judge of the Supreme Court*,
R. S. WANASUNDERA, *Judge of the Supreme Court*, and
D. WIMALARATNE, *Judge of the Supreme Court*.

Counsel :

Shiva Pasupati, *Senior Attorney, Attorney-General*, with K. M. M. B. Kulatunga, *Additional Solicitor-General*, and Suri Ratnapala, *State Counsel*, on notice.

D. S. Wijesinghe with Sidat Sri Nandalochana and Gomin Dayasiri for a Party who is interested, *viz.*, Sepala Ekanayake.

Court Assembled for the Hearing : At 10.00 a.m. on 12th July, 1982.

A Bill titled "Offences Against Aircraft Act" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

The Attorney-General and D. S. Wijesinghe, Attorney-at-Law appeared before us and assisted us in the consideration of the Bill.

The Bill seeks to make provision for an Act to give effect to certain Conventions relating to the safety of aircraft to which Sri Lanka has become a party. These Conventions are —

- (a) The Convention signed at Tokyo on September 14, 1963 ;
- (b) The Convention signed at the Hague on December 16, 1970 ; and
- (c) The Convention signed on September 23, 1971, at Montreal.

The offences referred to in the Bill are all criminal according to the general Principles of law recognized by the community of nations.

Part II of the Bill is sought to be made retrospective from July 3, 1978. Such retrospective operation is permitted by the provisions of Article 13 of the Constitution.

We are, therefore, of opinion that the provisions of the Bill are not inconsistent with the Constitution.

N. D. M. SAMARAKOON,
Chief Justice.

J. G. T. WEERARATNE,
Judge of the Supreme Court.

R. S. WANASUNDARA,
Judge of the Supreme Court.

S. SHARVANANDA,
Judge of the Supreme Court.

D. WIMALARATNE,
Judge of the Supreme Court.

First Reading :
21.07.1982 (*Hansard Vol. 20, No. 14 ; col. 1099*).

Decision of the Supreme Court conveyed to Parliament :
21.07.1982 (*Hansard Vol. 20, No. 14 ; col. 1085, 1086*).

Second Reading :
21.07.1982 (*Hansard Vol. 20, No. 14 ; col. 1107 - 1166*).

Committee Stage and Third Reading :
21.07.1982 (*Hansard Vol. 20, No. 14 ; col. 1167 - 1177*).

Speaker's Certificate :
26.07.1982.

Title : Offences Against Aircraft Act, No. 24 of 1982.

THIRD AMENDMENT TO THE CONSTITUTION BILL

to amend the Constitution of the Democratic Socialist Republic of Sri Lanka.

THIRD AMENDMENT TO THE CONSTITUTION BILL

In the matter of the ordinary exercise of the jurisdiction of the Supreme Court under Article 120 read with Article 121 of the Constitution of the Democratic Socialist Republic of Sri Lanka in respect of the Bill entitled the "The Third Amendment to the Constitution."

S.C. 2/82 — (Filed on 5.8.82).

Prins Gunasekera with R. M. Suresh Chandra, K. Tirangama and N. Punchihewa for M. Dahanayake of Ragama, the *Petitioner*,

S.C. 3/82 — (Filed on 9.8.82).

S. Nadesan, Q.C., with Miss. Suriya Wickremasinghe and S. H. N. Reza for Desmond Fernando, Secretary, Civil Rights Movement of Sri Lanka, *Petitioner*.

S.C. 4/82 — (Filed on 9.8.82).

L. O. H. Wanigasekera — *Petitioner* in person.

S.C. 5/82 — (Filed on 9.8.82).

V. S. A. Pullenayagam, with G. Kumaralingam, S. C. Chandrahasan and R. Srinivasan for C. Vivekananda — *Petitioner*.

Siva Pasupathy, *Attorney-General*, with Sarath Silva, *Deputy Solicitor-General* and S. Ratnapala, *State Counsel*, appeared for the State.

Present :

S. SHARVANANDA, *Judge of the Supreme Court*,
B. S. C. RATWATTE, *Judge of the Supreme Court*, and
J. F. A. SOZA, *Judge of the Supreme Court*.

Heard on : 12th, 13th, 16th and 17th August 1982.

Decided on : 23rd August 1982.

A Bill entitled "An Act to amend the Constitution of the Democratic Socialist Republic of Sri Lanka" was published in Part II of the *Gazette* of July 16, 1982 and was tabled in Parliament on 3rd August 1982. The constitutional jurisdiction vested in this Court by Article 120 of the Constitution to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution has been invoked by the petitioners in the above applications.

Clause 2 of the Bill states, that Article 31 of the Constitution of the Democratic Socialist Republic of Sri Lanka is hereby amended, *inter alia*, as follows :

"(1) By the addition immediately after paragraph (3) of the Article, of the following paragraph :

"3A) (a) (1) the President may, at any time after the expiration of four years from the commencement of his first term of office, by Proclamation, declare his intention of appealing to the people for a mandate to hold office, by election, for a further term".

The Bill contains further clauses consequential and incidental to the above amendment.

The Bill also seeks to repeal paragraph (4) of Article 31 and substitute a new paragraph therefor.

Article 38 of the Constitution is also sought to be amended in Sub-paragraph (d) of paragraph (1) of that Article by substituting for the words "one month" the words "two weeks."

Article 160 of the constitution is also sought to be amended by substituting for the words "shall hold office" the words and figures "shall subject to the provisions of Article 31 (3A) hold office."

We took up all the four petitions together for hearing. The Attorney-General appeared and assisted us in the consideration of the above petitions.

The petitioner in petition No. 4/82 contended that the proposed Bill infringes on Article 1 of the Constitution. He also took exception to the use of the word "Mandate" in clause 2(1) of the Bill. We regret that there is no merit in the contention of this petitioner.

We will now proceed with the contentions of the other three petitioners who are hereinafter referred to as the "petitioners."

The petitioners contended that the provisions of the Bill are inconsistent with Article 3 of the Constitution and that if they are to become law have to be passed by a two-thirds majority in Parliament and thereafter be approved by the People at a Referendum in terms of Article 83 of the Constitution.

The Constitution makes provision for the amendment or repeal of the provisions of the Constitution. By virtue of Article 82 and 83 of the Constitution the power to amend is wide and extensive and reaches all provisions of the Constitution.

Article 82 (5) provides 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."

However Article 83 of the Constitution provides :

Notwithstanding anything to the contrary in the provisions of Article —

(a) a Bill for the amendment or for the repeal and replacements of or which is inconsistent with any of the provisions of Articles 1, 2, 3, 6, 5, 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."

The Articles sought to be amended by the Bill are Articles 31, 38 and 160 of the Constitution. Though these Articles, *ex facie*, are not referred to in Article 83 of the Constitution, it was the contention of the petitioners that the provisions of the Bill on an analysis, are inconsistent with the Article 3 of the Constitution, as they involve alienation of the Sovereignty of the People.

Article 3 is an entrenched Article and the whole structure of the Constitution is founded on that Article.

Article 3 provides "In the Republic of Sri Lanka Sovereignty is in the People and is inalienable. Sovereignty includes the powers of Government, fundamental rights and franchise."

Article 4 is complementary to Article 3 and both Articles have to be read together. Article 4 spells out the manner in which the Sovereignty of the People referred to in Article 3 is to be exercised. It provides as follows :

"The Sovereignty of the People shall be exercised and enjoyed in the following manner :

(a) the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People and by the People at a Referendum ;

(b) the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People ;

(c) the judicial power of the People shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament, and of its Members, wherein the judicial power of the People may be exercised directly by Parliament according to law ;

(d) the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided ; and

(e) the franchise shall be exercisable at the election of the President of the Republic and of the Members of Parliament, and at every Referendum by every citizen who has attained the age of eighteen years, and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors."

The crucial question is, "Does the proposed amendment impinge on the basic attribute of inalienability of the People's Sovereignty, as postulated by Articles 3 and 4 ?" The thrust of the argument of the petitioners is that the amendment by seeking to abridge the tenure of office of the President impinges on the executive power of the People and on the franchise of the People as set out in Articles 4 (d) and 4 (e), respectively, read with Article 3.

It was submitted that the People in the exercise of their Sovereign power have by Article 30 (2) fixed a definite period of office for the President namely six years, in order that their objective of stability may be achieved and that they had, in no uncertain terms, prescribed by Article 31 (3) —

"that the poll for the election of the President shall be taken not less than 1 month and not more than 2 months after the expiration of the term of office of the President in office."

According to the petitioners, the People have unequivocally taken the view that there should on no account be a Presidential election more often than once in six years. They buttressed their submission by reference to Article 38 of the Constitution which provides for situations when the office of the President becomes vacant prior to the expiration of the period of six years fixed by Article 30 (2). For such eventuality Article 40 provides that Parliament elect as President one of its Members to function in that office for the unexpired period of the term of office of the President vacating office. It was contended that by seeking to reduce the period of tenure of office of the President the sovereign right of the People to determine the tenure of office of their executive-delegate is jeopardized.

The learned Attorney-General countered the argument of the petitioners by his submission that the proposed amendment, far from alienating the sovereignty of the People, enhances the franchise which is one of the components of that sovereignty, by providing for more opportunities for the People to exercise their franchise. He further pointed out that the amendment does not reduce the period of office of the President from six years to four years and render the office vacant, at the end of the proposed period of four years, but that it merely enables the President to seek a mandate before his term of office ends.

It was urged that the thinking underlying the provisions of the Constitution regarding the Executive is that the Executive must be assured of a stable and fixed term of office and that the term of office should not be abridged by the legislature ; and further that the office of elected President with an irreducible term of office for six years was the measure contemplated for the exercise of the executive power of the People and that if this six-year period is reduced to four years with the option being given to the incumbent President to determine for how much of the balance period of two years he should function, it will have the effect of altering an essential incident of the office determined by the People in the exercise of their executive

power. It was apprehended that if this Bill was not required to conform to Article 83 it would be competent for Parliament by the exercise of its legislative power to alter the term of office of the President and to invest the President with the power to alter his term of office contrary to the provisions of Article 38 (1) before the expiration of the six years prescribed by Article 30 (2). It was said that Parliament by seeking to confer on the President through the proposed amendment the power to terminate his office before the expiration of six years in circumstances otherwise than those referred to in Article 38 (1) was alienating the Sovereignty of the People. According to the petitioners the proposed amendments have an impact on the Sovereignty of the People and are inconsistent with Article 4.

Article 4 (a) provides that legislative power of the People shall be exercised by Parliament consisting of the elected representatives of the People and by the People at a Referendum.

Article 75 provides *inter alia* that —

“ Parliament shall have power to make laws including laws having retrospective effect and repealing or amending any provision of the Constitution, or adding any provision to the Constitution.”

Article 75 has to be read subject to Article 82 (5) and 83. Article 83 necessitates approval by the People at a Referendum for a Bill which is inconsistent with any of the provisions of Articles 1, 2, 3, 6 to 10 or of Article 83 or with the provisions of paragraph 30 (2) and paragraph 62 (2) which would extend the term of office of the President or the duration of the Parliament, as the case may be to over six years. It will thus be seen that subject to these restrictions Parliament has plenary powers to make any law to amend any provision of the Constitution.

It was relevantly pointed out by the Senior Counsel for the Civil Rights Movement that the Constitution of the Democratic Socialist Republic of Sri Lanka is a product of the Mandate given by the People ; that the whole edifice of the Constitution is founded on the Sovereignty of the People ; and that any amendment to the Constitution which affects the sovereign power of the People that has been delegated by them to the Parliament or to the President, should have their approval. He stressed the sanctity of the written Constitution and referred us to Article 89 of the French Constitution of 1958, which postulates a Referendum for any amendment of the Constitution. It is to be borne in mind that the evolution of the concept of Executive Presidency has been influenced by the French Constitution.

Counsel for the petitioner in application No. 5/82 further submitted that under the Constitution the electoral process relating to the election of the President had been deliberately programmed and as the proposed amendment would enable the President to depart from the electoral process and dictate to the People when there should be an election of President it was an interference with the franchise of the People.

We have to test the validity of the petitioners' objection that the provisions of the Bill erode the Sovereignty of the People by reference to the various facets of that Sovereignty. Article 3 states that the sovereignty of the People includes powers of

Government, fundamental rights and the franchise. Powers of Government, may be categorised as Legislative, Executive and Judicial.

Article 4 mandates that —

“ The Sovereignty of the People shall be exercised and enjoyed in the following manner :

- (a) the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People, and by the People at a Referendum ;
- (b) the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People ;
- (c) the judicial power of the People shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized, by the constitution or created and established by Law

It was not suggested that the Bill encroaches on the judicial power of the People. The main thrust of the petitioners' objection is that it affects the executive power of the People, in that it seeks to alter the tenure of office of the executive-delegate of the People.

By reducing the period of office from six years to four years Parliament is not cutting down the period of office of the President. What it seeks to do is to empower the President to appeal to the people for a mandate to hold office prior to the expiration of his term of office, prescribed by Article 30 (2), after the expiration of four years from the commencement of his first term of office. The President is thereby enabled to limit, of his own choice, his term of office. There is no compulsion on him to vacate the office at the end of four years. It is thus left to the discretion of the President who has been elected by the People to voluntarily cut short his period of office and seek a fresh mandate from the People.

Article 4 (b) envisages the executive power of the People being vested in and exercised only by a President who has been *elected by the People*. The foundation and justification for the grant of the executive power is election by the People. The election symbolizes the Sovereignty of the People. It is fundamental to the exercise of the Sovereignty of the People that the repository of the executive power should be a person elected by the People. In this respect Article 40 (1) which provides for Parliament electing as President one of its members to function as President, on the elected President vacating office prior to the expiration of his term of office is a departure from Article 4 (b) and impinges on the Sovereignty of the People. A person elected by Parliament and not by the People has been enabled to exercise the executive power of the People. Since Article 40 (1) has been incorporated in the Constitution its validity cannot be questioned, but it cannot furnish an argument against any new provision which is consonant with Article 4 (b).

The proposed amendment provides for a situation when the elected President may want to vacate his office and seek re-election prior to the expiration of his term of office — a contingency not provided for in the Constitution. The amendment seeks to supply the *casus omissus* in the Constitution. In contradistinction to the President elected by Parliament in terms of Article 40 (1), in the instance identified by the

amendment, the President who will be succeeding to the office of the President who vacates his office prior to the expiration of the full term of office will be a President elected by the People and thereby delegated by them to exercise their executive power in terms of Article 4 (b). The amendment by that means seeks to correct the deviation or anomaly inherent in Article 40 and reaffirm the Sovereignty of the People. The principle that the executive power of the people is exercisable only by an elected President, even during an interregnum caused by the premature vacation of office by a President, has been salvaged. The Bill thus far from alienating the Sovereignty of the People seeks to maintain the Sovereignty of the People by making election by the People a pre-condition for the holding of that office.

Election by the People connotes acknowledgement of the Sovereignty of the People. It is the only ground of democratic legitimacy.

It is in harmony with this democratic principle that the executive power of the People should be exercised by a President elected by the People that the French Constitution which asserts by Article 3 that —

“ National Sovereignty belongs to the People which shall exercise this Sovereignty through their representatives and by means of Referendum ”

provides by Article 7, that in the event of the Presidency of the Republic becoming vacant for any cause whatsoever there should be a new President elected by the People.

The Constitution of India similarly provides that there should be an election by the People to fill a vacancy in the office of President of India.

It was submitted by Counsel in petition No. 3/82 that the Bill confers on the incumbent President who offers himself for re-election an electoral advantage and therefore infringes the fundamental right of equality which is a component of the People's Sovereignty. He stated that the President is given the power to choose the date of election at any time after four years, and that this power places him at an advantage over other prospective candidates. This submission is not well founded. It is an accepted convention or feature of any democratic Government that the Prime Minister as an incident of his office is entitled to choose the date of Parliamentary election. It is not a valid complaint that he has an advantage over the others. The People are the best judges of any abuse of this power. 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 not sufficient ground to hold that a law offends the fundamental right of equality.

It was also vehemently contended by all the petitioners that the Bill affects the franchise and thereby alienates the Sovereignty of the People.

Article 4 (e) provides that the franchise shall be exercisable at the election of the President and also at the election of Members of Parliament and at every Referendum by every citizen who has attained the age of eighteen years, who being qualified to be an elector, has his name entered in the register of electors.

Article 88, appearing in the Chapter on " Franchise and Elections " sets out the content of this franchise. It states —

" Every person shall, unless disqualified as hereinafter provided, be qualified to be an elector at the election of the President and of the Members of Parliament or to vote at any Referendum : "

" Provided that no such person shall be entitled to vote unless his name is entered in the appropriate register of electors."

Article 89 enumerates the disqualifications to be an elector.

The Bill does not in any way add to, diminish, or vary the franchise contemplated by Article 88. The franchise which symbolizes the Sovereignty of the People is not affected in any way by the provisions of the Bill. Only those people who satisfy the requirements of Article 88 are entitled to vote at any election of the President held under the provisions of the Bill.

In our view the period of office of the President prescribed by Article 30 (2) or of Parliament under Article 62 (2) does enter the concept of franchise.

Franchise signifies the right to vote at the election of the President and Members of Parliament and at a Referendum whenever such is held (vide Article 4 (e) and 88) The term of office of the President or of Members of Parliament is not involved in the concept of franchise. In our view Article 30 (2) and Article 62 (2) which prescribes such term of office can, if not for the special provision of Article 83 (b), ordinarily be amended by Parliament in accordance with Article 82 (5). It was therefore necessary to make special provision by Article 83 (b) that a Referendum was obligatory to carry through any amendment to the provisions of Article 30 (2) and of Article 62 (2) extending the term of office of the President or the duration of Parliament to over six years. Far from Article 83 (b) being superfluous as contended by the petitioners, under the scheme of the Constitution it was necessary to incorporate such a provision in order to ensure that Parliament could not legislate such extension all by itself. It is to be noted that Article 83 (b) prohibits extension of the term of the President or the duration of Parliament beyond six years, but not the abridging of that period. Hence Article 83 (b) would not apply to the present amendment.

In our view by restricting the irreducible period of the President's office from six to four years, the President would be enabled to discover the will of the People and the People will be given an opportunity to express their approval or disapproval of his stewardship or his programme of action, prior to the expiration of the full period of six years. The grant of this power involves in no way an infringement of the Sovereignty of the People as contemplated by Article (3) of the Constitution. In our view the arguments of the petitioners are not tenable and hence we reject them.

Under Article 120 the only question assigned to us for determination in the case of a Bill described as being for the amendment of any provision of the Constitution is whether the Bill requires approval by the People at a Referendum by virtue of the provisions of Article 83.

For the reasons set out above we determine in terms of Article 120 Proviso (a) that the Bill in question does not require the approval of the People at a Referendum.

S. SHARVANANDA,
Judge of the Supreme Court.

B. S. C. RATWATTE,
Judge of the Supreme Court.

J. F. A. SOZA,
Judge of the Supreme Court.

Date: 23rd August 1982

First Reading :

03.08.1982 (*Hansard* Vol. 21, No. 1 ; col. 41)

Decision of the Supreme Court conveyed to Parliament :

26.08.1982 (*Hansard* Vol. 21, No. 6 ; col. 527 – 536).

Second Reading :

26.08.1982 (*Hansard* Vol. 21, No. 6 ; col. 538 – 650).

Committee Stage and Third Reading :

26.08.1982 (*Hansard* Vol. 21, No. 6 ; col. 649 – 652).

Speaker's Certificate :

27.08.1982 :

Title : Third Amendment to the Constitution.

LOANS (SPECIAL PROVISIONS) BILL

to authorize the raising of loans in or outside Sri Lanka for the service of the Government during any period in respect of which no Appropriation Act has been passed authorizing expenditure during that period and to provide for the payment from such loans of moneys required during that period for expenditure on such service and to provide for matters connected therewith or incidental thereto.

LOANS (SPECIAL PROVISIONS) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. 2/82

Present :

S. SHARVANANDA, *Judge of the Supreme Court*, in whose name this Bill was introduced into the Court; J. A. R. VICTOR PERERA, *Judge of the Supreme Court*, learned Counsel for the Attorney-General; J. F. A. SOZA, *Judge of the Supreme Court*, learned Counsel for the respondents; and K. M. M. B. KULATUNGA, *Solicitor-General* with S. RATNAPALA, *State Counsel*, for the Attorney-General.

Court Assembled for the Hearing :— At 10.00 a.m. on 27th October 1982.

A Bill titled “The Loans (Special Provisions) Act” was referred to this Court by His Excellency the President, in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka, for the special determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contained a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest. The learned Solicitor-General appeared before us and assisted us in the consideration of this Bill.

Paragraph 2 of the Bill provides for authority for raising loans for the service of the Government during any period commencing on the first day of any financial year for which no Appropriation Act has been passed by Parliament and ending on the date of commencement of the Appropriation Act. This paragraph stipulates that the aggregate proceeds of the loans raised in any period of three months in the relevant period shall not exceed one fourth of the total amount of the loans authorised to be raised for the preceding financial year of the Government by the Appropriation Act for that financial year.

We have considered these provisions and we determine that the bill or any of its provisions are not inconsistent with any provision of the Constitution.

S. SHARVANANDA,
Judge of the Supreme Court.

J. A. R. VICTOR PERERA,
Judge of the Supreme Court.

J. F. A. SOZA,
Judge of the Supreme Court.

**Clauses of the LOANS (SPECIAL PROVISIONS) BILL considered
in the Decision of the Supreme Court**

Paragraph 2 :

Without prejudice to any other law authorizing the raising of loans for and on behalf of the Government, any expenditure of the Government, for which provision has been made by, or under any law or which has been otherwise lawfully authorized for any period commencing on the first day of any financial year of the Government in respect of which no Appropriation Act has been passed by Parliament and ending on the date of commencement of the Appropriation Act for that financial year (in this Act referred to as the "relevant period"), may be met from the proceeds of loans which are hereby authorized to be raised, whether in or outside Sri Lanka, for or on behalf of the Government, so however, that the aggregate proceeds of the loans raised in any period of three months in the relevant period shall not exceed one-fourth of the total amount of the loans authorized to be raised for the preceding financial year of the Government by the Appropriation Act for that financial year.

First Reading :

28.10.1982 (*Hansard* Vol. 21, No. 11 ; col. 1034)

Decision of the Supreme Court conveyed to Parliament : 28.10.1982 (*Hansard* Vol. 21, No. 11 ; col. 1031, 1032).

Second Reading :

02.11.1982 (*Hansard* Vol. 21, No. 12 ; col. 1324).

Committee Stage and Third Reading :

02.11.1982 (*Hansard* Vol. 21, No. 12; col 1324, 1325).

Speaker's Certificate :

03.11.1982 ;

Title : Loans (Special Provisions) Act, No. 40 of 1982.

FOURTH AMENDMENT TO THE CONSTITUTION BILL

to amend the Constitution of the Democratic Socialist Republic of Sri Lanka.

FOURTH AMENDMENT TO THE CONSTITUTION BILL
Decision of the Supreme Court of the Democratic Socialist Republic of Sri Lanka
In the matter of a reference under Article 122(1)(b) of the Constitution.

Present: very steady and often improvements in form and build due to continuous growth

N. D. M. SAMARAKOON, Q.C., *Chief Justice*

J. G. T. WEERARATNE *Judge of the Supreme Court,*

S. SHARVANANDA, *Judge of the Supreme Court.*

R. S. WANASUNDERA, *Judge of the Supreme Court,*

D. WIMALARATNE, *Judge of the Supreme Court.*

B. S. C. RATWATTE, Judge of the Supreme Court, and

J. A. R. VICTOR PERERA, Judge of the Supreme Court.

Counselor's Role in

Siva Pasupathy, Attorney-General with K. M. M. B. Kulatunga, Solicitor-General and S. Ratnapala, State Counsel for Petitioner in S.D. No. 3 of 1982 and for Respondent in S.C. No. 104/82 and S.C. No. 107/82.

Felix R. D. Bandaranaike for Petitioner in S.C. No. 104/82.

Tables of the Standard Curve.

S. Kanekeratnam for *Petitioner* in S.C. No. 107/82.

Two documents will be ruled.
Court Assembled for the Hearing : At 10.00 a.m. on 3rd November, 1982.

A Bill titled "An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

The Attorney-General appeared before us and assisted in the consideration of the Bill.

Mr. Felix R. D. Bandaranaike appeared in person in support of his objection.

Mr. S. Kanekeratnam, Attorney-at-law appeared for the objector C. V. Vivekananthan.

The majority of this Court is of the view that the period of the first Parliament may be extended as proposed by the draft Bill which is described in its long title as being for the amendment of the Constitution and is intended to be passed with the special majority required by Article 83 and submitted to the People by Referendum. In view of this decision this Court in terms of Article 120 Proviso (b) states that it does not have and exercise any further jurisdiction in respect of the said Bill.

Three members of this Court are not in agreement with the above view.

N. D. M. SAMARAKOON,
Chief Justice.

J. G. T. WEERARATNE,
Judge of the Supreme Court.

R. S. WANASUNDERA,
Judge of the Supreme Court.

B. S. C. RATWATTE,
Judge of the Supreme Court.

S. SHARVANANDA,
Judge of the Supreme Court.

D. WIMALARATNE,
Judge of the Supreme Court.

J. A. R. VICTOR PERERA,

Judge of the Supreme Court.

First Reading :
04.11.1982 (*Hansard* Vol. 21, No. 14 ; col. 1480)

Decision of the Supreme Court conveyed to Parliament :
04.11.1982 (*Hansard* Vol. 21, No. 14 ; col. 1459, 1460).

Second Reading :

04.11.1982 (*Hansard* Vol. 21, No. 14 ; col. 1482 - 1674).

Committee Stage and Third Reading :

04.11.1982 (*Hansard* Vol. 21, No. 14 ; col. 1673 - 1676).

Speaker's Certificate :

05.11.1982 ;

Title ; Fourth Amendment to the Constitution.

A copy of the Criminal Procedure (Special Provisions) Law, No. 15 of 1978, was referred to us by His Excellency the President in terms of Article 162(1)(g) of the Constitution of the
CRIMINAL PROCEDURE (SPECIAL PROVISIONS) (AMENDMENT) BILL

CRIMINAL PROCEDURE (SPECIAL PROVISIONS) (AMENDMENT) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution.

Government of the Democratic Socialist Republic of Sri Lanka

S.D. No. 4 of 1982 P/Parl. (1) was on 20th October 1982

Present : The Hon. Minister of Justice and Minister of Constitutional Affairs and the Minister of

R. S. WANASUNDERA, Judge of the Supreme Court,

D. WIMALARATNE, Judge of the Supreme Court, and

B. S. C. RATWATTE, Judge of the Supreme Court.

Counsel:

Sarath Silva, Deputy Solicitor-General, with S. Ratnapala, Acting Senior State Counsel for Attorney-General (on notice).

Court Assembled for the Hearing : At 10.00 a.m. on 7th December, 1982.

A Bill titled "An Act to amend the Criminal Procedure (Special Provisions) Law, No. 15 of 1978" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka, for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

Mr. Sarath Silva, Deputy Solicitor-General, appeared before us and assisted in the consideration of the Bill.

The Bill contains two clauses, apart from the first clause giving the short title. Clause 2 is to extend the period of operation of the principal enactment for a further period of two years. Clause 3 adds to the First Schedule of the principal enactment certain offences under the Forests Ordinance, and Poison, Opium and Dangerous Drugs Ordinance.

The Principal enactment No. 15 of 1978 had come for consideration before the Constitutional Court that existed under the 1972 Republican Constitution. That Constitutional Court had upheld the constitutionality of the principal enactment. The Court had considered whether or not the enactment transgressed the equality provision of the Constitution — the only provision of the Constitution that had relevance in the matter. That Court held that there was a 'permissible classification in respect of certain categories of persons against whom there were accusations of the commission of the grave offences referred to in the two Schedules'.

Since then there had been two previous amendments to the principal enactment. They are Amending Act No. 24 of 1979 and Amending Act No. 54 of 1980. Both these amending Acts have extended the operation of the principal enactment on two previous occasions. Amending Act No. 54 of 1980 had, in addition, amended the schedule of the principal enactment by adding new offences as is sought to be done in this case. These previous amendments have not attracted the attention of

this Court. These amendments however fall within the principles already enunciated by the previous Constitutional Court and their validity in any event cannot now be questioned. The only new feature in those amendments was a provision for a mandatory minimum sentence. This provision is one which is clearly permitted by Article 13 of the Constitution. The principal enactment and these amendments are on our statute book and are now operative as law. The reasoning of the learned Judges of the previous Constitutional Court, with which we agree, is applicable to the provisions of this Bill. We therefore see nothing in this Bill that contravenes the provisions of the Constitution.

We accordingly determine that the Bill or any provision thereof is not inconsistent with the Constitution.

R. S. WANASUNDERA,

Judge of the Supreme Court.

— 1 —

D. WIMALARATNE,
Author of *Siamese Court*

B. S. C. RATWATTE,
Judge of the Supreme Court.

Decision of the Supreme Court conveyed to Parliament ; and, p. 88 para 24
24.12.1982 (*Hansard* Vol. 21, No. 18 ; col. 2048, 2049).

Committee Stage and Third Reading : (24.12.1982 (Hansard Vol. 21, No. 18; col. 2110 - 2115).

Speaker's Certificate: I do hereby certify that the above-mentioned resolution was moved on 30.12.1982; and the members of the said resolution had the said resolution passed.

Title : Criminal Procedure (Special Provisions) Amendment) Act, No. 51 of 1982.

FIFTH AMENDMENT TO THE CONSTITUTION BILL

to amend the Constitution of the Democratic Socialist Republic of Sri Lanka.

FIFTH AMENDMENT TO THE CONSTITUTION BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 1 of 1983. P/Parl.

Present :

D. WIMALARATNE, *Judge of the Supreme Court*,
B. S. C. RATWATTE, *Judge of the Supreme Court*,
J. A. R. VICTOR PERERA, *Judge of the Supreme Court*,
P. COLIN THOME, *Judge of the Supreme Court*,
J. F. A. SOZA, *Judge of the Supreme Court*,
K. A. P. RANASINGHE, *Judge of the Supreme Court*, and
M. H. ABDUL. CADER, *Judge of the Supreme Court*.

Counsel:

Siva Pasupathy, *Attorney-General*, with M. M. Kulatunga, *Solicitor-General*, and
Suri Ratnapala, *Senior State Counsel* for the State. Felix R. Dias Bandaranaike
intervenes with permission of Court.

Court Assembled for the Hearing : At 10.00 a.m. on 21st February, 1983.

A Bill titled "An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka" (hereinafter referred to as the Fifth Amendment) has been referred to the Chief Justice by His Excellency the President in terms of Article 122 (1) (b) of the Constitution for a special determination by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution.

The Bill contains an endorsement by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest, in terms of Article 122 (1) of the Constitution.

Mr. Siva Pasupathy, Attorney-General, assisted us in the consideration of the Bill as did Mr. Felix R. Dias Bandaranaike (hereinafter referred to as the Petitioner) who appeared in person in support of the challenge contained in his petition dated 18th February, 1983.

The Bill seeks to amend sub-paragraph (iii) of paragraph (d) of Article 161 of the Constitution by the addition of a proviso, the effect of which is to provide for the filing of any vacancy caused in the membership of the First Parliament in the electoral district in respect of which such vacancy has occurred and which has not been filled within a stipulated period by nomination in the manner provided therein, by having recourse to an election to be held in that electoral district in accordance with the provisions of the Ceylon (Parliamentary Elections) Order-in-Council, 1946.

In the case of a Bill which is described in its long title as one being for the amendment of the Constitution, proviso (a) to Article 120 stipulates that the only question which the Supreme Court may determine whether such Bill requires the approval by the People at a Referendum.

The Attorney-General has contended that the Fifth Amendment has become necessary due to a lacuna in the Constitution in that no provision exists to meet a situation where the Secretary of a Political Party refrains from nominating a member to fill a vacancy when required to do so by the Commissioner of Elections under Article 161 (d)(iii) of the Constitution.

The Bill has been challenged mainly on the ground of its inconsistency with the provisions of Article 3 of the Constitution, which proclaims that "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."

It has been contended by the Petitioner that the Fifth Amendment will create two methods or modalities for the filling of Parliamentary vacancies ; they being (1) nomination by the Secretary of a Political Party, and (2) in the absence of such nomination within a stipulated period, election by the People of the electorate in which the vacancy has occurred. The effect of the Fifth Amendment, it has been argued, would be to create an inequality before the law in respect of the people of different Parliamentary constituencies in which vacancies have occurred. The Fifth Amendment, it was argued, is thus inconsistent with Article 3 because it violates the principle of equality in the matter of voting at elections for Members of Parliament, which equality is recognised by Article 93.

The answer to this contention is that the Constitution already recognises and provides for the two methods of filling Parliamentary vacancies. Where any vacancy has occurred in the membership of Parliament in the manner stipulated in Article 161 (b) such vacancy is filled by an election to that electoral district. On the other hand, where any vacancy has occurred in the manner stipulated in Article 161 (d) (i) and (ii) such vacancy is filled by nomination at the instance of the Secretary of a Political Party. So that the Fifth Amendment is not one which *creates* two methods of the filling of Parliamentary vacancies. It only extends the principle of election and is not violative of principles of equality in the matter of voting at elections stipulated in Article 93.

It has also been contended that the Fifth Amendment has the effect of creating an alienation of the franchise, which is part of the Peoples' sovereignty because it vests in an authority other than the People (namely the Secretary of a Political Party) the discretion to decide whether a Parliamentary vacancy ought to be filled by nomination or by election.

The answer to this contention also is that there is no *creation* of an alienation of the franchise because the Constitution already recognises and provides for the filling of Parliamentary vacancies by a process other than election. Article 161 (d) (i) and (ii) empower the filling of vacancies by a process of nomination, the nominating authority being the Secretary of a Political Party. There is thus no *creation* of the alienation of the franchise. The amendment seeks to enlarge the principle of election for filling Parliamentary vacancies where earlier vacancies were filled by nomination only. The sovereignty of the People, including the franchise, is therefore not affected by this amendment.

It has also been contended by the Petitioner that the Bill violates the general principle of the fundamental right to equality, more especially recognised in Article 12 (1) of the Constitution. We do not agree. But even if that be so, Article 15 (7) authorises the limitation of the exercise and operation of such right in the manner set out therein.

For these reasons our determination is that the Bill before us is not one which requires the approval by the People at a Referendum. However, as the Bill is one for the amendment of the Constitution, it may only be passed by the special majority required under the provisions of paragraph (5) of Article 82 of the Constitution ; that is by not less than the two-thirds of the whole number of members (including those not present).

D. WIMALARATNE,
Judge of the Supreme Court.

B. S. C. RATWATTE,
Judge of the Supreme Court.

J. A. R. VICTOR PERERA,
Judge of the Supreme Court.

P. COLIN THOME,
Judge of the Supreme Court.

J. F. A. SOZA,
Judge of the Supreme Court.

K. A. P. RANASINGHE,
Judge of the Supreme Court.

M. M. ABDUL CADER,
Judge of the Supreme Court.

First Reading :

24.02.1982 (*Hansard* Vol. 22, No. 3 ; col. 85)

Decision of the Supreme Court conveyed to Parliament :

24.02.1983 (*Hansard* Vol. 22, No. 3 ; col. 65 – 67).

Second Reading :

24.02.1983 (*Hansard* Vol. 22, No. 3 ; col. 89 – 196).

Committee Stage and Third Reading :

24.02.1983 (*Hansard* Vol. 22, No. 3 ; col. 196 – 201).

Speaker's Certificate :

25.02.1983

Title : Fifth Amendment to the Constitution.

STATE LANDS (RECOVERY OF POSSESSION) ACT, 1979

AN ACT to amend the State Lands (Recovery of Possession) Act, No. 7 of 1979

and to provide for the better regulation of the recovery of possession of state lands.

WHEREAS, it is expedient to amend the State Lands (Recovery of Possession) Act, No. 7 of 1979, to provide for the better regulation of the recovery of possession of state lands.

IT IS ENACTED AS FOLLOWS:—

1. The State Lands (Recovery of Possession) Act, No. 7 of 1979, is hereby amended by inserting the following section immediately after section 10:—

“11. (1) The State Lands (Recovery of Possession) Act, No. 7 of 1979, is hereby amended by inserting the following section immediately after section 10:—

STATE LANDS (RECOVERY OF POSSESSION) (AMENDMENT) BILL

to amend the State Lands (Recovery of Possession) Act, No. 7 of 1979

and to provide for the better regulation of the recovery of possession of state lands.

WHEREAS, it is expedient to amend the State Lands (Recovery of Possession) Act, No. 7 of 1979, to provide for the better regulation of the recovery of possession of state lands.

IT IS ENACTED AS FOLLOWS:—

1. The State Lands (Recovery of Possession) Act, No. 7 of 1979, is hereby amended by inserting the following section immediately after section 10:—

“11. (1) The State Lands (Recovery of Possession) Act, No. 7 of 1979, is hereby amended by inserting the following section immediately after section 10:—

“11. (1) The State Lands (Recovery of Possession) Act, No. 7 of 1979, is hereby amended by inserting the following section immediately after section 10:—

“11. (1) The State Lands (Recovery of Possession) Act, No. 7 of 1979, is hereby amended by inserting the following section immediately after section 10:—

“11. (1) The State Lands (Recovery of Possession) Act, No. 7 of 1979, is hereby amended by inserting the following section immediately after section 10:—

STATE LANDS (RECOVERY OF POSSESSION) (AMENDMENT) BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.
S.D. No. 2 of 1983

P/Parl. I would like to say or I solicited India saying oh (A.1)
and India said oh India said she stated and then India can you when to bring you
Present : (A.1) now India said when India is to
D. WIMALARATNE, Judge of the Supreme Court, (A.1) now India said when India is to
B. S. C. RATWATTE, Judge of the Supreme Court, and (A.1) now India said when India is to
J. A. R. VICTOR PERERA, Judge of the Supreme Court. (A.1) now India said when India is to

Counsel: James W. L.

Sarath Silva, *Deputy Solicitor General*, for the Attorney General on notice.

Court Assembled for the Hearing : 10.00 a.m. on 11th July, 1983.

A Bill titled "An Act to amend the State Lands (Recovery of

No. 7 of 1979 was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

We have given our careful consideration to the question whether or not any provision of the Bill before us transgresses any provision of the Constitution.

Section (3) of the principal enactment is to be amended so as to provide in subsection (1) that where the competent authority is of opinion —

(a) that any land is State land ; and
(b) that any person is in unauthorized possession or occupation of such land.

the competent authority may serve a "quit notice" on the person so in possession or occupation to vacate and deliver possession to the competent authority within a certain period.

A new sub-section is to be inserted as follows :

“(1A) No person shall be entitled to any hearing or to make any representation in respect of a notice under sub-section (1).”

The new sub-section 3 (1 A) appears to us to be inconsistent with Article 4 (c) of the Constitution in that it seeks to oust the exercise by the Court of the Judicial power of the People and therefore this Bill requires in terms of Article 123 (2) (b) to be passed by the special majority specified under the provisions of paragraph (2) of Article 84.

The learned Deputy Solicitor General, who assisted us in the consideration of this Bill, indicated that the intention of this amendment is to limit the hearing or representation referred to in Section 3 (1 A) before the competent authority. In order to make this Clause cease to be inconsistent with the Constitution, we specify that Section 3 (1 A) be amended to read as follows :

"(1 A) No person shall be entitled to any hearing before the competent authority or make any representations before the competent authority in respect of a notice under sub-section (1)."

If so amended as specified above there will be no inconsistency with any of the provisions of the Constitution and the Bill need not be passed by the special majority as required in terms of paragraph (2) of Article 84.

D. WIMALARATNE,
Judge of the Supreme Court.

B. S. C. RATWATTE,
Judge of the Supreme Court.

J. A. R. VICTOR PERERA,
Judge of the Supreme Court.

First Reading :

21.07.1983 (*Hansard Vol. 24, No. 11 ; col. 1064 – 1066*)

Decision of the Supreme Court conveyed to Parliament : 21.07.1983 (*Hansard Vol. 24, No. 11 ; col. 1040, 1041*).

Second Reading :

09.08.1983 (*Hansard Vol. 24, No. 14 ; col. 1504—1526, No. 15 ; col. 1527—1540*).

Committee Stage and Third Reading :

09.08.1983 (*Hansard Vol. 25, No. 15 ; col. 1541 — 1543*).

Speaker's Certificate :

11.08.1983 (*Hansard Vol. 25, No. 16 ; col. 1544 — 1545*).

Title : State Lands (Recovery of Possession) (Amendment).

SIXTH AMENDMENT TO THE CONSTITUTION BILL

to amend the Constitution of the Democratic Socialist Republic of Sri Lanka

WHEREAS it is necessary to amend the Constitution of the Democratic Socialist Republic of Sri Lanka in accordance with the following:

1. To provide for the incorporation of the following provisions in the Constitution:

(a) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex.

(b) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex in the administration of justice.

(c) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex in the administration of law.

(d) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex in the administration of law.

2. To provide for the incorporation of the following provisions in the Constitution:

(a) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex.

(b) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex in the administration of justice.

(c) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex in the administration of law.

(d) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex in the administration of law.

3. To provide for the incorporation of the following provisions in the Constitution:

(a) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex.

(b) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex in the administration of justice.

(c) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex in the administration of law.

(d) The State shall not discriminate against any person on the ground of race, place of birth, language, religion, caste, creed or sex in the administration of law.

SIXTH AMENDMENT TO THE CONSTITUTION BILL

In the matter of a reference under Article 122 (1) (b) of the Constitution.

S.D. No. 3 of 1983
P/Parl.

Present :

N. D. M. SAMARAKOON, Q.C., *Chief Justice*,
R. S. WANASUNDERA, *Judge of the Supreme Court*,
D. WIMALARATNE, *Judge of the Supreme Court*.
B. S. C. RATWATTE, *Judge of the Supreme Court*,
J. A. R. V. PERERA, *Judge of the Supreme Court*,
P. COLIN THOME, *Judge of the Supreme Court*,
J. F. A. SOZA, *Judge of the Supreme Court*,
K. A. P. RANASINGHE, *Judge of the Supreme Court*, and
H. RODRIGO, *Judge of the Supreme Court*.

Counsel :

K. M. M. B. Kulatunga, *Solicitor-General* with Suri Ratnapala, *Senior State Counsel* and Kalinga Wijeyewardene, *State Counsel* for the Attorney-General on notice.

H. B. Kariyawasam the *Petitioner* appears in person.

Herman J. C. Perera, *Attorney-at-Law*, President of the Bar Association on behalf of the Bar.

Court Assembled for the Hearing : At 10.00 a.m. on 3rd August, 1983.

A Bill titled "An Act to amend the Constitution of the Democratic Socialist Republic of Sri Lanka" was referred to us by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for determination whether the Bill or provision thereof is inconsistent with the Constitution. The Bill contains a certificate by which the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

The Solicitor-General, the President of the Bar Association and Mr. Kariyawasam appeared before us and assisted us in the consideration of the Bill.

We have examined the provisions of the Bill. We are of opinion that the provisions of Article 157 A (3) (b) and Article 157 A (5) (b) (ii) are inconsistent with the provisions of Article 11 of the Constitution in that the forfeiture provided therein is

without any qualification or limitation. In view of this the said provision requires to be passed by the two-thirds majority referred to in Article 83 and approved by the People at a Referendum. However, the Solicitor-General stated that this provision will be suitably amended so that it will not be inconsistent with Article 11.

The Bill is not inconsistent with any other provision of the Constitution.

N. D. M. SAMARAKOON,
Chief Justice.

R. S. WANASUNDERA,
Judge of the Supreme Court.

B. S. C. RATWATTE,
Judge of the Supreme Court.

P. COLIN THOME,
Judge of the Supreme Court.

K. A. P. RANASINGHE,
Judge of the Supreme Court.

D. WIMALARATNE,
Judge of the Supreme Court.

J. A. R. VICTOR PERERA,
Judge of the Supreme Court.

J. F. A. SOZA,
Judge of the Supreme Court.

H. RODRIGO,
Judge of the Supreme Court.

**Clauses of the Sixth Amendment to the Constitution Bill considered in the
Supreme Court Decision**

157 A (3) (b)

Any person who acts in contravention of the provisions of paragraph (1) shall on conviction by the Court of Appeal, after trial on indictment and according to such procedure as may be prescribed by Law :—

(b) forfeit his immovable and movable property.

157 A (5) (b) (ii)

Where the Supreme Court makes a declaration under paragraph (4) in relation to any political party or other association or organization in pursuance of an application made to it under that paragraph.

(b) any person who holds office or is a member of that political party or other association or organisation, after the date of such declaration, shall be guilty of an offence and shall on conviction by the Court of Appeal after trial on indictment and according to such procedure as may be prescribed by Law —

(ii) forfeit his movable property.

First Reading :

04.08.1983 (*Hansard* Vol. 24, No. 13 ; col. 1256)

Decision of the Supreme Court conveyed to Parliament :

04.08.1983 (*Hansard* Vol. 24, No. 13 ; col. 1255, 1256).

Second Reading :

04.08.1983 (*Hansard* Vol. 24, No. 13 ; col. 1257 — 1453).

Committee Stage and Third Reading :

04.08.1983 (*Hansard* Vol. 24, No. 13 ; col. 1453 — 1459).

Speaker's Certificate :

08.08.1983 ;

Title : Sixth Amendment to the Constitution.

INDEX	PAGE
1. Compulsory Public Service (Amendment)	35
2. Constitution (First Amendment)	19
3. Constitution (Second Amendment)	43
4. Constitution (Third Amendment 1981)	109
5. Constitution (Third Amendment 1982)	141
6. Constitution (Fourth Amendment)	155
7. Constitution (Fifth Amendment)	163
8. Constitution (Sixth Amendment)	173
9. Criminal Procedure (Special Provisions) (Amendment)	159
10. Criminal Trials (Special Provisions)	81
11. Development Councils	103
12. Development Councils (Amendment)	121
13. Essential Public Services	63
14. Foreign Loans (Amendment)	93
15. Inland Revenue (Amendment)	97
16. Land Reform (Amendment)	115
17. Licensing of Produce Brokers	29
18. Loans (Special Provisions)	151
19. Local Authorities (Special Provisions) (Amendment)	39
20. Monetary Law (Amendment)	47
21. Motor Traffic (Amendment)	55
22. National Housing (Amendment)	23
23. Offences Against Air Craft	135
24. Parliament (Powers and Privileges) (Amendment)	89
25. Parliamentary Pensions (Amendment)	125
26. Passport (Regulation) and Exit Permit (Amendment)	85
27. Prevention of Terrorism (Temporary Provisions)	59
28. Prevention of Terrorism (Temporary Provisions) (Amendment)	129
29. Proscribing of Liberation Tigers of Tamil Eelam and Other Similar Organisations (Amendment)	51
30. Special Presidential Commissions of Inquiry (Special Provisions)	15
31. State Lands (Recovery of Possession) (Amendment)	169
32. Supplementary Allowance of Workers	77
33. Tax Amnesty	11
34. Universities	1