



DECISIONS OF THE
SUPREME COURT
ON
PARLIAMENTARY BILLS
1988

VOLUME IV

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1988

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

VOLUME IV

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NATIONAL HERITAGE WILDERNESS AREAS BILL

to make provisions for the declaration of National Heritage Wilderness Areas ;
for the protection and preservation of such areas ; and for matters connected
therewith or incidental thereto.

NATIONAL HERITAGE WILDERNESS AREAS BILL

The above Bill was presented to Parliament on 11.9.1987. The decision of the Supreme Court on this Bill which was conveyed to Parliament on 7.10.1987 has been included in volume III of the "Decisions of the Supreme Court on Parliamentary Bills". The debate in Parliament on this Bill took place in January, 1988.

The references are given below.

First Reading :

11.09.1987 (Hansard Vol. 48 No. 6 Col. 447).

Decisions of the Supreme Court conveyed to Parliament :

07.10.1987 (Hansard Vol. 48 No. 9 Cols. 621-623).

Second Reading :

07.01.1988 (Hansard Vol. 51 No. 1 Cols. 28-58).

Committee Stage and Third Reading :

07.01.1988 (Hansard Vol. 51 No. 1 Cols. 58-70).

Speaker's Certificate :

04.03.1988.

Title : National Heritage Wilderness Areas Act, No. 3 of 1988.

CODE OF CRIMINAL PROCEDURE (AMENDMENT)

A

BILL

to amend the Code of Criminal Procedure Act, No. 15 of 1979

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL

In the matter of a petition under the provisions of Article 121 (1) of the Constitution.

Kalutotage Lelatlunga
of 108/4, Gothami Road,
Borella.

PETITIONER

S.C. No. 2/1988 (Spl.)

Present :

K. A. P. Ranasinghe, Chief Justice,
G. R. T. D. Bandaranaike, Judge of the Supreme Court and
M. Jameel, Judge of the Supreme Court.

Appearance :

Mr. Sarath Wijesinghe, Attorney-at-Law for the Petitioner.
Mr. Upawansa Yapa, Deputy Solicitor-General for the Attorney-General.

Court Assembled for the Hearing : At 10.00 a.m. on 23rd March, 1988.

The Petitioner has, on the 15th day of March, 1988, presented a petition to this Court, in terms of the provisions of Article 121 (1), for a determination that the Bill titled "AN ACT TO AMEND THE CODE OF CRIMINAL PROCEDURE ACT, No. 15 of 1979" is inconsistent with Articles 10, 11, 12 (1) (2) and 14 (1) of the Constitution.

Section 2 of the said Bill seeks to amend the definition of the term "Peace Officer", given in section 2 of the Code of Criminal Procedure Act No. 15 of 1979, by deleting the definition set out therein, as : "Peace Officer includes, Police Officers and Grama Seva Niladaris appointed by the Government Agent in writing to perform police duties," and by substituting therefor the following new definition: "Peace Officer" includes a Police Officer, and a Divisional Assistant Government Agent and a Grama-Seva Niladari appointed by a Government Agent in writing to perform police duties." A consideration of these two definitions shows that what is being sought to, be achieved by the amendment is to include another category of Public Officers namely, Divisional Assistant Government Agents, within the definition of the said term "Peace Officer."

The Petitioner does not seek to challenge the inclusion of the category of Divisional Assistant Government Agents, within the said definition. He, however, objects to the inclusion of the Grama Seva Niladaris within the said definition. His contention is : that there existed a category of persons known as "Special Service Officers" විශේෂ සේවා නිලධාරීන් who had been appointed by Members of Parliament, as Public Relations Officers : that the said officers profess opinions and ideologies peculiar to the particular political party in power : that those officers have since been absorbed into the State Services as Grama Seva Niladaris : that, once such officers are vested with Police duties, they would seek to harass those not professing political beliefs similar to theirs.

Learned Counsel appearing for the Petitioner submitted that the proposed amendment violates the provisions of Articles 10, 12 (2) and 14 (1) (b) (c) and (e). He contended : that Article 10 would be violated because persons, who do not profess thoughts similar to those entertained by the said Special Service Officers විශේෂ සේවා නිලධාරීන් who have been absorbed as Grama Seva Niladaris, would be harassed by these officers, once these officers are clothed with police powers : that Article 12 (2) would be violated because such officers would discriminate against those not professing political opinions similar to theirs : that Article 14 (1) (b) (c) and (e) would be violated because persons holding political opinions different from those of the said Special Services Officers විශේෂ සේවා නිලධාරීන් would be denied the said rights by these officers once they are clothed with police powers.

The aforementioned submissions of learned Counsel are based upon fears in regard to the conduct of such officers once clothed with police powers. Objections founded upon what is likely to be done by such officers, who have been appointed as Grama Seva Niladaris, would really be directed against the acts of the officers themselves, and not against any legislative provisions under which they are sought to be brought into form a group with one or more other groups of public officers. The legislative provisions themselves cannot be flawed or objected to on that ground. Any future objectionable conduct on the part of such officers cannot be urged against the validity of such legislative measure itself. So long as the proposed legislative provisions do not violate any of the provisions of the Constitution itself, their enactment cannot be objected to on the grounds that have been urged by learned Counsel. What would be violative of the provisions of the Articles referred to by learned Counsel namely 10, 12 (2), 14 (1) (b) (c) and (e), would be not the provisions in the amending Bill, but, if at all, the conduct of the officers themselves.

We are, therefore, of the view that the objections put forward by learned Counsel are not tenable. In our opinion the provisions of the aforesaid amending Bill do not violate any of the provisions of the Constitution.

K. A. P. RANASINGHE,
Chief Justice,

G. R. T. D. BANDARANAIKE,
Judge of the Supreme Court,

M. JAMEEL,
Judge of the Supreme Court.

First Reading :

10.03.1988 (Hansard Vol. 52, No. 5 ; Col. 397)
Decision of the Supreme Court conveyed to Parliament :
05.04.1988 (Hansard Vol. 52, No. 9 ; Cols. 632-633)

Second Reading :

07.04.1988 (Hansard Vol. 52, No. 11 ; Cols. 866-868)

Committee Stage and Third Reading :

07.04.1988 (Hansard Vol. 52, No. 11 ; Col. 868)

Speaker's Certificate :

19.05.1988

Title : Code of Criminal Procedure (Amendment) Act No. 12 of 1988.

**FOURTEENTH
AMENDMENT TO THE CONSTITUTION**

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

FOURTEENTH AMENDMENT TO THE CONSTITUTION BILL

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

S.D. No. 2 of 1988

Present :

H. D. TAMBIAH, *Judge of the Supreme Court*
O. S. M. SENEVIRATNE, *Judge of the Supreme Court*
H. A. G. DE SILVA, *Judge of the Supreme Court*
G. P. S. DE SILVA, *Judge of the Supreme Court*
M. JAMEEL, *Judge of the Supreme Court*

Counsel :

K. M. M. B. KULATUNGA, *P.C., Solicitor-General, with K. S. AZIZ, Deputy Solicitor-General, for the Attorney-General*
R. K. W. GOONESEKERA, *with S. DASSANAYAKE, GOMIN DAYASIRI and WIMAL DE SILVA, for MRS. SIRIMA BANDARANAIKE, Petitioner*

PRINS GUNASEKERA *with VIVEKANANDAN, and SHANTHA SENADHEERA for DR. NATH AMARAKOON (National Democratic Congress)*

P. A. D. SAMARASEKERA, *P.C., with A. L. M. DE SILVA, for DINESH GUNAWARDENE, Petitioner*

SARATH WUESINGHE, *for K. LEELATUNGA, Petitioner*

Court Assembled for the Hearing : At 10.30 a.m. on 18th April, 1988.

A Bill titled "An Act to amend the Constitution of the Democratic Socialist Republic of Sri Lanka" was referred to the Chief Justice by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for a special determination by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution.

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

The petitioners, Mrs. Bandaranaike, Mr. Dinesh Gunawardena, and Mr. K. Leelatunga, filed objections, and their Counsel sought permission to make submissions against the said Bill, and this was allowed.

Mr. Prins Gunasekera submitted that he could not file objections as he had difficulty in obtaining a copy of the Bill, and he also wished to make submissions. This too was allowed by us.

The Bill contains an endorsement that the Cabinet of Ministers has certified that in its view, the Bill is urgent in the national interest.

Article 120 (a) states—

“(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”.

The Bill in its long title is described as being for the amendment of the Constitution. Therefore, the only question this Court has to determine is whether this Bill requires approval by the People at a Referendum by virtue of Article 83.

The principal submission made on behalf of all the Petitioners was that the Clauses 3 and 8 of the Bill are inconsistent with Article 3, read with Articles 4 (a) and 4 (e) of the Constitution.

While no Objection was raised in regard to the election of 196 Members, it was submitted that the balance 29 seats were to be apportioned by the Commissioner of Elections among the recognised political parties and independent groups contesting the General Election and ultimately nominated by the Secretaries of the said two groups from the lists referred to under this Clause or the nomination papers submitted under Clause 7 (3). In short, the contention was that apportionment by the Commissioner and the nomination by the Secretary of the recognised political party or group leader runs counter to the principal of elections by the electors, enshrined in Article 3, read with Articles 4 (a) and 4 (e) of the Constitution, in that it is an erosion of the franchise which is an inalienable aspect of the sovereignty of the people.

However, learned Solicitor-General emphasised that the apportionment is based on “. . . the same proportion as the proportion which the number of votes polled by each such party or group at such General Election bears with the total number of votes polled at such General Election . . .” (Article 99 (A)).

Learned Solicitor-General urged that these were the operative words in Article 99 (A), and that they show that the apportionment is related to the exercise of franchise by the electors at the General Election. He accordingly urged that there is no erosion of the elective principle.

We have considered the respective submissions made in regard to this matter and our determination is that Clauses 3 and 8 of the Bill are not inconsistent with the provisions of Article 3, read with Articles 4 (a) and 4 (e) of the Constitution, and therefore do not require the approval of the People at a Referendum.

Mr. Samarasékera, P.C., brought to our notice that certain matters in Clause 8 of the Bill need clarification. While the Bill provides, “the Commissioner shall cause the lists submitted to him under this Article to be published in the Gazette”, there is no reference to the time of the publication of the Gazette, as to when this is to be published in the Gazette, and that electors may not have adequate notice of the names on the lists at the time of the poll.

Learned Solicitor-General agreed that this publication could be done in the same manner and at the same time as in the case of nomination for the Electoral Districts as provided for in the Parliamentary Elections Act, No. 1 of 1981.

One other matter arises out of Clause 5 of the Bill.

Mr. R. K. W. Gunasekera submitted that the words "a substantial concentration of persons united by a community of interest, whether racial, religious or otherwise .." are not subject to the ejusdem generis rule and that therefore a Delimitation Commission could carve out zones even on a political basis.

Learned Solicitor-General however stated that suitable amendments could be made by the deletion of the words "or otherwise" and substituting therefore the words "such other like interest", or words to that effect.

Mr. Prins Gunasekera submitted that Clause 2 of the Bill is inconsistent with Articles 3 read with 4 (b) of the Constitution, and therefore cannot be amended without the approval of the People at a Referendum. We have considered this submission, and we do not agree with it.

We accordingly determine that the Bill is not inconsistent with the provisions contained in Article 83 (a) or (b) and therefore does not require the approval of the People at a Referendum.

H. D. TAMBIAH,
Judge of the Supreme Court.

O. S. M. SENEVIRATNE,
Judge of the Supreme Court.

H. A. G. DE SILVA,
Judge of the Supreme Court.

G. P. S. DE SILVA,
Judge of the Supreme Court.

M. JAMEEL,
Judge of the Supreme Court.

**Clauses in the FOURTEENTH AMENDMENT TO THE CONSTITUTION BILL
considered in the Supreme Court Decision**

Clause 2 :

Article 35 of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as "the Constitution") is hereby amended in paragraph (3) of that Article, by the substitution, for the words "relating to the election of the President", of the words "relating to the election of the President or the validity of a referendum or to proceedings in the Court of Appeal under Article 144 or in the Supreme Court, relating to the election of a Member of Parliament".

Clause 3 :

Article 62 of the Constitution is hereby amended by the repeal of paragraph (1) of that Article and the substitution, of the following paragraph therefor :—

"(1) There shall be a Parliament which shall consist of two hundred and twenty-five Members elected in accordance with the provisions of the Constitution"

Clause 5:

The following Article is inserted immediately after Article 96 and shall have effect as Article 96A of the Constitution :—

“Division of
electoral
districts
into zones.

96A. (1) Within two weeks of the coming into force of this Article, the President shall, for the purpose of dividing where necessary, electoral districts entitled to return more than ten members into zones, establish a Delimitation Commission consisting of three persons appointed by him who he is satisfied are not actively engaged in politics. The President shall appoint one of such persons to be the Chairman.

(2) If any member of the Delimitation Commission shall die or resign or if the President is satisfied that any such member has become incapable of discharging his functions as such, the President shall, in accordance with paragraph (1) of this Article, appoint another person in his place.

(3) Where it appears to the Delimitation Commission that there is in any electoral district entitled to return more than ten members, a substantial concentration of persons united by a community of interest, whether racial, religious or otherwise, but differing in one or more respects from the majority of the electors in that electoral district, the Delimitation Commission may, after affording the public an opportunity of making representations, as far as possible divide that electoral district into zones so as to ensure the representation of that interest, so however, that an electoral district entitled to return more than ten but less than twenty members, shall be divided into not more than two zones, and an electoral district entitled to return more than twenty members, shall be divided into not more than three zones.

(4) In dividing an electoral district into zones, the Delimitation Commission shall have regard to the polling divisions into which that electoral district has been divided under the law for the time being in force relating to the registration of electors, so as to ensure, as far as practicable, that each zone is a combination of two or more of such polling divisions.

(5) The provisions of paragraphs (5) and (6) of Article 96 shall, *mutatis mutandis*, apply to decisions of the Delimitation Commission.

(6) The Chairman of the Delimitation Commission shall communicate to the President, the decisions of the Commission as regards the division of electoral districts into zones within two months of the coming into force of this Article.

(7) The President shall by proclamation publish the names and boundaries of the zones into which an electoral district has been divided, in accordance with the decisions of the Delimitation Commission. The zones specified in the Proclamation shall come

into operation at the next ensuing General-Election of Members of Parliament, and shall be the zones of that electoral district for the purposes of the Constitution and any law for the time being in force relating to the election of Members of Parliament”.

Clause 8

The following Article is inserted after Article 99 and shall have effect as Article 99A of the Constitution :—

“Election of Members of Parliament on the basis of the total number of votes polled at a General Election.

99A. After the one hundred and ninety six members referred to in Article 98 have been declared elected at a General Election of Members of Parliament, the Commissioner shall apportion the balance twenty nine seats among the recognised political parties and independent groups contesting such General Election in the same proportion as the proportion which the number of votes polled by each such party or group at such General Election bears to the total number of votes polled at such General Election and for the purposes of such apportionment, the provisions of paragraphs (4), (5), (6) and (7) of Article 98 shall, *mutatis mutandis* apply.

Every recognised political party or independent group contesting a General Election shall submit to the Commissioner, within the nomination period specified for such election a list of persons qualified to be elected as Members of Parliament, from which it may nominate persons to fill the seats, if any, which such party or group will be entitled to, on such apportionment. The Commissioner shall cause every list submitted to him under this Article to be published in the *Gazette*.

Where a recognized political party or independent group is entitled to a seat under the apportionment referred to above, the Commissioner shall by a notice, require the secretary of such recognized political party or group leader of such independent group to nominate within one week of such notice, persons qualified to be elected as Members of Parliament (being persons whose names are included in the list submitted to the Commissioner under this Article or in any nomination paper submitted in respect of any electoral district by such party or group at that election) to fill such seats and shall declare elected as Members of Parliament, the persons so nominated.

For the purposes of this Article the number of votes polled at a General Election shall be deemed to be the number of votes actually counted and shall not include any votes rejected as void”.

First Reading :

03.05.1988 (*Hansard* Vol. 52 No. 15 ; Col. 1149)

Decision of the Supreme Court conveyed to Parliament :

21.04.1988 (*Hansard* Vol. 52 No. 13 ; Cols. 955-957)

Second Reading :

04.05.1988 (*Hansard* Vol. 52 No. 16 ; Cols. 1238-1322)

Committee Stage and Third Reading :

04.05.1988 (*Hansard* Vol. 52, No. 16 ; Cols. 1323-1334)

Speaker's Certificate :

24.05.1988.

Title : Fourteenth Amendment to the Constitution.

PARLIAMENTARY ELECTIONS (AMENDMENT) BILL

to amend the Parliamentary Elections Act, No. 1 of 1981

PARLIAMENTARY ELECTIONS (AMENDMENT) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution
S. D. No. 3 of 1988

Present :

H. D. THAMBIAN, *Judge of the Supreme Court*
O. S. M. SENEVIRATNE, *Judge of the Supreme Court.*
H. A. G. DE SILVA, *Judge of the Supreme Court.*
G. P. S. DE SILVA, *Judge of the Supreme Court.*
M. JAMEEL, *Judge of the Supreme Court.*

Counsel :

K. M. M. B. KULATUNGA, *P.C., Solicitor-General,*
with TONY FERNANDO, State Counsel, for the Attorney-General.

Court Assembled for the Hearing : At 10.30 a.m. on 18th April, 1988.

A Bill titled " An Act to amend the Parliamentary Elections Act, No.1 of 1981 " was referred to the Chief Justice by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for a special determination by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution.

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

The Bill contains an endorsement that the Cabinet of Ministers has certified that in its view, the Bill is urgent in the national interest.

This Bill contains provisions consequent on the proposed 14th Amendment to the Constitution, and also amendments to the Parliamentary Elections Act, No. 1 of 1981.

We have considered the provisions of the Bill and our determination is that none of the provisions contained in the Bill is inconsistent with the Constitution.

H. D. THAMBIAN,
Judge of the Supreme Court.

O. S. M. SENEVIRATNE
Judge of the Supreme Court.

H. A. G. DE SILVA
Judge of the Supreme Court.

G. P. S. DE SILVA
Judge of the Supreme Court.

M. JAMEEL
Judge of the Supreme Court.

First Reading :

03.05.1988 (*Hansard* Vol. 52, No. 15 ; Col. 1149)

Decision of the Supreme Court conveyed to Parliament :

21.04.1988 (*Hansard* Vol. 52, No. 13 ; Cols. 954-955)

Second Reading :

04.05.1988 (*Hansard* Vol. 52, No. 16 ; Col. 1334)

(Also *Hansard* Vol. 52, No. 16 ; Cols. 1238-1322)

Committee Stage and Third Reading :

04.05.1988 (*Hansard* Vol. 52, No. 16 ; Cols. 1334-1350)

Speaker's Certificate :

24.05.1988.

Title : Parliamentary Elections (Amendment) Act, No. 15 of 1988,

REFERENDUM (AMENDMENT) BILL
to amend the Referendum Act, No. 7 of 1981

REFERENDUM (AMENDMENT) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.D. No. 5 of 1988
No.P/CF/185.

Present :

E. A. D. ATHUKORALE, *Judge of the Supreme Court.*
O S. M. SENEVIRATNE, *Judge of the Supreme Court.*
G. P. S. DE SILVA, *Judge of the Supreme Court.*

Counsel :

K. M. M. B. Kulatunga, Acting Attorney-General with Shibly Aziz, Deputy Solicitor-General for the Attorney-General.

Court Assembled for the Hearing : At 11.00 a.m. on 20th April, 1988.

A Bill titled "An Act to amend the Referendum Act No. 7 of 1981" 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 determination as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

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

E. A. D. ATHUKORALE,
Judge of the Supreme Court.
O. S. M. SENEVIRATNE,
Judge of the Supreme Court.
G. P. S. DE SILVA,
Judge of the Supreme Court.

First Reading :

03.05.1988 (*Hansard* Vol. 52, No. 15 ; Col. 1150)

Decision of the Supreme Court Conveyed to Parliament :

21.04.1988 (*Hansard* Vol. 52, No. 13 ; Col. 958)

Second Reading :

04.05.1988 (*Hansard* Vol. 52, No. 16 ; Col. 1354)

(Also *Hansard* Vol. 52, No. 16 ; Cols. 1238-1322)

Committee Stage and Third Reading :

04.05.1988 (*Hansard* Vol. 52, No. 16 ; Cols. 1354-1356)

Speaker's Certificate :

24.05.1988.

Title : Referendum (Amendment) Act No. 17 of 1988.

PRESIDENTIAL ELECTIONS (AMENDMENT) BILL

to amend the Presidential Elections Act, No. 15 of 1981

PRESIDENTIAL ELECTIONS (AMENDMENT) BILL

In the matter of a Reference under Article 122(1)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.D. No. 4 of 1988

No. P/CF/185.

Present :

E. A. D. Athukorale, Judge of the Supreme Court,
O. S. M. Seneviratne, Judge of the Supreme Court.,
G. P. S. de Silva, Judge of the Supreme Court.

Counsel :

K. M. M. B. Kulatunga, Acting Attorney-General with Shibly Aziz, Deputy Solicitor-General for the Attorney-General.

Court Assembled for the Hearing : At 11.00 a.m. on 20th April, 1988.

A Bill titled "An Act to amend the Presidential Elections Act, No. 15 of 1981" 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 determination as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

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

E. A. D. ATHUKORALE,
Judge of the Supreme Court.

O. S. M. SENEVIRATNE,
Judge of the Supreme Court.

G. P. S. DE SILVA,
Judge of the Supreme Court.

First Reading :

03.05.1988 (*Hansard* Vol. 52, No. 15 ; Col. 1150)

Decision of the Supreme Court conveyed to Parliament :

21.04.1988 (*Hansard* Vol. 52, No. 13 ; Cols. 958-959)

Second Reading :

04.05.1988 (*Hansard* Vol. 52, No. 16 ; Col. 1350)

(Also *Hansard* Vol. 52, No. 16 ; Cols. 1238-1322)

Committee Stage and Third Reading :

04.05.1988 (*Hansard* Vol. 52, No. 16 ; Cols. 1351-1354)

Speaker's Certificate :

24.05.1988.

Title ; Presidential Elections (Amendment) Act No. 16 of 1988

UNIVERSITIES (AMENDMENT) BILL
to amend the Universities Act, No. 16 of 1978

UNIVERSITIES (AMENDMENT) BILL

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

S.D. No. 1/88.

P/Parl/29

Present :

L. H. DE ALWIS, *Judge of the Supreme Court,*
K. D. O. S. M. SENEVIRATNE, *Judge of the Supreme Court,*
and M. JAMEEL, *Judge of the Supreme Court.*

Counsel :

K. M. M. B. KULATUNGA, P. C., S. G. with S. MARSOOF, S.S.C., for
Attorney-General.

Court assembled for the hearing : At 10.00 a.m. on 14th April. 1988.

A Bill titled "An Act to amend the Universities Act, No. 16 of 1978," was referred to the Supreme 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 determination as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet, in terms of Article 122 of the Constitution, that the Cabinet of Ministers has certified that, in its view, the Bill is urgent in the national interest.

Mr. K. M. M. B. Kulatunga, P.C. Solicitor-General, with Mr. S. Marsoof S.S.C. for the Attorney-General appeared before us and assisted us in the consideration of the Bill.

On an examination of the Bill we find that the Bill, or any provision thereof, is not inconsistent with the Constitution.

L. H. DE ALWIS,
Judge of the Supreme Court.
K. D. O. S. M. SENEVIRATNE,
Judge of the Supreme Court.
M. JAMEEL,
Judge of the Supreme Court.

First Reading :

03.05.1988 (*Hansard* Vol. 52, No. 15 ; Col. 1150)

Decision of the Supreme Court conveyed to Parliament :

21.04.1988 (*Hansard* Col. 52, No. 13 ; Col. 954)

Second Reading :

06.07.1988 (*Hansard* Vol. 53, No. 7 ; Cols. 666-734)

Committee Stage and Third Reading :

06.07.1988 (*Hansard* Vol. 53, No. 7 ; Cols. 734-738)

Speaker's Certificate :

15.07.1988.

Title : Universities (Amendment) Act, No. 32 of 1988.

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

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

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

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

S.D. No. 6 of 1988.

Present :

E. A. D. ATUKORALE, *Judge of the Supreme Court*
H. D. TAMBIAH, *Judge of the Supreme Court*
H. A. G. DE SILVA, *Judge of the Supreme Court*

Counsel :

SUNIL DE SILVA, *Additional Solicitor-General* with K. DHARMAWARDENE,
State Counsel, for the the *Attorney-General*.

Court Assembled for the Hearing : At 10.10 a.m. on 16th May, 1988.

A Bill titled "An Act to amend the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979" was referred to the Chief Justice by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for a special determination by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

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

We have examined the provisions of the Bill, the object of which is to provide for the trial of offences under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, by a Judge of the High Court sitting without a jury or by a High Court at Bar consisting of three Judges without a Jury.

We are of the view that the Bill or any provision thereof is not inconsistent with the Constitution.

We accordingly determine that the Bill or any provision thereof is not inconsistent with the Constitution.

Sgd. E. A. D. ATUKORALE,
Judge of the Supreme Court.

Sgd. H. D. TAMBIAH,
Judge of the Supreme Court.

Sgd. H. A. G. DE SILVA,
Judge of the Supreme Court.

First Reading :

07.06.1988 (*Hansard* Vol. 53, No. 1 ; Col. 16)

Decision of the Supreme Court conveyed to Parliament :

19.05.1988 (*Hansard* Vol. 52, No. 19 ; Cols. 1466-1467)

Second Reading :

20.06.1988 (*Hansard* Vol. 53, No. 5 ; Col. 417)

Committee Stage and Third Reading :

[20.06.1988 (*Hansard* Vol. 53, No. 5 ; Cols. 417-420)

Speaker's Certificate :

15.07.1988

Title : Prevention of Terrorism (Temporary Provisions) Amendment, Act No. 2 of 1988

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL
to amend the Code of Criminal Procedure Act, No. 15 of 1979

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL

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

S.D. No. 7 of 1988.

Present :

E. A. D. ATUKORALE, *Judge of the Supreme Court.*

H. D. TAMBIAH, *Judge of the Supreme Court.*

H. A. G. DE SILVA, *Judge of the Supreme Court.*

Counsel :

SUNIL DE SILVA, *Additional Solicitor-General* with K. DHARMAWARDENE,
State Counsel, for the Attorney-General.

Court Assembled for the Hearing : At 10.35 a.m. on 16th May, 1988.

A Bill titled "An Act to amend the Code of Criminal Procedure Act No. 15 of 1979", was referred to the Chief Justice by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for a special determination by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

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

We have examined the provisions of the Bill. The object of the proposed amendment to S. 450 of the Code of Criminal Procedure Act No. 15 of 1979 is two-fold, namely, (a) to provide for the expeditious hearing of trials before the High Court at Bar, and (b) to enable the remaining Judges of the High Court at Bar to continue the hearing of a trial commenced before such High Court at Bar, in the event of the death or incapacity of a Judge of such High Court at Bar.

On a consideration of the proposed amendment we are of the view that the proposed amendment to S. 450 is not inconsistent with the Constitution.

The object of the proposed amendment to S. 451 of the Code of Criminal Procedure Act No. 15 of 1979 is to provide for an appeal to the Supreme Court (instead of the Court of Appeal) from any judgement, sentence or order pronounced by the High Court at Bar.

We have considered the impact of Article 138 (1) of the Constitution on the Proposed amendment to S. 451 of the Code of Criminal Procedure Act. Learned Additional Solicitor-General submitted that in terms of Article 138 (1) of the Constitution, the appellate jurisdiction of the Court of Appeal is subject to the provisions of the Constitution or of any law, and that, therefore, the Parliament can pass legislation to remove the existing appellate jurisdiction of the Court of Appeal in respect of any

judgement, sentence or order pronounced by a High Court at Bar, and provide for an appeal direct to the Supreme Court. He therefore submitted that the proposed amendment to S.451 of the Code of Criminal Procedure Act is not inconsistent with the Constitution.

On a consideration of the submissions made by the learned Additional Solicitor-General we are of the view that the proposed amendment to S. 451 of the Code of Criminal Procedure Act No. 15 of 1979 is not inconsistent with the Constitution.

Accordingly we determine that the Bill to amend the code of Criminal Procedure Act No. 15 of 1979, is not inconsistent with the Constitution.

However, learned Additional Solicitor-General informs us that the Parliament intends to pass the proposed Bill with a two-third majority of the total membership of the Parliament (including those not present).

E. A. D. ATUKORALE,
Judge of the Supreme Court.

H. D. TAMBIAH,
Judge of the Supreme Court.

H. A. G. DE SILVA,
Judge of the Supreme Court.

First Reading :

07.06.1988 (*Hansard* Vol. 53, No. 1 ; Col. 16)

Decisions of the Supreme Court conveyed to Parliament :

19.05.1988 (*Hansard* Vol. 52, No. 19 ; Cols. 1467-1468)

Second Reading :

20.06.1988 (*Hansard* Vol. 53, No. 5 ; Cols. 371-415)

Committee Stage and Third Reading :

20.06.1988 (*Hansard* Vol. 53, No. 5 ; Cols. 415-417)

Speaker's Certificate :

15.07.1988

Title : Code of Criminal Procedure (Amendment) Act No. 21 of 1988

UNIVERSITIES (AMENDMENT) BILL

to amend the Universities Act, No. 16 of 1978

UNIVERSITIES (AMENDMENT) BILL

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

S.D. No. 8 of 1988.

P/Parl./31

Present :

E. A. D. ATHUKORALE, *Acting Chief Justice*, H. D. TAMBIAH, *Judge of the Supreme Court*, and M. JAMEEL, *Judge of the Supreme Court*.

Counsel :

K. M. M. B. KULATUNGA, P.C., *Acting Attorney-General* with TONY FERNANDO, *State Counsel*, for the *Attorney-General*.

Court Assembled for the Hearing : At 10.05 a.m. on 4th July, 1988.

A Bill titled "AN ACT TO AMEND THE UNIVERSITIES ACT, NO. 16 OF 1978", was referred to the Acting Chief Justice by His Excellency the President in terms of Article 122(1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka, for special determination by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

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

We have carefully examined the provisions of the Bill. Section 25A of the Universities Act, No. 16 of 1978, as amended by the Universities (Amendment) Act No. 7 of 1985, empowers the Minister, subject to the provisions of Section 70C, by a "Degree Awarding Institution Order" to recognise any Institute, not being an Institution referred to in Sections 21, 22, 23, 24, 24A and 25, as a Degree Awarding Institution for the purpose of developing higher education in such course of study in such branches of learning as are specified in such order and subject to such condition as may be specified therein. Clause 2 of the Bill under consideration seeks to delete the reference to the aforesaid sections 21, 22, 23, 24, 24A and 25, and to substitute therefor the words "any Institution". Clauses 3 and 4 of the Bill are amendment consequential on an amendment to section 25A.

Our determination is that the Bill or any provision thereof is in no way inconsistent with the Constitution.

E. A. D. ATHUKORALE,
Acting Chief Justice.

H. D. TAMBIAH,
Judge of the Supreme Court.

M. JAMEEL,
Judge of the Supreme Court.

Clauses in the UNIVERSITIES (AMENDMENT) BILL considered in the decision of the Supreme Court

Clause 2

Section 25A of the Universities Act, No. 16 of 1978 (hereinafter referred to as the "principal enactment") is hereby amended by the substitution for the words and figures "any Institute not being an Institution referred to in section 21, 22, 23, 24, 24A and 25 of this Act as", of the words "any Institution as".

Clause 3

Section 70C of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for the words "in respect of an Institute, obtain a report in relation to such institute", of the words "in respect of an Institution obtain a report in relation to such institution."

Clause 4

Section 147 of the principal enactment is hereby amended by the substitution for the definition of "Degree Awarding Institute", of the following new definition:—

"Degree Awarding Institute" means any institution recognised under the provisions of section 25A;".

First Reading :

06.07.1988 (*Hansard* Vol. 53, No. 8 ; Col. 665)

Decision of the Supreme Court conveyed to Parliament :

05.07.1988 (*Hansard* Vol. 53, No. 7 ; Cols. 535-536)

Second Reading :

06.07.1988 (*Hansard* Vol. 53, No. 7 ; Cols. 741-771)

Committee Stage and Third Reading :

06.07.1988 (*Hansard* Vol. 53, No. 7 ; Cols. 771-772)

Speaker's Certificate :

15.07.1988

Title : Universities (Amendment) Act, No. 26 of 1988

MEDICAL (AMENDMENT) BILL
to amend the Medical Ordinance

MEDICAL (AMENDMENT) BILL

S.D. No. 9 of 1988.

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

Present :

E. A. D. ATHUKORALE, Acting *Chief Justice*, H. D. TAMBIAH, *Judge of the Supreme Court*, and M. JAMEEL, *Judge of the Supreme Court*.

Counsel :

K. M. M. B. KULATUNGA, P.C., *Acting Attorney-General* with TONY FERNANDO, S.C. for the *Attorney-General*.

Court Assembled for hearing : At 10.40 a.m. on 4th July, 1988.

A Bill titled "An Act to Amend the Medical Ordinance," was referred to the Acting Chief Justice by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka, for a special determination by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

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

We have carefully examined the provisions of the Bill. In our view clauses 2(1), 2(3), clause 4 and clause 6 are amendments consequential to the Bill to amend the Universities Act, No. 16 of 1978, which has already been held by us not to be inconsistent with the Constitution. The above clauses are therefore not inconsistent with the Constitution.

Clauses 2(2) and 2(4) which have no relation to the Bill to amend the Universities Act, No. 16 of 1978, aforesaid enable persons holding foreign degrees referred to therein to obtain registration under the Medical Ordinance (Chap. 105). Similarly clause 3 of the Bill enables apothecaries referred to therein to obtain registration under the Medical Ordinance. These clauses, too, in our view, are not inconsistent with the Constitution.

Clause 5 of the Bill provides for the more effective enforcement of the punitive provision of the Medical Ordinance. This clause, too, is not inconsistent with the Constitution.

Accordingly we determine that the Bill or any provision thereof is not inconsistent with the Constitution.

E. A. D. ATHUKORALE,
Acting Chief Justice.

H. D. TAMBIAH,
Judge of the Supreme Court.

M. JAMEEL
Judge of the Supreme Court.

Clauses in the MEDICAL (AMENDMENT) BILL Considered in the decision of the Supreme Court

Clause 2(1), (2), (3), (4) :

Section 29 of the Medical Ordinance (hereinafter referred to as "the principal enactment") is hereby amended as follows :—

(1) by the substitution for sub-paragraph (i) of paragraph (b) of sub section (1) of that section of the following sub-paragraph :—

"(i) holds a Degree of Bachelor of Medicine of—

- (a) the University of Ceylon or a corresponding University ; or
- (b) a Degree Awarding Institute, and a certificate granted by the Medical Council under section 32 ; or "

(2) by the addition at the end of subsection (1) of that section of the following, sub-paragraph :—

"(iii) not being qualified to be registered under the preceding sub-paragraphs—

- (aa) is a citizen of Sri Lanka ;
- (bb) holds a Degree of Bachelor of Medicine or an equivalent qualification of any University or Medical School of any country outside Sri Lanka, which, on the date on which such person was admitted to such University or Medical School, was a Degree or qualification which entitled its holder to be registered as a Medical Practitioner under this Ordinance ;
- (cc) has had an aggregate period of at least five years of efficient and satisfactory service, in the capacity of a Medical Officer ; and
- (dd) holds a certificate granted by the Medical Council under section 32."

(3) by the substitution for sub-paragraph (i) and sub-paragraph (ii) of paragraph (b) of subsection (2) of that section of the following new sub-paragraphs (i) and (ii) :

- "(i) holds a Degree of Bachelor of Medicine of the University of Ceylon or a corresponding University or a Degree Awarding Institute ; or
- (ii) has passed the examination necessary for obtaining a degree of Bachelor of Medicine of the University of Ceylon or a corresponding University or of a Degree Awarding Institute, but has not obtained that degree owing to a delay on the part of that University or Degree Awarding Institute in conferring that degree on him ; or "

(4) by the addition at the end of subsection (2) of that section, of the following sub-paragraph :—

“(iv) not being qualified to be registered provisionally under any of the preceding sub-paragraphs :—

(aa) is a citizen of Sri Lanka ;

(bb) holds a Degree of Bachelor of Medicine or an equivalent qualification of any University or Medical School of any country outside Sri Lanka, which, on the date on which such person was admitted to such University or Medical School, was a Degree or qualification which entitled its holder to be registered as a Medical Practitioner under this Ordinance ;

(cc) has had an aggregate period of at least five years of efficient and satisfactory service in the capacity of a medical officer.”

Clause 3 :

3. Section 41 of the principal enactment is hereby amended in item (a) of sub-paragraph (i) of paragraph (a) of subsection (2A) of that section, by the substitution for the words “as an estate apothecary, or” of the words “as an estate apothecary on an estate or on an estate and in the public service ; or”

Clause 4 :

Section 43 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and substitution thereof of the following subsection :—

“(1) No person shall be registered as a Dentist unless he is of good character and holds a degree or diploma in dentistry conferred or granted by the University of Ceylon or a corresponding University or by a Degree Awarding Institute.”

Clause 5 :

The following section is inserted immediately after section 69 and shall have effect as section 69A of the principal enactment :—

69A. (1) Notwithstanding anything to the contrary in the Code of Criminal Procedure Act, No. 15 of 1979 every offence under this Ordinance, shall be a cognizable offence within the meaning, and for the purpose, of that Act.

(2) The Minister may appoint in writing any Regional Director of Health Services or any Medical Officer of Health Services to be an authorized officer for the purposes of this section.

(3) Every authorized officer appointed under subsection (1) shall be deemed to be a peace officer within the meaning of the Code of Criminal Procedure Act, No. 15 of 1979 for the purpose of exercising, in relation to any offence under this Ordinance, any power conferred upon a peace officer by that Act.

“Every offence to be a cognizable offence.”

Clause 6 :

Section 74 of the principal enactment is hereby amended by the insertion immediately before the definition of the " Dentist " of the following new definition :—

" Degree Awarding Institute " has the same meaning as in the Universities Act, No. 16 of 1978 ;'

First Reading :

06.07.1988 (*Hansard* Vol. 53, No. 8 ; Col. 666)

Decision of the Supreme Court conveyed to Parliament :

05.07.1988 (*Hansard* Vol. 53, No. 7 ; Col. 537)

Second Reading :

06.07.1988 (*Hansard* Vol. 53, No. 8 ; Cols. 772-775)

Committee Stage and Third Reading :

06.07.1988 (*Hansard* Vol. 53, No. 8 ; Cols. 775-776)

Speaker's Certificate :

15.07.1988.

Title : Medical (Amendment) Act, No. 26 of 1988.

PARLIAMENTARY ELECTIONS (AMENDMENT) BILL

to amend the Parliamentary Elections Act, No. 1 of 1981

PARLIAMENTARY ELECTIONS (AMENDMENT) BILL

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

S.D. No. 10 of 1988

Present :

H. A. G. DE SILVA, *Judge of the Supreme Court;*
G. R. T. D. BANDARANAYAKE, *Judge of the Supreme Court ;*
M. JAMEEL, *Judge of the Supreme Court.*

Counsel :

K. M. M. B. KULATUNGE, *PC., Solicitor-General with S. RAJARATNAM*
State Counsel, for the Attorney-General.
PRINS GUNASEKERA, *Attorney-at-Law for the Mahajana Eksath Peramuna*

Court assembled for the hearing : At 10.00 a.m. on 26th July, 1988.

A Bill titled "An Act to amend the Parliamentary Elections Act No. 1 of 1981" was referred to the Acting Chief Justice by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for a special determination by the Supreme Court as to whether the Bill of any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

The Solicitor-General appeared before us and assisted us in the consideration of the Bill and Mr. Prins Gunasekera, Attorney-at-Law representing the Mahajana Eksath Peramuna, too, addressed us on the Bill.

We have examined the provisions of the Bill. The main object of the proposed amendment to Section 7 of the Parliamentary Elections Act No. 1 of 1981 is to enable political parties to apply to the Commissioner of Elections to be treated as recognised political parties provided such applications are made before 31st December, 1989 and to suspend the operation of sub-section 4 of Section 7 of Act No. 1 of 1981, during that period. The proposed amendment will cease to have effect on 31st December, 1989 by virtue of paragraph (g) of the new sub-section 4A of Section 7 of Act No. 1 of 1981 introduced by Clause 2 of this Bill.

Mr. Prins Gunasekera, Attorney-at-Law, too, submitted that the proposed amendment is not inconsistent with any of the provisions of the Constitution.

It is our determination that the provisions of the proposed Bill are not inconsistent with any of the provisions of the Constitution.

H. A. G. DE SILVA
Judge of the Supreme Court.
G. R. T. D. BANDARANAYAKE
Judge of the Supreme Court
M. JAMEEL
Judge of the Supreme Court

**CLAUSE IN THE PARLIAMENTARY ELECTIONS (AMENDMENT) BILL
CONSIDERED IN THE DECISION OF THE SUPREME COURT**

Clause 2:

Section 7 of the Parliamentary Elections Act, No. 1 of 1981, is hereby amended by the insertion, immediately after subsection (4) of that section, of the following sub-section :—

“(4A) (a) During the continuance in force of this sub-section, the secretary of any political party, other than a party which is already entitled to be treated as a recognized political party for the purpose of elections, may, subject to the provisions of paragraph (c) and paragraph (d), at any time make on behalf of that party a written application to the Commissioner, that such party be treated as a recognized political party for the purpose of elections. The application shall also specify which one of the approved symbols such party desires to be allotted to such party if so treated.

(b) The Secretary of a political party shall, at the time an application is made under paragraph (a), furnish to the Commissioner a copy of the constitution of such party and a list of office bearers of such party.

(c) Nothing in paragraph (a) shall be read or construed as enabling the secretary of a political party to make an application under that paragraph at any time during any of the following periods, that is to say, the period—

(i) commencing on the date of a Proclamation dissolving Parliament or of an Order requiring the holding of an election under the Parliamentary Elections Act, No. 1 of 1981 and ending on the date of poll specified in such Proclamation or Order ; or

(ii) commencing on the date of an Order made under section 2 of the Presidential Elections Act, No. 15 of 1981 and ending on the date of poll fixed by that Order ; or

(i) commencing on the date of a notice under section 10 of the Provincial Councils Elections Act, No. 2 of 1988, relating to an election under that Act, and ending on the date of poll specified for that election in an Order made under section 22 of that Act ; or

(iv) commencing on the date of a notice under section 10 of the Development Councils Elections Act, No. 20 of 1981, relating to an election under that Act, and ending on the date of poll specified for that election in a notice made under section 22 of that Act ; or

(v) commencing on the date of a notice under section 26 of the Local Authorities Elections Ordinance, relating to an election under that Ordinance, and ending on the date of poll specified for that election in a notice under section 38 of that Ordinance ; or

- (vi) commencing on the date of a Proclamation issued under section 2 of the Referendum Act, No. 7 of 1981 and ending on the date of poll appointed by that Proclamation.
- (d) Where an application made under paragraph (a) in respect of a political party is disallowed by the Commissioner, no application shall be made under that paragraph in respect of that political party until after the expiration of a period of three months from the date of the order disallowing the first application.
- (e) The provisions of subsections (5), (6) and (7) of this section shall *mutatis mutandis*, apply to every application made under this subsection.
- (f) During the period commencing on the date on which this subsection come into force and ending on the thirty-first day of December, 1989, the provisions of subsection (4) shall cease to have effect.
- (g) The provisions of this subsection shall cease to have effect on the thirty-first day of December, 1989."

First Reading :

09.08.1988 (*Hansard* vol. 53, No. 13 ; Col. 1127)

Decision of the Supreme Court conveyed to Parliament :

09.08.1988 (*Hansard* Vol. 53, No. 13 ; Cols. 1081-1082)

Second Reading :

09.08.1988 (*Hansard* Vol. 53, No. 13 ; Cols. 1127-1183)

Committee Stage and Third Reading :

09.08.1988 (*Hansard* Vol. 53, No. 13 ; Cols. 1183-1187)

Speaker's Certificate

16.08.1988

Title : Parliamentary Elections (Amendment) Act, No. 29 of 1988.

UNIVERSITIES (AMENDMENT) BILL

to amend the Universities Act, No. 16 of 1978

UNIVERSITIES (AMENDMENT) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution.
S.D. No. 11 of 1988

Present :

K. A. P. RANASINGHE, *Chief Justice*, E. A. D. ATUKORALE, *Judge of the Supreme Court*

H. D. TAMBIAH, *Judge of the Supreme Court*

Counsel :

K. M. M. B. KULATUNGA, *Solicitor-General* with TONY FERNANDO, *State Counsel*, for the *Attorney-General*

Court Assembled for the Hearing : At 10.05 a.m. on 7th September, 1988.

A Bill entitled "An Act to amend the Universities Act No. 16 of 1978" has been referred to the Chief Justice by His Excellency the President, in terms of Article 122 (1) (b) of the Constitution, for the special determination of this court, as to whether the said Bill or any provision thereof is inconsistent with the Constitution. The said Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view, the said Bill is urgent in the national interest.

The Solicitor-General, appeared before this Court and assisted this Court in the consideration of the provisions of the said Bill. The object of the said Bill is to amend section 70 (C) of the Universities Act No. 16 of 1978, as amended by Act No. 7 of 1985, by adding at the end of the said section, the three new subsections numbered therein, as (3), (4) and (5). The said provisions confer a power on the Minister to issue a special direction to a Degree Awarding Institute to the effect that every student of such Institute (whether admitted before or after the date of such direction) shall be eligible to sit only for the examinations conducted and held by such Institute in such branches of learning as are specified in the Order made under section 25 (A) recognising such Degree Awarding Institute. The power so vested in the Minister is an enabling power which such Minister could exercise at his discretion. The effect of such a direction, when issued, is that the students of such Institute could sit only for examinations conducted and held by such Institute in such branches of learning as had been specified in the order already made under section 25 (A).

A special direction so issued is also made final by the provisions of subsection (4).

The provisions of subsection (5) further make such a direction operative notwithstanding any agreements to the contrary entered into—

- (a) between such Institute, or its management, and the students of such Institute—
- (b) between such Institute or its management, and any Higher Educational Institution, or
- (c) between the students of such Institute and any Higher Educational Institution.

Learned Solicitor-General, who appeared before this court, submitted that the provisions of this Bill do not, in any way offend against any of the provisions of the Constitution

On a consideration of the provisions of the said Bill and the relevant provisions of the Constitution, this Court agrees with the said submissions.

Accordingly, the determination of this Court is that neither the said Bill, nor any of the provisions thereof, is inconsistent with the Constitution.

K. A. P. RANASINGHE,
Chief Justice.

E. A. D. ATUKORALE,
Judge of the Supreme Court.

H. D. THAMBIAH,
Judge of the Supreme Court.

**CLAUSE IN THE UNIVERSITIES (AMENDMENT) BILL CONSIDERED IN
THE DECISION OF THE SUPREME COURT**

Clause 2 :

Section 70C of the Universities Act, No. 16 of 1978 is, hereby amended by the addition at the end of that section, of the following subsections :—

“(3) The Minister may issue to a Degree Awarding Institute a special direction to the effect that every student of such Degree Awarding Institute (whether admitted before or after the date of such direction) shall be eligible to sit only for the examination conducted and held by that Degree Awarding Institute in such branches of learning as are specified in the Order made under section 25A recognising such Degree Awarding Institute.

(4) A special direction issued to a Degree Awarding Institute under subsection (3) shall be final.

(5) A special direction issued to a Degree Awarding Institute under subsection (3) shall have effect notwithstanding anything to the contrary in any agreement between—

- (a) such Degree Awarding Institute or its management and the students of such Degree Awarding Institute ;
- (b) such Degree Awarding Institute or its management and any Higher Educational Institution ; or
- (c) the students of such Degree Awarding Institute and any Higher Educational Institution”.

First Reading :

08.09.1988 (Hansard Vol. 54, No. 3 ; Col. 173)

Decision of the Supreme Court conveyed to Parliament :

08.09.1988 (Hansard Vol. 54, No. 3 ; Cols. 165-166)

Second Reading :

08.09.1988 (Hansard Vol. 54, No. 3 ; Cols. 173-222)

09.09.1988 (Hansard Vol. 54, No. 4 ; Cols. 274-313).

Committee Stage and Third Reading :

09.09.1988 (Hansard Vol. 54, No. 4, Cols. 314-315)

Speaker's Certificate :

15.09.1988

Title : Universities (Amendment) Act., No. 33 of 1988

NATIONAL ENVIRONMENTAL (AMENDMENT) BILL

to amend the National Environmental Act, No 47 of 1983

NATIONAL ENVIRONMENTAL (AMENDMENT) BILL

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

No. 12/88.

Present :

E. A. D. ATUKORALE, *Judge of the Supreme Court.*

G. P. S. DE SILVA, *Judge of the Supreme Court.*

G. R. T. D. BANDARANAYAKE, *Judge of the Supreme Court*

Counsel :

K. M. M. B. KULATUNGA, *P. C. Solicitor-General* with J. A. N. DE SILVA,
Senior State Counsel for the Attorney-General.

Court assembled for the hearing : At 10.05 a.m. on 8th September, 1988.

A Bill titled "An Act to amend the National Environmental Act, No. 47 of 1980" was referred to the Chief Justice 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 by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

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

The Bill seeks to amend the provisions of the National Environmental Act No. 47 of 1980, hereafter referred to as the principal Act. The main amendments sought to be introduced by the Bill relate to the more effective protection, management and enhancement of the environment, the regulation, maintenance and control of the quality of the environment and the prevention, abatement and control of environmental pollution. With a view to achieving these objects the Bill, by Clause 5, seeks to widen the scope and ambit of activity of the Central Environmental Authority established under the principal Act by enlarging its powers, functions and duties. Part IV A of the Bill, which deals with environmental protection, prohibits every person from discharging, depositing or emitting waste into the environment which will cause pollution except under the authority of a licence issued by the Central Environmental Authority and in accordance with such standards and other criteria as may be prescribed under the Bill after it becomes law, hereinafter referred to as the Act. It makes provision for the making of applications for and the issue of licences, for their suspension or cancellation by the Authority and for appealing to the Secretary of the appropriate Ministry against the Authority's decision refusing to grant, suspending, cancelling or refusing to renew the licences. The decision of the Secretary on any such appeal is sought to be made final.

Part IV B of the Bill makes provision for the regulation, maintenance and control of the quality of the environment. It prohibits every person from depositing or emitting waste into the inland waters of Sri Lanka except in accordance with such standards or criteria as may be prescribed under the Act. It further prohibits every person from polluting such waters or from causing or permitting to cause pollution in such waters so that the physical, chemical or biological condition of the inland waters is so changed as to make or reasonably expected to make those waters or any part thereof unclean, noxious, poisonous, impure, detrimental to the health, welfare, safety of property or human beings, poisonous or harmful to animals, birds, wildlife, fish, plants or other forms of life or detrimental to any beneficial use made of those waters. This Part deems certain acts enumerated herein to be a contravention of the prohibition against pollution of the inland waters of Sri Lanka and further prescribes penalties and imposes sanctions for a contravention of the provisions against such pollution. There are also in this Part similar provisions against the discharge or emission of waste into the atmosphere and for the imposition of penalties and sanctions against such discharge or emission; against the discharge or deposit of waste into the soil and for the imposition of penalties and sanctions for a violation of such provisions; against permitting the emission of excessive noise unless there is compliance with the standards or limitations as may be prescribed by the Act in regard to the volume, intensity or quality of such noise; and against discharging or permitting the discharge of noise greater in volume, intensity or quality than the levels prescribed for tolerable noise except under the authority of a licence issued by the Central Environmental Authority. A person who discharges or permits the discharge of such noise without a licence or acts in breach of a condition, limitation or restriction imposed by a licence commits an offence and is liable to be punished in a Court. There is also in this Part provisions enabling the Authority to remove or otherwise dispose of litter deposited in any place which is or is likely to become detrimental to the health, safety or welfare of the members of the public. The cost of removal or disposal of such litter is recoverable in a Court of competent jurisdiction against the person proved to have made the deposit.

Part IVC of this Bill provides for the determination of prescribed projects and the machinery for the obtaining of approval for such projects. Clause II of the Bill empowers the Minister to make regulations in respect of all matters which are stated or are required by the Act to be prescribed or for which regulations are required by the Act to be made.

On a careful examination of the several Clauses in the Bill (including those referred to above) we are of the view that the amendments sought to be made to the principal Act are not inconsistent with the Constitution. Accordingly this Court determine that the Bill or any provision thereof is not inconsistent with the Constitution.

E. A. D. ATUKORALE,

Judge of the Supreme Court.

G. P. S. DE SILVA,

Judge of the Supreme Court

G. R. T. D. BANDARANAYAKE,

Judge of the Supreme Court.

**CLAUSES IN THE NATIONAL ENVIRONMENTAL (AMENDMENT) BILL
CONSIDERED IN THE DECISION OF THE SUPREME COURT**

Clause 5 :

Section 10 of the principal enactment is hereby amended as follows :—

- (1) by the repeal of subsection (2) of that section ;
- (2) by the re-numbering of subsection (1) of that section as section 10 ;
- (3) by the re-numbering of paragraphs (f), (g), (h), (i), (j), (k), (l), and (m) of the re-numbered section 10, as (k), (l), (m), (n), (o), (p), (q) and (r) ; and
- (4) by the insertion immediately after paragraph (e) of the re-numbered section 10, of the following new paragraphs :—
 - (f) to be responsible for the co-ordination of all regulatory activities relating to the discharge of wastes and pollutants into the environment and the protection and the improvement of the quality of the environment ;
 - (g) to regulate, maintain and control the volume, types, constituents and effects of waste, discharge, emissions, deposits or other sources and sub-sources of pollution which are of danger or potential danger to the quality of the environment of any segment of the environment ;
 - (h) to require the submission of proposals, for new projects and changes in or abandonment of existing projects, for the purpose of evaluation of the beneficial and adverse impacts of such proposals on the environment ;
 - (i) to require any local authority to comply with and give effect to any recommendations relating to environmental protection within the limits of the jurisdiction of such local authority and in particular any recommendations relating to all or any of the following aspects of environmental pollution ;
 - (i) the prohibition of the unauthorized discharge, emission or deposit of litter, waste, garbage and sewage ;
 - (ii) the prevention of the discharge of untreated sewage or sub-standard industrial effluents or toxic chemicals into soil, canals or water ways ;
 - (iii) the prohibition of the display of posters or bills on walls or buildings or any other unauthorized places and regulation of the erection of advertising hoardings ;
 - (iv) the prevention of the defacement of the scenic places and public property ;
 - (v) the control of the pollution of the atmosphere ;
 - (vi) the control of noise pollution ; and

(vii) the storage, transport and disposal of any material which is hazardous to health and environment ;

(j) to appoint special committees to assist it in performance of its functions”.

Clause : 11

Section 32 of the principal enactment is hereby repealed and the following section substituted therefor :—

32. (1) The Minister may make regulations in respect of all matters which are stated or are required by this Act to be prescribed or for which regulations are required by this Act to be made.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1) the Minister may make regulations in respect of all or any of the following matters :—

(a) levy of fees for—

(i) examining plans, specifications and information relating to installation or proposed installations ;

(ii) the issue of licences under this Act ; and

(iii) carrying out necessary monitoring duties ;

(b) specification of standards or criteria for the implementation of any national environmental policy or classification for the protection of the environment and for protecting beneficial uses ;

(c) specification of standards or criteria for determining whether any matter, action or thing is poisonous, objectionable, detrimental to health or within any other description or referred to in this Act ;

(d) prohibition of the discharge, emission, or deposit into the environment of any matter, whether liquid, solid, or gaseous, or of radio activity and prohibition or regulating the use of any specified fuel ;

(e) specification of ambient air quality standard and emission standards and specifying the maximum permissible concentrations of any matter that may be present in or discharge into the atmosphere ;

(f) prohibition of the use of any equipment, facility, vehicle, or boat capable of causing pollution or regulating the construction, installation or operation thereof so as to prevent or minimise pollution ;

(g) requirement of issuing pollution warnings or alerts ;

(h) prohibition or regulation of the open burning of refuse or other combustible matter ;

(i) regulation of the establishment of sites for the disposal of solid or liquid waste on or in land ;

- (j) determination of objectionable noise and specification of standards for tolerable noise ;
 - (k) prohibition of or regulation of bathing, swimming, boating or other activity in or around any waters that may be detrimental to health or welfare or having adverse cultural effects or for preventing pollution ;
 - (l) requirement that the oil refineries and installations operating in Sri Lanka store such substance or material and equipment necessary to deal with any pollution of the inland waters of Sri Lanka that may arise in the course of their business ;
 - (m) requirement that the oil refineries carrying on business install such equipment as may be prescribed for the purpose of reducing or preventing any trade effluent from containing oil ;
 - (n) prescribing the procedure relating to appeals against the decision of the Authority ;
 - (o) relating to visual amenities in urban and rural areas ;
 - (p) storage and transportation of harmonious materials ;
 - (q) disposal of wastes and hazardous materials whether to the atmosphere water or soil ; and
 - (r) requirement of specific environmental monitoring duties by the developer or a specified third party delegated for this purpose.
- (3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or upon such later date as may be specified in the regulation.
- (4) Every regulation made by the Minister shall, as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Every regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder. Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette*.

First Reading :

22.09.1988 (*Hansard* Vol. 54, No. 5 ; Col. 331)

Decision of the Supreme Court Conveyed to Parliament :

09.09.1988 (*Hansard* Vol. 54, No. 4 ; Cols. 262-263)

Second Reading :

06.10.1988 (*Hansard* Vol. 54, No. 9 ; Cols. 812-841)

07.10.1988 (*Hansard* Vol. 54, No. 10 ; Cols. 878-879)

Committee Stage and Third Reading :

07.10.1988 (*Hansard* Vol. 54, No. 10 ; Col. 879)

25.11.1988 (*Hansard* Vol. 54, No. 23 ; Col. 2282-2283)

Speaker's Certificate :

17.12.1988.

Title : National Environmental (Amendment) Act, No. 56 of 1988.

ELECTIONS (SPECIAL PROVISIONS) BILL

to amend the Parliamentary Elections Act, No. 1 of 1981, the Presidential Act, No. 15 of 1981 and the Provincial Councils Elections Act, No. 2 of 1988.

ELECTIONS (SPECIAL PROVISIONS) BILL

S.D. No. 13 of 1988

In the matter of a Reference in terms of Article 122 (1) (b) of the Constitution requiring the Supreme Court to determine as to whether the Bill titled "An act to amend the Parliamentary Elections Act, No. 1 of 1981, the Presidential Elections Act, No. 15 of 1981 and the Provincial Councils Elections Act, No. 2 of 1988 inconsistent with the Constitution.

Present :

H. D. TAMBIAH, *Judge of the Supreme Court*

H. A. G. DE SILVA, *Judge of the Supreme Court*

G. P. S. DE SILVA, *Judge of the Supreme Court*

Counsel :

M. S. M. AZIZ, *Deputy Solicitor-General with Asoka de Silva, Deputy Solicitor General for the Attorney-General.*

R. K. W. GUNASEKERA, *Attorney-at-Law (in person)*

GOMIN DAYASIRI *Attorney-at-Law (in person).*

Court Assembled for the Hearing : At 10.00 a.m. on 22.9.1988.

A Bill titled "An act to amend the Parliamentary Elections Act, No. 1 of 1981, the Presidential Elections Act, No. 15 of 1981, and the Provincial Councils Elections Act, No. 2 of 1988," was referred to the Chief Justice by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka, for a special determination by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution.

Mr. M. S. M. Aziz, deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill.

Mr. R. K. W. Gunasekera, attorney-at-law, and Mr. Gomin Dayasiri, attorney-at-law, appeared in person, and requested that they be permitted to make oral submissions and we accordingly allowed them to make their submissions.

The Bill contains an endorsement that the Cabinet of Ministers has certified that in its view, the Bill is urgent in the national interest.

The substantial amendment to the Parliamentary Elections Act, No. 1 of 1981 is contained in clause 4 which enables the Commissioner of Elections to invalidate a poll at a polling station, after inquiry, on account of disturbances at the polling station. The Commissioner of Elections is also given a discretion, after receipt of the statement from the Returning Officer in terms of clause 4 (5) to either hold a fresh poll or not, depending on whether or not the result of the election will be affected by the failure to count the votes polled or the votes which would have been polled.

The principal submission made by both attorneys-at-law is that in the event of the Commissioner of Elections deciding that a fresh poll need not be held, the right of franchise guaranteed by Article 4 (e) of the Constitution would be infringed.

We have considered this submission and in our view the exercise of the franchise is not affected since the decision of the Commissioner of Elections is based on the statement prepared by the Returning Officer in terms of clause 4 (5).-

Both learned attorneys-at-law also submitted that in the event of the Commissioner deciding to hold a fresh poll on a subsequent date, the votes cast at the other polling stations would have been made public and, therefore, could affect the principle of the secrecy of the vote which is an essential attribute of the franchise. In our view the principle of the secrecy of the vote is intended to ensure the right of a voter to vote for a party and a candidate of his choice, according to his conscience. Accordingly we are unable to agree with the contention of learned attorneys-at-law.

As regards the amendment to the Presidential Elections Act, No. 1 of 1981, the substantial amendments are contained in clauses 7 and 10. Clause 7 incorporates the provisions already found in section 24 (3) of the Parliamentary Elections Act, No. 1 of 1981, and also section 22 (6) of the Provincial Councils Elections Act, No. 1 of 1988.

Both learned attorneys-at-law submitted that under clause 7, the decision not to hold an election in any electoral district has been entrusted to the Commissioner of Elections without meaningful guidelines being given to him as to how his discretion should be exercised.

We have considered this submission. We however, agree with the submission made by learned Deputy Solicitor-General that the operative words in clause 7 (2) are "the polling for the election of an electoral district cannot be taken on the date specified in the notice relating to the election."

This in our view is a sufficient guideline given to the Commissioner of Elections.

The same argument was addressed to us namely, the violation of the secrecy of the vote, in regard to clauses 7 (3) and 10 of Part II of the Bill, which we have already dealt with.

Part 3 of the Bill contains provisions similar to that contained in Parts I and II of the Bill, and learned attorneys-at-law made no submissions in regard to them.

We note that the decisions of the Commissioner of Elections postulated in this amending Bill have not been given a final and conclusive effect, and in any event, section 92 (1) (a) and (v) of the Parliamentary Elections Act, No. 1 of 1981, section 91 (a) and (b) of the Presidential Elections Act, No. 15 of 1981, and section 92 (1) (a) and (b) of the Provincial Councils Elections Act, No. 2 of 1988, made such decisions by the Commissioner of Elections reviewable by a Court of Law.

It should also be noted that the independence and the tenure of office of the Commissioner of Elections is ensured and guaranteed in terms of Article 103 (1) of the Constitution.

At the hearing, the Deputy Solicitor-General informed us that at a meeting of the leaders of parties represented in Parliament, presided over by the Hon. the Speaker, the Commissioner of Elections had explained the provisions of the Bill and there were no objections raised to the said provisions.

We, accordingly, determine that neither the Bill nor any of its provisions is inconsistent with the Constitution.

H. D. TAMBIAH,
Judge of the Supreme Court

H. A. G. DE SILVA,
Judge of the Supreme Court.

G. P. S. de SILVA,
Judge of the Supreme Court.

Clauses in the ELECTIONS (SPECIAL PROVISIONS) BILL Considered in the decision of the Supreme Court

Clause 4 -

The following new section is hereby inserted immediately after section 48, and shall have effect as section 48A of the principal enactment :—

Disturbances at
polling
stations

48A. (1) Where due to the occurrence of events of such a nature—
(a) it is not possible to commence the poll at a polling station at the hour fixed for the commencement of the poll ; or

(b) the poll at such polling station commences at the hour fixed for the opening of the poll but cannot be continued until the hour fixed for the closing of the poll ; or

(c) any of the ballot boxes assigned to the polling station cannot be delivered to the counting officer ,

the presiding officer of such polling station shall forthwith inform the returning officer who shall in turn inform the Commissioner

(2) On receipt of an information under subsection (1) in relation to a polling station in an electoral district, the Commissioner may, after such inquiries as he may deem necessary to ascertain the truth of such information, by Order published in the *Gazette* declare the poll at such polling station void.

(3) Where the Commissioner makes an Order under subsection (2) in respect of a polling station in an electoral district, the provisions of Part IV shall, *mutatis mutandis* apply to the counting of votes polled in the election for such electoral district and the declaration of the result of such election, subject to the modifications set out in this section.

(4) The counting officer in charge of the counting centre to which the polling station in respect of which the Order under subsection (2) has been made, is assigned shall, notwithstanding anything in section 52, commence the counting of votes after he

has received all the ballot boxes from the polling stations assigned to his centre other than the ballot boxes from the polling station in respect of which the Order under subsection (2) has been made.

(5) The returning officer shall, from the statements under subsection (1) of section 53 furnished to him by all the counting officers, add up and ascertain the votes polled by each recognized political party and independent group and the preferences secured by each candidate nominated by each such party or group at the election for such electoral district (other than votes polled at the polling station in respect of which an Order under subsection (2) has been made and shall forthwith forward a statement to that effect to the Commissioner.

(6) Where the Commissioner is of the opinion, upon receipt of a statement under subsection (5) that the result of the election for such electoral district will not be affected by the failure to count the votes polled, or the votes which would have been polled, in the polling station in respect of which an Order under subsection (2) has been made, he shall direct the returning officer to make a declaration under subsection (2) of section 60 in accordance with such statement and the provisions of that subsection, and the returning officer shall make a declaration accordingly.

(7) (a) Where the Commissioner is of the opinion on receipt of a statement under subsection (5) that the result of the election for such electoral district will be affected by the failure to count the votes polled, or the votes which could have been polled, at the polling station in respect of which an Order under subsection (2) has been made he shall forthwith appoint a date for taking a fresh poll at such polling station.

(b) The date appointed for the poll under paragraph (a) shall be not later than two weeks from the date on which the Commissioner receives the statement under subsection (5). The Commissioner shall give notice of the new date of poll in at least one newspaper in each of the National languages and by notices conspicuously displayed in the polling district in which such polling station is situated.

(c) The provisions of sections 28 to 47 (both inclusive) shall *mutatis mutandis*, apply to and in relation to, voting at a poll ordered under paragraph (a) The register of electors to be used at that poll shall be same as that used at the earlier poll.

(d) For the purposes of the application of the provisions of section 73, 74 and subsection (2) of section 79 to a poll ordered under paragraph (a) the references in those sections to "the day

following the date on which a poll is taken at such election shall be deemed to be a reference to the day following the date appointed for the taking of such poll.

(e) A person who votes more than once at an election by reason of his voting at a poll ordered under Paragraph (a) shall be deemed not to be guilty of any offence under this Act.

(8) Upon receipt of the documents referred to in section 55 in respect of the poll ordered under subsection (7) the returning officer shall add the votes polled by each recognized political party and independent group and the preferences secured by each candidate nominated by each such party or group and set out in a statement forwarded to the Commissioner under subsection (5) the votes polled by each such party or group and the preferences secured by each such candidate at the poll ordered under sub-section (7), and shall make a declaration under subsection (2) of section 60 in accordance therewith."

Clause 7 :

Section 21 of the Presidential Elections Act, No. 15 of 1981 (hereinafter in this Part referred to as the "principal enactment") is hereby amended as follows :—

(1) by the renumbering of that section as subsection (1) of that section ; and

(2) by the insertion, immediately after the renumbered subsection (1), of the following new subsections :—

"(2) Where due to any emergency or unforeseen circumstances the poll for the election in any electoral district cannot be taken on the day specified in the notice relating to the election published under subsection (1) the Commissioner may by Order published in the Gazette, appoint another date for the taking of such poll and such date shall not be later than one month before the expiration of the term of office of the President in office.

(3) Where a new date for taking a poll in an electoral district has been appointed by an Order made under subsection (2), no declaration shall be made by the Commissioner under section 56 or section 61 or section 63 until after the counting of the votes polled at such poll has been completed and a statement, under section 58, indicating the number of votes cast in favour of each candidate in such electoral district has been transmitted to the Commissioner."

Clause 10 :

The following new section is hereby inserted immediately after section 46 of the principal enactment and shall have effect as section 46A of that enactment :—

Disturbances at
polling
stations

46A. (1) Where due to the occurrence of events of such a nature-
(a) it is not possible to commence the poll at a polling station
at the hour fixed for the commencement of the poll ; or

(b) the poll at such polling station commences at the hour fixed for the opening of the poll but cannot be continued until the hour fixed for the closing of the poll ; or

(c) any of the ballot boxes assigned to the polling station cannot be delivered to the returning officer.

the presiding officer of such polling station shall forthwith inform the returning officer who shall in turn inform the Commissioner

(2) On receipt of an information under subsection (1) in relation to a polling station in an electoral district, the Commissioner may, after making such inquiries as he may deem necessary to ascertain the truth of such information by Order published in the *Gazette* declare the poll at such polling station void.

(4) Where the Commissioner makes an Order under subsection (2) in respect of a polling station in an electoral district the provisions of Part IV shall *mutatis mutandis*, apply to the counting of votes in such polling station and the declaration of the result of the election, subject to the modifications set out in this section.

(4) The counting officer in charge of the counting centre to which the polling station in respect of which the Order under subsection (2) has been made, is assigned shall, notwithstanding anything in section 50, commence the counting of votes after he has received all the ballot boxes from the polling stations assigned to his centre, other than the ballot boxes from the polling station in respect of which the Order under subsection (2) has been made . .

(5) Where the Commissioner is of the opinion, upon receipt of the statements under section 55 furnished to him by all the returning officers that the result of the election will not be affected by the failure to count the votes polled, or the votes which would have been polled in the polling station in respect of which an Order under subsection (2) has been made he shall proceed to make a declaration under section 56 or section 61.

(6) (a) Where the Commissioner is of the opinion upon receipt of the statements under section 55 furnished to him by all the returning officers, that the result at the election will be affected by the failure to count the votes polled, or the votes which would have been polled, at the polling station in respect of which an Order under subsection (2) has been made, he shall forthwith appoint a date for taking a fresh poll at such polling station, and the date so appointed shall be not later than one month before the expiration of the term of office of the President in office. The Commissioner shall give notice of the new date of poll in at least one newspaper in each of the National languages and by notices conspicuously displayed in the polling district in which such polling station is situated.

(b) The provisions of section 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 38, 39, 41, 42, 43, 44 and 45 shall, *mutatis mutandis*, apply to and in relation to, voting, at a poll ordered under paragraph (a). The register of electors to be used at that poll shall be same as that used at the earlier poll.

(c) For the purpose of the application of the provisions of sections 73, 74 and subsection (2) of section 78 to a poll ordered under paragraph (a) the references in those sections to "the day following the date on which a poll is taken at such election" shall be deemed to be a reference to the day following the date appointed for the taking of such poll.

(d) A person who votes more than once at an election by reason of his voting at a poll ordered under paragraph (a) shall be deemed not to be guilty of any offence under this Act.

(7) Where a new date for taking a poll at a polling station has been appointed under subsection (6), no declaration shall be made by the Commissioner under section 56 or section 61 or section 63 until after the counting of the votes polled at such poll has been completed and a statement, under section 55, indicating the number of votes cast in favour of each candidate at such poll has been transmitted to the Commissioner."

First Reading :

23-09.1988 (*Hansard* Vol. 54 No. 6 ; Col. 453)

Decision of the Supreme Court conveyed to Parliament :

23-09.1988 (*Hansard* Vol. 54 , No. 6 Cols. 439—440)

Second Reading :

04.10.1988 (*Hansard* Vol. 54 , No. 7 : Cols. 565—616)

05.10.1988 (*Hansard* Vol. 54, No. 8 : Cols. 709—759)

Committee Stage and Third Reading :

05.10.1988 (*Hansard* Vol. 54, No. 8 : Cols. 759—785)

Speaker's Certificate :

21.10.1988

Title : Elections (Special Provisions) Act, No. 35 of 1988.

LOCAL AUTHORITIES (SPECIAL PROVISIONS) BILL

**to provide for the extension of the term of office of members of certain Local Authorities
and for matters connected therewith or incidental thereto**

THE LOCAL AUTHORITIES (SPECIAL PROVISIONS) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution
Supreme Court No :

Special Determination 14/88

Present :

SENEVIRATNE, J.,
BANDARANAYAKE, J., and
FERNANDO, J.

Counsel : K. M. M. B. Kulatunge, P.C., *Solicitor-General with*
Miss. M. N. B. Fernando, S. C., *for the Attorney-General*

Court assembled for the hearing : At 10.00 a.m on 30th September 1988.

A Bill titled "The Local Authorities (Special Provisions) Bill" was referred to this Court by His Excellency the President, in terms of Article 122 (1)(b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate where by the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

By virtue of the Local Authorities (Special Provisions) Act, No. 43 of 1987 the terms of office of the elected members of certain Development Councils, Municipal Councils and Urban Councils were extended for a period of one year, i.e. until 01.01.1989 or such earlier date as the Minister may appoint. Provision was also made that the terms of office of certain Pradeshiya Sabhas shall commence on 01.01.1989 or on such earlier date as the Minister may appoint; and that the Minister may by Order appoint a Special Commissioner to administer the affairs of any such Sabha during the period commencing on 01.01.1988 and ending on the date of commencement of the terms of office of such Sabha. Section 5 required the Commissioner of Elections, within two weeks of the coming into operation of that section, to publish a notice calling for nominations in respect of certain electoral areas in respect of which either no nomination papers had been received, or all the nomination papers received had been rejected, in previous nomination periods.

The Bill under consideration is in virtually identical terms, providing for a further extension not exceeding one year in respect of the aforesaid Councils and Sabhas, for reasons of public order.

We have considered the provisions of the Bill, and find that there is no inconsistency between the Bill, or any provision thereof, and the Constitution. Accordingly, we determine that the Bill or any provision thereof is not inconsistent with the Constitution.

O. S. M. SENEVIRATNE,
Judge of the Supreme Court.
G. R. T. D. BANDARANAYAKE,
Judge of the Supreme Court.
M. D. H. FERNANDO, P. C.
Judge of the Supreme Court.

First Reading :

05.10.1988 (Hansard Vol. 54, No. 8 : Col. 628)

Decision of Supreme Court Conveyed to Parliament

04.10.1988 (Hansard Vol. 54, No. 7 : Cols. 546—548)

Second Reading :

13.10.1988 (Hansard Vol. 54, No. 11 : Cols. 988—1039)

Committee Stage and Third Reading :

13.10.1988 (Hansard Vol. 54, No. 11 : 1039—1040)

Speaker's Certificate :

09.11.1988.

Title : Local Authorities (Special Provisions) Act, No. 38 of 1988.

**GRANT OF CITIZENSHIP TO STATELESS PERSONS
(SPECIAL PROVISIONS) BILL**

**to provide for the Grant of Status of Sri Lanka Citizen to certain
Stateless Persons of Indian Origin**

**THE GRANT OF CITIZENSHIP TO STATELESS PERSONS
(SPECIAL PROVISIONS) BILL**

In the matter of a reference under Article 122 (1) (b) of the Constitution.
Supreme Court No.

Statutory Determination No. 15/88

Present :

TAMBAIAH, J.
JAMEEL, J. and
Fernando, J.

Counsel :

SHIBLEY AZIZ, *Deputy Solicitor-General* with F. N. GOONEWARDENE
S.C., for the *Attorney-General*

The Court Assembled for the hearing : At 10.40 a.m. on 3rd November 1988.

Mr. Shibley Aziz, D.S.G., appeared before us and assisted us in the determination of this matter.

A Bill titled "The Grant of Citizenship to Stateless Persons (Special Provisions Bill)" ("An Act to provide for the Grant of Status of Sri Lanka Citizen to certain Stateless Persons of Indian Origin") was referred to this Court by His Excellency the President in terms of Article 122 (1) (b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate whereby the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

From time to time, under the provisions of various Indo-Sri Lanka Agreements and statutes passed in the implementation thereof, the Governments of Sri Lanka and India agreed to grant citizenship, of Sri Lanka and India respectively, to specified numbers of stateless persons of Indian origin, resident in Sri Lanka.

Our attention was drawn to the Grant of Citizenship to Stateless Persons Act No. 5 of 1986. The preamble to that Act states :

" And whereas the Government of India has resolved to solve the problem of statelessness within eighteen months of the date of enactment of this Act."

Section 2 of that Act provided for the grant of Sri Lanka citizenship to a total of 469,000 persons of Indian origin. Section 4 provided for Sri Lanka citizenship to be granted to the children, born after 30th October 1964, of such (469,000) persons. The preamble to that Act also referred to 506,000 persons of Indian origin to whom the Government of India had agreed to grant Indian citizenship. Section 7 provided that if, after such 506,000 persons had been granted Indian citizenship, and after the 469,000 persons referred to in section 2 had been granted Sri Lanka citizenship, there remained any residue of persons of Indian origin lawfully resident in Sri Lanka, the Minister shall grant the status of Sri Lanka citizens to such persons in accordance with the prescribed procedure.

The provisions of that Act were considered by this Court upon a Reference under Article 122 (1) (b) : Statutory Determination No. 1 of 1986, 27.01.86. Apart from an amendment suggested by the Court to avoid a possible inconsistency with the Constitution, it was held that the provisions of the Bill were not inconsistent with the Constitution. That Act was subsequently enacted by Parliament, with the amendment suggested by this Court.

The 1986 Act entitled the persons referred to in sections 2, 4 and 7 to Sri Lanka citizenship. However, an administrative process of registration and issue of certificates was involved. The learned Deputy Solicitor-General informed us that it was not possible to complete the implementation of the process contemplated in that Act within the period of eighteen months referred to in the preamble thereto, due to various administrative difficulties. That Act was enacted on 18th February 1986, and the period of eighteen months has long expired.

The Bill now under consideration seeks to implement the provisions of the 1986 Act, without the need for further administrative action. In lieu of the processes of registration and issue of certificates contemplated by that Act, clause 2 of the Bill automatically and without further delay grants the status of Sri Lanka citizen to all those who were entitled thereto under the 1986 Act.

The learned Deputy Solicitor-General submitted that none of the provisions of the Bill are inconsistent with the Constitution.

We have considered the provisions of the Bill and find that there is no inconsistency between the Bill, or any provision thereof, and the Constitution. Accordingly we determine that neither the Bill nor any provision thereof is inconsistent with the Constitution.

H. D. TAMBIAH,
Judge of the Supreme Court.

M. JAMEEL,
Judge of the Supreme Court.

M. D. H. FERNANDO,
Judge of the Supreme Court.

**Clause in the GRANT OF CITIZENSHIP TO STATELESS PERSONS
(SPECIAL PROVISIONS) BILL Considered in the decision of the
Supreme Court**

Clause 2 :

Notwithstanding the provisions of any other law every person who—

- (a) is of Indian origin lawfully resident in Sri Lanka ;
- (b) is stateless ; and
- (c) is not within the 506,000 persons referred to in the Grant of Citizenship to Stateless Persons Act, No. 5 of 1986, who have applied to the Indian High Commission for the Grant of Indian Citizenship, and the children born to them after October 30, 1964.

First Reading :

09.11.1988 (*Hansard* Vol. 54, No. 20, Cols. 2111-2112)

Decision of the Supreme Court conveyed to Parliament :

09.11.1988 (*Hansard* Vol. 54, No. 20, Cols. 2095-2096)

Second Reading :

09.11.1988 (*Hansard* Vol. 54, No. 20, Cols. 2113-2133)

Third Reading and Committee stage †

09.11.1988 (*Hansard* Vol. 54, No. 20, Cols. 2133-2134)

Speaker's Certificate :

11.11.1988.

Title : Grant of Citizenship to Stateless Persons (Special Provisions) Act, No. 39 of 1988.

INDEMNITY (AMENDMENT) BILL

to amend the Indemnity Act, No. 20 of 1982

INDEMNITY (AMENDMENT BILL)

In the matter of a Reference under Article 122 (1) (b) of the Constitution.
S.D. No. 16/88

Present :

E. A. D. ATUKORALE, *Judge of the Supreme Court*
O. S. M. SENEVIRATNE, *Judge of the Supreme Court.*
Dr. A. R. B. AMERASINGHE, *Judge of the Supreme Court.*

Counsel :

TILAK MARAPANE, *Additional Solicitor-General for the Attorney-General.*
Mr. PRINS GUNASEKERA, *President of the Colombo District Citizens' Committee, in person.*

Mr. R. K. W. GOONESEKERA, *Attorney-at-Law, for the Civil Rights Movement.*

Court Assembled for the Hearing : At 10.25 a.m. on 30th November, 1988.

A Bill titled "An Act to amend the Indemnity Act No. 20 of 1982" was referred to the Chief Justice 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 by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has decided that in its view the Bill is urgent in the national interest.

The learned Additional Solicitor-General appeared for the Attorney-General. Mr. Prins Gunasekera, President of the Colombo District Citizens' Committee, appeared in person and Mr. R. K. W. Goonasekera, Attorney-at-law, appeared for the Civil Rights Movement. They assisted us in the consideration of the Bill.

The Bill seeks to amend the Indemnity Act, No. 20 of 1982, hereinafter referred to as the Act. The amendments sought to be introduced are by the substitution for the words and figures "to August 31, 1977" in the long title to the Act of the words "to the relevant date", by a like amendment to Section 2 of the Act and by the addition immediately after section 2 of the Act of a new Section (Section 3) seeking to interpret the words "the relevant date".

Although it was submitted to us by Mr. Prins Gunasekera and Mr. R. K. W. Goonasekera that the Bill is not merely an amendment to the Act but constitutes the enactment of a new Indemnity Act, we are of the opinion that the object and effect of the Bill is to make amendments to the existing Indemnity Act, No. 20 of 1982. As such what arises for our determination upon the reference under Article 122 (1) (b) is whether the Bill or any provision thereof is inconsistent with the Constitution.

The sole effect of the amendment sought to be introduced to the Act is to extend the period of operation of the Act from 1st September 1977 to "the relevant date" as defined in Section 4 of the Bill.

As such this Court, by a majority, determines that the Bill to amend the Indemnity Act No. 20 of 1982, or any provision thereof is not inconsistent with the Constitution.

E. A. D. ATUKORALE,
Judge of the Supreme Court.

O. S. M. SENEVIRATNE,
Judge of the Supreme Court.

Dr. A. R. B. AMERASINGHE,
Judge of the Supreme Court.

First Reading :

06.12.1988 (*Hansard* Vol. 54 No. 24 Col. 2317)

Decision of the Supreme Court Conveyed to Parliament :

06.12.1988 (*Hansard* Vol. 54 No. 24 Cols. 2307-2308)

Second Reading :

06.12.1988 (*Hansard* Vol. 54 No. 24 Cols. 2319-2331)

07.12.1988 (*Hansard* Vol. 54 No. 25, Cols. 2362-2377)

Committee Stage and Third Reading :

07.12.1988 (*Hansard* Vol. 54, No. 25 Cols. 2377-2378)

Speaker's Certificate :

17.12.1988.

Title : Indemnity (Amendment) Act, No. 60 of 1988.

**DECLARATION OF ASSETS AND LIABILITIES
(AMENDMENT) BILL**

to amend the Declaration of Assets and Liabilities Law, No. 1 of 1975

DECLARATION OF ASSETS AND LIABILITIES (AMENDMENT) BILL

Supreme Court
Special Determination
NC. 17/88
(P/Paal/36)

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

Present :

TAMBIAH, J.
SENEVIRATNE, J., and
FERNANDO, J.

Counsel :

Mr. K. M. M. B. Kulatunga, P.C., Solicitor-General with Mr. Tony Fernando,
State Counsel, for the Attorney-General.

The Court assembled for the hearing : At 10.20 a.m. on 02nd December, 1988.

Mr. K. M. M. B. Kulatunga, P. C., Solicitor-General, appeared before us and assisted in the determination of this matter.

A Bill titled "the Declaration of Assets and Liabilities (Amendment) Bill" (an Act to amend the Declaration of Assets and Liabilities Law, No. 1 of 1975) was referred to this Court by His Excellency the President, in terms of Article 122 (1) (b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate whereby the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

Under the Declaration of Assets and Liabilities Law, No. 1 of 1975, certain categories of persons, specified in section 2, were required to make periodic declarations of assets and liabilities to the authorities specified in section 4. Section 5 authorised certain persons and bodies alone to have access to such declarations.

Clause 2 of the Bill seeks to expand the category of persons required to declare their assets and liabilities, by including (a) office-bearers of recognized political parties, (b) the executive of registered trade unions, (c) candidates nominated for elections under the Presidential Elections Act, Parliamentary Elections Act, Provincial Councils Elections Act, Development Councils (Elections) Act, and Local Authorities Elections Ordinance, (d) proprietors, editors and members of the editorial staff of newspapers in respect of which declarations have been made under the Newspapers Ordinance, and (e) Chairman, directors and staff officers of Companies registered under the Companies Act in which the majority of shares are held by the State or a public corporation. The category of persons required by section 2 to make declarations consisted, broadly speaking, of Parliamentarians, elected members

and staff officers of local authorities, Judges and Judicial Officers, public officers (staff grade), and chairmen, directors and staff officers of public corporations. The proposed amendment seeks to expand this category—firstly, by including office-bearers of recognised political parties and candidates for election to public office:

Secondly, by including certain officers of Companies in which the State has, directly or indirectly, a major interest, and

thirdly, by including two other categories of persons who hold certain offices, in trade unions and newspapers respectively, and are able to exercise considerable influence on the public.

The purpose of the principal Act was to require those holding high public office in the Legislature, the Executive or the Judiciary to declare their assets and liabilities; the obvious purpose was to endeavour to keep public life free from corruption. The extension of the obligation to make declarations to candidates for elective office, and to officer-bearers of recognised political parties, is perfectly consistent with that objective; the non-inclusion of other political parties and associations does not amount to discrimination violative of Article 12 for the reason that recognised political parties have a predominant influence on such elections, and also enjoy certain privileges under the election laws. Likewise, the considerations that moved the Legislature to require “public officers” of the staff grade to make such declarations, are equally applicable to Companies registered under the Companies Act, in which the State has a major interest; no improper discrimination is involved by reason of the non-inclusion of other Companies. Newspapers have a great influence on the life of the community, especially by reason of their ability to affect and even to mould public opinion, even on political issues; trade unions have a similar position in regard to the economic life of the community. Mr. Kulatunga submitted that trade unions in this country have close connections with political parties, and their activities thus also affect the political life of the community. The proprietors, editors and editorial staff of newspapers, and the executives of trade unions, are the key personnel in their respective organisations from the point of view of such influence. In answer to Court, Mr. Kulatunga submitted that the expression “editorial staff” does not include journalists, reporters and the like, who play no part in the final selection and editing of material to be published in newspapers. Their role in keeping public life pure, and even in regard to the electoral process, is of such importance that it is legitimate to ensure that they are not influenced by corrupt means. Thus the categories of persons originally covered by section 2 as well as those sought to be covered by the amendment share a common feature—the public interest is advanced by requiring the disclosure of assets and liabilities, as a minimum safeguard to prevent, or to minimise, the possibility that they would be subject to bribery and corruption. Although other categories of persons may possibly have been included, the basis of classification apparent in the Bill is not arbitrary or unreasonable.

Clauses 3 and 4 mainly contain amendments consequential to clause 2. Clause 3 (b), instead of requiring declarations to be made in every fifth year after the first declaration, now requires annual declarations of assets and liabilities.

We find that although clause 2 (b) introduces a new provision (dc) imposing an obligation on candidates for election as aforesaid, to make declarations of assets and liabilities, there appears to be an omission. Although clause 3 (a) catches up a successful candidate (who is required to make such declaration before he commences to function in the office to which he is elected), no appropriate provision is made for declarations by unsuccessful candidates, although clause 2 is intended to apply to all candidates nominated for election. Having regard to the object of the principal Act and the amendment, namely purity in public life, the obligation of making a declaration should apply equally to both successful and unsuccessful candidates. Mr. Kulatunga agreed with us that this omission is discriminatory, and needs rectification. In order to make this provision consistent with Article 12 (1) of the Constitution, we suggest that the following words be added at the end of the proviso sought to be added by clause 3 (a), after the words "as the case may be" :

"and in the case of an unsuccessful candidate for election, within a period of three months after the date of nomination."

Mr. Kulatunga also brought to our notice that in clause 2 (a) after the words "judicial officer", the words "and scheduled public officers" will be added to bring that provision into conformity with clause 4 (a).

The amendments sought to be made by clause 5, by adding a new subsection (3), now enables any person to obtain a certified copy of a declaration on payment of the prescribed fee. Clauses 6 and 7 are amendments consequential to clause 5. Clause 9 creates a consequential right to institute a criminal prosecution.

Clause 8 seeks to create a new offence, namely the wilful omission of any asset or liability from a declaration, and the penalty and forfeiture of assets consequent thereto.

Clause 11 widens the scope of declarations to include assets and liabilities acquired in the name of the declarant's spouse and child.

We accordingly determine, (1) that clause 3(a) is inconsistent with the Constitution, but, upon amendment as set out above, it will not be inconsistent with the Constitution : (2) that none of the other provisions of the Bill are inconsistent with the Constitution.

H. D. TAMBIAH,
Judge of the Supreme Court.

O. S. M. SENEVIRATNE,
Judge of the Supreme Court.

M. D. H. FERNANDO,
Judge of the Supreme Court.

**Clauses in the DECLARATION OF ASSETS AND LIABILITIES (AMENDMENT)
BILL, Considered in the Supreme Court decision**

Clause 2 :

Section 2 of the Declaration of Assets and Liabilities Law, No. 1 of 1975 (hereinafter referred to as "the principal enactment") is hereby amended in subsection (1) of that section, as follows :—

(a) by the substitution for paragraph (b) of that sub-section of the following paragraph :—

“(b) Judges and public officers appointed by the President, public officers appointed by the Cabinet of Ministers, judicial officers appointed by the Judicial Service Commission and staff officers in Ministries and Government Departments ;” ;

(b) by the insertion immediately after paragraph (d) of that subsection, of the following paragraphs.

“(da) office bearers of recognized political parties for the purposes of elections under the Presidential Elections Act, No. 15 of 1981 the Parliamentary Elections Act, No. 1 of 1981 or the Provincial Councils Elections Act, No. 2 of 1988 or the Development Councils (Elections) Act, No. 20 of 1981 or the Local Authorities Elections Ordinance ;

(db) the executive of trade unions registered under the Trade Unions Ordinance ;

(dc) candidates nominated for election at elections to be held under the Presidential Elections Act, No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981, the Provincial Councils Elections Act, No. 2 of 1988, the Development Councils (Elections) Act, No. 20 of 1981 or the Local Authorities Elections Ordinance ;

(dd) proprietors, editors and members of the editorial staff of newspapers in respect of which declarations have been made under section 2 of the Newspapers Ordinance ;

(de) Chairman, Directors and staff officers of Companies registered under the Companies Act No. 17 of 1982 in which the majority of shares are held by the State or by a public corporation. ”.

Clause 3 :

Section 3 of the principal enactment is hereby amended as follows :—

(a) by the addition at the end of subsection (2) of that section, of the following proviso :—

“Provided that a person to whom this Law applies referred to in paragraph (dc) of subsection (1) of section 2 shall be deemed to have complied with the provisions of this subsection if he makes a declaration of his assets and

liabilities as at the date of his nomination as a candidate for election under any of the Acts referred to in that paragraph on the date of such nomination or before he functions, or sits or votes, as President, a member of Parliament, a member of Provincial Council, member of a Development Council or any other local authority, as the case may be.” ;

(b) by the repeal of subsection (3) of that section, and the substitution therefor, of the following subsection :—

“(3) Every person who is required to make the first declaration of assets and liabilities under subsection (1) of subsection (2) shall, unless such person ceases to be a person to whom this Law applies, by the thirtieth day of June in each year, make in the prescribed form, a declaration of his assets and liabilities as at the thirty first day of March of such year and include in such declaration the assets and liabilities he held on the date on which he was first required to make a declaration of his assets and liabilities under this Law :

Provided that, where a person who is required to make a declaration of assets and liabilities under subsection (2) has made the first declaration as at any date within six months preceding the thirty first day of March in any year, he shall not be required to make another declaration for such year.”.

Clause 4 :

Section 4 of the principal enactment is hereby amended as follows :—

(a) by the substitution for paragraph (c) of that section of the following paragraph :—

“(c) to the Judicial Service Commission by judicial officers and by scheduled public officers within the meaning of Article 14 of the Constitution ;” ;

(b) by the insertion immediately after paragraph (i) of that section of the following paragraphs :—

“(ia) to the Commissioner of Elections—

(i) by office bearers of recognized political parties for the purposes of elections under the Presidential Elections Act, No. 15 of 1981 Parliamentary Elections Act, No. 1 of 1981, the Provincial Councils Elections Act, No. 2 of 1988, the Development Councils (Elections) Act, No. 20 of 1981 or the Local Authorities Elections Ordinance;

(ii) by candidates nominated for election at elections to be held under the Presidential Elections Act, No. 15 of 1981, the Provincial Councils Elections Act, No. 2 of 1988 the Development Councils (Elections) Act, No. 20 of 1981 or the Local Authorities Elections Ordinance ;

(ib) to the Secretary to the Ministry of the Minister in charge of the subject of Labour by the executive of trade unions registered under the Trade Unions Ordinance ;

(ic) to the Secretary to the Ministry of the Minister in charge of the subject, of newspapers by proprietors, editors and members of the editorial staff of newspapers, in respect of which declarations have been made under section 2 of the Newspapers Ordinance ;

(id) to the Registrar of Companies, by Chairman, Directors and Staff Officers of Companies registered under the Companies Act, No. 17 of 1982 in which the majority of the shares are held by the State or by a public Corporation.”

Clause 5 :

Section 5 of the principal enactment is hereby amended by the addition immediately after subsection (2) of that section of the following subsection :—

“(3) Any person shall, on payment of a prescribed fee to the appropriate authority, have the right to call for and refer to any declaration of assets and liabilities and on payment of a further fee to be prescribed, shall have the right to obtain a certified copy of such declaration.

In this subsection “appropriate authority” in relation to a declaration of assets and liabilities means the person to whom that declaration of assets and liabilities has been made under section 4.”

Clause 6 :

Section 7 of the principal enactment is hereby amended by the repeal of subsection (4) of that section and the substitution therefor of the following subsection :—

“(4) Save as provided in subsection (1) and for the purposes of a proceeding under section 9A, it shall be an offence for any person to make a public statement concerning a person to whom this Law applies alleging that such person has made recent acquisitions of wealth or property, or recent financial or business dealings, or incurred recent expenditures not commensurate with the known sources of wealth and income of such person, or as to the contents of any declaration of assets and liabilities of such person, or to make any such public statement in respect of any investigation being made by an appropriate authority upon a written communication made by him under the provisions of subsection (1)”.

Clause 7 :

Section 8 of the principal enactment is hereby amended as follows :—

“(1) by the repeal of the subsection (1) of that section and the substitution of the following subsection therefor :—

“(1) Except in the performance of his duties under this Law or as may be necessary for the institution of proceedings under, or for the purpose of carrying

into effect the provisions of this Law, a person shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person to whom this Law applies, or which may come to his knowledge in the performance of his duties under this Law or in the exercise of his right under subsection (3) of section 5, and shall not communicate any such matter to any person other than the person to whom such matter relates or suffer any unauthorized person to have access to any papers or records which may have come into his possession in the performance of his duties under this Law or in the exercise of his right under subsection (3) of section 5.” ; and

(2) by the repeal of subsection (3) of that section and the substitution of the following sub-section therefor :—

(2) by the repeal of subsection (3) of that section and the substitution of the following sub-section therefor :—

(3) Any person required to preserve and aid in preserving secrecy under the provisions of sub-section (1) shall not be required to produce in any court any declaration of assets and liabilities or any other document relating thereto, or to divulge or communicate to any court any matter or thing coming to his notice in the performance of his duties under this Law or in the exercise of his right under subsection (3) of section 5, except as may be necessary for proceedings instituted or to be instituted under, or for the purpose of carrying into effect the provisions of, this Law or the Bribery Act, the Exchange Control Act, the Inland Revenue Act, No. 28 of 1979 or the Customs Ordinance.”.

Clause 8 :

Section 9 of the principal enactment is hereby amended as follows :—

(1) in subsection (1) of that section by the insertion immediately after paragraph (b) of that section of the following paragraph :—

“(bb) who wilfully omits any asset or liability from any such declaration ;”

(2) by the insertion immediately after subsection (3) of that section of the following subsection :—

“(3A) Where any person is convicted of an offence under paragraph (bb) of subsection (1) the assets in respect of which the offence was committed shall by virtue of such conviction be vested in the State free of all encumbrances.

(3B) The vesting of any assets in the State under subsection 3A shall take effect—

(a) Where an appeal has been preferred to the Court of Appeal or the Supreme Court against the order of forfeiture, upon the determination of the appeal, conforming or upholding the order of forfeiture ;

- (b) Where no appeal has been preferred to the Court of Appeal against the order of forfeiture after the expiration of the period within which an appeal may be preferred to the Court of Appeal against the order of forfeiture.”.

determine, as security for the payment of the costs incurred, or likely to be incurred, by the accused and of any compensation that may be ordered under paragraph (d);

- (d) whenever a Magistrate acquits or discharges a person accused of the relevant offence and declares that the complaint was frivolous or vexatious, the Magistrate shall order the complainant to pay the State reasonable costs in a sum determined by the Magistrate and shall also order the complainant to pay to the accused the amount of the costs incurred by the accused and such compensation as the Magistrate shall think fit from and out of the security deposited by the complainant ;.

- (e) nothing in subsection (7) of section 17 of the Criminal Procedure Act shall limit the amount of the compensation that may be ordered by a Magistrate under paragraph (d) ;

- (f) where the complainant in a prosecution for the relevant offence pays the State costs and compensation ordered against him under paragraph (d), the accused shall not be entitled to institute, or maintain, an action or damages in any Civil Court against such complainant in respect of such prosecution ; and

- (g) notwithstanding anything in section 318 of the Criminal Procedure Act, the complainant in a prosecution for the relevant offence may appeal against the acquittal of the person accused of such offence, without the written approval of the Attorney-General.”

Clause 9;

The following new section is hereby inserted immediately after section 9 of the Principal enactment and shall have effect as section 9A of the enactment :

“Procedure for prosecution and trial of offences referred to in section 9 (1) (b) or (bb).

9A. An offence under paragraph (b) or (bb) of subsection (1) of section 9 (in this section referred to as “the relevant offence”) shall be inquired into, tried and otherwise dealt with, according to the provisions of the Code of Criminal Procedure Act, No.15 of 1979 (in this section referred to as “the Criminal Procedure Act”) subject to the following modifications—

- (a) no complaint under section 136(1) (a) of the Criminal Procedure Act in respect of the relevant offence shall be entertained by a Magistrate unless it is—
- (i) in writing ;
 - (ii) drawn and countersigned by a pleader ;
 - (iii) signed by the complainant ; and

- (iii) accompanied by a certified copy, obtained under subsection (3) of section 5 of this Law, of the declaration in respect of which the offence is alleged to have been committed;
- (b) notwithstanding anything in sub-section (5) of section 9 of this Law, the prior sanction of the Attorney-General shall not be necessary for the institution of a prosecution for the relevant offence;
- (c) where a complaint in respect of the relevant offence is entertained by a Magistrate, the Magistrate shall where he is of opinion that there is sufficient ground for proceeding against the person alleged to have committed the offence not issue summons, under section 139 of the Criminal Procedure Act requiring the attendance of such persons unless the complainant deposits in Court, such sum as the Magistrate may determine.

Clause 11

Section 12 of the principal enactment as amended by Act No. 29 of 1985 is hereby further amended as follows :

- (a) by the substitution for the definition of assets and liabilities of the following definition :

“assets and liabilities” means assets and liabilities in and outside Sri Lanka, and includes movable and immovable property owned by the declarant in whole or in part, any property in which the declarant has a beneficial interest and any property acquired by the declarant during the period to which the declaration relates, in the name of his spouse or child ;”

- (b) by the insertion immediately after the definition of “Commissioner of Local Government” of the following definition,—

“Executive” when used with reference to a trade union has the same meaning as in the Trade Unions Ordinance ;

- (c) by the substitution for the definition of “local authority” of the following definition :

“local authority” means any Municipal Council, Urban Council or Development Council, or Pradeshiya Sabha, and includes any authority created and established by or under any law to exercise perform and discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged, by any such Council or Sabha ;

- (d) by the insertion immediately after the definition of “local authority” of the following definition :—

“officer bearer” in relation to a recognized political party means the President, Vice President, Secretary or a member of the executive committee

of such recognised political party and any other person who is duly empowered to give directions in regard to such political party and includes the leader of such political party, howsoever designated, whether as Patron, President, Advisor or otherwise ;”;

(e) by the substitution for the definition of “staff officer” of the following definition :—

“Staff officer” means—

“in the case of any employee of the Government or a local authority

(a) any officer—

(i) holding any office created prior to November 18, 1970, the initial of the salary scale of which was on November 18, 1970, not less than Rs. 6,720 per annum, or such other amount per annum as would, under any subsequent revision of salary scales, correspond to such initial ;

(ii) holding any office created after November 18, 1970, the initial of the salary scale of which is, on the date of the creation of that office, not less than the initial of the salary scale applicable, on that date, to an office referred to in item (i) or such other amount per annum as would under any subsequent revision of salary scales, correspond to the first mentioned initial ;

(b) in the case of any employee of a public corporation any officer—

(i) holding any office created prior to November 18, 1970, the initial of the salary scale of which was, on November 18 1970, not less than Rs. 7,200 per annum of such other amount per annum as would under any subsequent revision of salary scales correspond to such initial ;

(ii) holding any office created after November 18, 1970, the initial of the salary scale of which is, on the date of creation of that office, not less than the initial of the salary scale applicable on that date to an office referred to in item (i) or such other amount per annum as would, under any subsequent revision of salary scales correspond to the first-mentioned initial.

First Reading :

07.12.1988 (*Hansard* Vol. 54 No. 25, Col. 2360).

Decision of the Supreme Court conveyed to Parliament :

06.12.1988 (*Hansard* Vol. 54, No. 24, Cols. 2309—2311).

Second Reading :

09.12.1988 (*Hansard* Vol. 54, No. 27, Cols. 2454—2476).

Committee Stage and Third Reading :

09.12.1988 (*Hansard* Vol. 54, No. 27, Cols. 2476-2478).

Speaker's Certificate :

17.12.1988

Title : Declaration of Assets and Liabilities (Amendment) Act, No. 74 of 1988

FIFTEENTH AMENDMENT TO THE CONSTITUTION BILL
to amend the Constitution of the Democratic Socialist Republic of Sri Lanka

FIFTEENTH AMENDMENT TO THE CONSTITUTION BILL

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

S.D. No. 18 of 1988

Present :

E. A. D. ATHUKORALE, *Judge of the Supreme Court*
H. A. G. DE SILVA, *Judge of the Supreme Court*
M. JAMEEL, *Judge of the Supreme Court*

Counsel :

K. M. M. B. Kulatunga, P. C, Solicitor General with Tony Fernando, State Counsel for the Attorney-General.

Court Assembled for the Hearing : At 10.15 a.m. on 6th December, 1988.

A Bill titled "An Act to amend the Constitution of the Democratic Socialist Republic of Sri Lanka" was referred to the Chief justice 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 by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest .

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

The Bill is described in its long title as being for the amendment of the Constitution. It seeks to repeal Articles 96A and 99(14) of the Constitution and to amend Articles 98 (8) and 99 (b). In view of the provisions of Article 120, proviso (a) the only question that this Court has to determine is whether the Bill requires approval by the People at a Referendum by virtue of the provisions of Article 83. We have examined the Bill carefully and are of the opinion and accordingly determine that the Bill or any provision thereof 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.

E. A. D. ATHUKORALE
Judge of the Supreme Court.

H. A. G. DE SILVA
Judge of the Supreme Court.

M. JAMEEL,
Judge of the Supreme Court.

First Reading :

08.12.1988 (*Hansard* Vol. 54, No. 26 ; Cols. 2401—2402)

Decision of the Supreme Court conveyed to Parliament :

08.12.1988 (*Hansard* Vol. 54, No. 26 ; Cols. 2392—2393)

Second Reading :

08.12.88 (*Hansard* Vol. 54 ; No. 26 ; Cols. 2404—2438)

09.12.1988 (*Hansard*) Vol. 54, No. 27 ; Cols. 2478—2492)

Committee Stage and Third Reading :

09.12.1988 (*Hansard* Vol. 54, No. 27 ; Cols. 2493-2494)

Speaker's Certificate : 17.12.1988

Title : Fifteenth Amendment to the Constitution.

PROVINCIAL COUNCILS ELECTIONS (AMENDMENT) BILL

to amend the Provincial Councils Elections Act, No. 2 of 1988

PROVINCIAL COUNCILS ELECTIONS (AMENDMENT) BILL

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

S. D. No. 19 of 1988

Present :

E. A. D. ATUKORALE, *Judge of the Supreme Court*

H. A. D. DE SILVA, *Judge of the Supreme Court*

M. JAMEEL, *Judge of the Supreme Court.*

Counsel :

K. M. M. B. KULATUNGE, *P. C., Solicitor-General* with TONY FERNANDO,
State Counsel, for the Attorney-General.

Court Assembled for the hearing : At 10.45 a.m. on 16th December, 1988.

A Bill titled "An Act to amend the Provincial Councils Elections Act, No. 2 of 1988" was referred to the Chief Justice 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 by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

The learned Solicitor-General assisted us in the consideration of the Bill.

Upon a consideration of the provisions of the Bill we are of the opinion and accordingly determine that neither the Bill nor any provision thereof is inconsistent with any of the provisions of the Constitution.

E. A. D. ATUKORALE,
Judge of the Supreme Court.

H. A. G. DE SILVA,
Judge of the Supreme Court.

M. JAMEEL,
Judge of the Supreme Court

First Reading :

08.12.1988 (*Hansard* Vol. 54 No. 26 Col. 2402)

Decision of Supreme Court conveyed to Parliament :

08.12.1988 (*Hansard* Vol. 54 No. 26 Col. 2393)

Second Reading :

09.12.1988 (*Hansard* Vol. 54 No. 27 Col. 2496)

Committee Stage and Third Reading :

09.12.1988 (*Hansard* Vol. 54, No. 27 Col. 2596—2497)

Speaker's Certificate : 17.12.1988

Title : Provincial Councils Elections (Amendment) Act, No. 55 of 1988

PARLIAMENTARY ELECTIONS (AMENDMENT) BILL

to amend the Parliamentary Elections Act, No. 1 of 1988

PARLIAMENTARY ELECTIONS (AMENDMENT) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution.
S.D. No. 20 of 1988

Present :

E. A. D. ATUKORALE, *Judge of the Supreme Court*, H. A. G. DE SILVA,
Judge of the Supreme Court, M. JAMEEL, *Judge of the Supreme Court*.

Counsel :

K. M. M. B. KULATUNGE, P.C., *Solicitor-General* with TONY FERNANDO,
State Counsel, for the *Attorney-General*.

Court Assembled for the Hearing : At 11.00 a.m. on 6th December 1988.

A Bill titled "An Act to amend the Parliamentary Elections Act, No. 1 of 1981" was referred to the Chief Justice 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 by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

The learned Solicitor-General assisted us in the consideration of this Bill.

The Bill seeks to repeal Section 129 A of the Parliamentary Elections Act, No. 1 of 1981, and is consequential to the proposed Fifteenth Amendment to the Constitution which we have considered today. Our determination is that the Bill is not inconsistent with the Constitution or any provision thereof.

E. A. D. ATUKORALE,
Judge of the Supreme Court.

H. A. G. DE SILVA,
Judge of the Supreme Court.

M. JAMEEL,
Judge of the Supreme Court.

First Reading :

08.12.1988 (*Hansard* Vol. 54, No. 26, Col. 2402)

Decision of the Supreme Court conveyed to Parliament :

08.12.1988 (*Hansard* Vol. 54, No. 26, Col. 2394)

Second Reading :

09.12.1988 (*Hansard* Vol. 54, No. 27, Col. 2495)

Committee Stage and Third Reading :

09.12.1988 (*Hansard* Vol. 54, No. 27, Cols. 2495-2496)

Speaker's Certificate :

17.12.1988

Title : Parliamentary Elections (Amendment) Act, No. 54 of 1988.

APPROPRIATION (AMENDMENT) BILL

to amend the Appropriation Act, No. 51 of 1987

APPROPRIATION (AMENDMENT) BILL

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

S.C. (S.D.) No. 21 of 1988.

Present :

K. A. P. Ranasinghe, *Chief Justice*

H. D. TAMBIAH, *Judge of the Supreme Court, and*

A. R. B. AMERASINGHE, *Judge of the Supreme Court.*

Counsel :

K. C. Kamalabayson, *Deputy Solicitor-General for Attorney-General.*

Court assembled for the hearing : At 10.00 a.m. on 7th December, 1988.

A Bill entitled "An Act to amend the Appropriation Act No. 51 of 1987," has been referred to the Chief Justice by His Excellency the President, in terms of Article 122 (1) (b) of the Constitution, for the special determination of this Court as to whether the said Bill or any provision thereof is inconsistent with the Constitution. The said Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has decided that, in its view, the Bill is urgent in the national interest.

Mr. K. C. Kamalabayson, Deputy Solicitor-General appeared on behalf of the Attorney-General and assisted this Court in the consideration of the provisions of the said Bill.

The statement of the legal effect of the provisions of the Bill states that it is to provide for an increase of the aggregate of the proceeds of loans authorised to be raised during the financial year 1988.

Section 2 of this Bill seeks to amend paragraph (b) of sub-section 1 of section 2 of the Appropriation Act No. 51 of 1987 by the substitution for the words "Rupees Thirty seven thousand one hundred and twenty million" of the words "Rupees Forty thousand one hundred and twenty million." The effect therefore, of the amendment would be to increase the aggregate of the proceeds of the loan to be raised from "Thirty seven thousand one hundred and twenty million rupees" to "Forty thousand one hundred and twenty million rupees."

Mr. Kamalabayson, Deputy Solicitor-General, who appeared on behalf of the Attorney-General submitted : that the provisions of this Bill do not violate any of the Article of the Constitution, and that according to List 2 (reserved list) of the 13th Amendment to the Constitution (page 35) the subject of finance in relation to national revenue, monetary policy and external resources, which would include the public debt of the Government of Sri Lanka and foreign loans, are all matters which come within the purview of the Parliament. The amendment sought to be made is to increase the upper limit of the amount of the borrowings. It is to be done by Parliament itself, and not by any other functionary.

We have examined the provisions of the proposed Bill, the provisions of the Articles set out in Chapter 17, and the provisions of Article 75 and 76 of the Constitution, and also the relevant provisions of the 13th Amendment. We are of opinion that the amendment sought to be made is within the legislative powers of Parliament, and do not violate any of the provisions of the Constitution.

In this view of the matter we are of opinion that neither the Bill nor any of the provisions thereof are inconsistent with the Constitution.

K. A. P. RANASINGHE,
Chief Justice.

H. D. TAMBIAH,
Judge of the Supreme Court.

A. R. B. AMERASINGHE,
Judge of the Supreme Court.

First Reading :

08.12.1988 (*Hansard* Vol. 54 No. 26 Col. 2402)

Decision of the Supreme Court conveyed to Parliament :

08.12.1988 (*Hansard* Vol. 54 No. 26 Cols. 2395—2396)

Second Reading :

08.12.1988 (*Hansard* Vol. 54 No. 26 Cols. 2438—2439)

Committee Stage and Third Reading :

08.12.1988 (*Hansard* Vol. 54 No. 26 Col. 2439)

Speaker's Certificate :

17.12.1988.

Title : Appropriation (Amendment) Act, No. 59 of 1988.

**SIXTEENTH AMENDMENT TO THE CONSTITUTION
BILL**

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

SIXTEENTH AMENDMENT TO THE CONSTITUTION BILL

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

S.D. No. 22/88.

Present :

H. A. G. DE SILVA, *Judge of the Supreme Court.*

G. P. S. DE SILVA, *Judge of the Supreme Court.*

M. JAMEEL, *Judge of the Supreme Court.*

Counsel :

Sunil de Silva, PC., Attorney-General with T. J. Marapone, Additional Solicitor-General and Shibly Aziz, Additional Solicitor-General.

Court Assembled for the Hearing : At 10.00 a.m. on 8th December 1988.

A Bill titled "An Act to amend the Constitution of the Democratic Socialist Republic of Sri Lanka was referred to the Chief Justice 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 bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

The learned 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 approval by the People at a Referendum by virtue of the provisions of Article 83.

We have given careful consideration to the submissions placed before us and to the provisions of the Bill. We are of opinion and accordingly we determine that neither the Bill nor any provision thereof is inconsistent with any of the provisions of the Articles referred to in Article 83 (a) or (b), and therefore do not require approval of the People at a Referendum.

H. A. G. DE SILVA,
Judge of the Supreme Court.

G. P. S. DE SILVA,
Judge of the Supreme Court.

M. JAMEEL,
Judge of the Supreme Court.

First Reading : 09.12.1988 (*Hansard* Vol. 54 No. 27 Col. 2452).

Decision of the Supreme Court conveyed to Parliament : 09.12.1988 (*Hansard* Vol. 54 No. 27 Col. 2444).

Second Reading : 09.12.1988 (*Hansard* Vol. 54 No. 27 Col. 2497—2505).

Committee Stage and Third Reading : 09.12.1988 (*Hansard* Vol. 54 No. 27 Cols. 2506—2507).

Speaker's Certificate : 17.12.1988.

Title : Sixteenth Amendment to the Constitution.

FINANCE COMPANIES BILL

**to provide for the Control and Supervision of Finance Companies ;
and to provide for matters connected therewith or
incidental thereto**

FINANCE COMPANIES BILL

S. D. No. 23/88.

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

Present : E. A. D. ATUKORALE, *Judge of the Supreme Court*

H. D. TAMBIAH, *Judge of the Supreme Court*

G. R. T. D. BANDARANAYAKE, *Judge of the Supreme Court*

Counsel : K. M. M. B. KULATUNGA, *P.C., Solicitor-General*, with K. C. KAMALASABEYSAN, *Deputy Solicitor-General for the Attorney-General.*

Court Assembled for the Hearing : At 10.40 a.m. on 14th December, 1988.

A Bill titled "An Act to provide for the Control and Supervision of Finance Companies and to provide for matters connected therewith or incidental thereto" was referred to the Chief Justice 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 of the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

The learned Solicitor-General assisted us in the consideration of the Bill.

The Bill repeals the Control of Finance Companies Act, No. 27 of 1979. Its object is to make provision for the better control, management and supervision of Finance Companies and to provide for matters connected therewith or incidental thereto. Our attention was invited by learned Solicitor-General to Article 4 (c), 12 (1) and 14 (1) (g), 15 (5) and 15 (7) of the Constitution.

We have carefully examined the several clauses of the Bill and their impact on the aforesaid Articles of the Constitution. We are of the opinion and accordingly determine that neither the Bill nor any provision thereof is inconsistent with the Constitution.

E. A. D. ATUKORALE,
Judge of the Supreme Court.

H. D. TAMBIAH,
Judge of the Supreme Court.

G. R. T. D. BANDARANAYAKE,
Judge of the Supreme Court

First Reading : 17.12.1988 (*Hansard* Vol. 54 No. 28 Col. 2522).

Decision of the Supreme Court conveyed to Parliament : 17.12.1988 (*Hansard* Vol. 54 No. 28 Col. 2515).

Second Reading : 17.12.1988 (*Hansard* Vol. 54 No. 28 Cols. 2567-2584).

Committee Stage and Third Reading : 17.12.1988 (*Hansard* Vol. 54 No. 28 Cols. 2584-2585).

Speaker's Certificate : 18.12.1980

Title : **Finance Companies Act, No. 78 of 1988**

J. R. JAYEWARDENE CENTRE BILL

to provide for the establishment of an Archival Depository called the J. R. Jayewardene Centre for Historical Research, Archives and Library ; and for matters connected therewith or incidental thereto.

J. R. JAYEWARDENE CENTRE BILL

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

S.D. No. 24/88.

Present :

H. A. G. DE SILVA, *Judge of the Supreme Court*
M. D. H. FERNANDO, P.C., *Judge of the Supreme Court*
Dr. A. R. B. AMERASINGHE, *Judge of the Supreme Court.*

Counsel :

M. SHIBLY AZIZ, *Additional Solicitor-General for Attorney-General.*

Court Assembled for the Hearing : At 10.00 a.m. on 15th December, 1988.

A Bill titled "An Act to provide for the establishment of an Archival Depository called the J. R. Jayewardene Centre for Historical Research, Archives and Library ; and for matters connected therewith or incidental thereto" was referred to the Chief Justice by His Excellency the President, in terms of Article 122 (1) 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 bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

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

That on a consideration of the Bill it appeared to us that there was some ambiguity as to the identity of the fund referred to in Clause 2(2) of the Bill in view of the fact that Clause 9 of the Bill appeared to contemplate only one Fund. The learned Additional Solicitor-General agreed that there was such an ambiguity and indicated that suitable amendments would be made to remove this ambiguity. In any event, this in our opinion does not involve any question of inconsistency with the Constitution.

We have given careful consideration to the submissions placed before us and to the provisions of the Bill. We are of opinion and accordingly we determine that neither the said Bill nor any of the provisions thereof is inconsistent with the Constitution.

H. A. G. DE SILVA,
Judge of the Supreme Court.

M. D. H. FERNANDO, P.C.
Judge of the Supreme Court.

Dr. A. R. B. AMERASINGHE,
Judge of the Supreme Court.

Clauses in the J. R. JAYEWARDENE CENTRE BILL considered in the Supreme Court Decision.

Clause 2(2) :

(2) The Centre shall be housed in premises bearing assessment No. 101/1-5, 1/1 and 1/2, Dharmapala Mawatha situated at Turret Road (now called Dharmapala Mawatha) in the Cinnamon Gardens' Ward (No. 36) within the Municipality and district of Colombo, purchased by the Democratic Socialist Republic of Sri Lanka from the People's Republic of China, by Deed No. 5761 dated February 8, 1988 and attested by N. Sambandan, Attorney-at-Law and Notary Public, Colombo, with a fund deposited in a bank that would generate funds for its maintenance.

Clause 9 :

9. (1) The Centre shall have its own Fund.

Fund of the
Centre.

(2) There shall be paid into such Fund—

(a) all sums appropriated annually for the purposes of the Centre ; and

(b) all sums received by it, as donations.

(c) all sums received as income from investments made by it.

(3) There shall be paid out of the Fund, all sums required to defray any expenditure incurred by the Centre in the exercise of its powers and the discharge of its functions.

First Reading :

17.12.1988 (*Hansard* Vol. 54 No. 28 Col. 2521)

Decision of the Supreme Court conveyed to Parliament :

17.12.1988 (*Hansard* Vol. 54 No. 28 Col. 2516)

Second Reading :

17.12.1988 (*Hansard* Vol. 54 No. 28 Cols. 2563-2564)

Committee Stage and Third Reading :

17.12.1988 (*Hansard* Vol. 54 No. 28 Cols. 2565-2566)

Speaker's Certificate : 18.12.1988

Title: J. R. Jayewardene Centre Act. No. 77 of 1988

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