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

In the matter of an application under Article 121 in respect of the 20th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka

SC (SD) Appl. No.

1. Agampodi Sendeman Chulasinghe
De Soyiza
No 02, Mallika Home ,
Galagoda, Kuligoda
2. Rajapaksha Arachchilage Namal
Ajith Rajapaksha
No 44/48, Agoda Village
Kandy Road, paliyagoda
3. Nanayakkara Godakande Achala
Shanika Senevirathna
No 215, Kanaththa Road
Pannipitiya
4. Rathnayake Mudiyansele
Prabodha Chinthaka
No Ranjani
Damanwara
Badulla
5. Chula Ranjeewa Adhikari
No 283/1/1, Weda Mawatha,
Gorakagas Junction
Wewita, Bandaragama
6. Teril Manoj Uduwana
No 211, Uduwana
Homagama
7. Rathnayake Mudiyansele Upali
Amarawansa Rathnayake
No 1/62, Ihala Imbulagoda,
Imbulagoda

8. Jayaweera Archchilage Manju Sri Chandrasena
No 06/D/126, Jayawadanagama,
Battaramulla
9. Mewala Gedara Amila Indika
No 83, Temple Road
Kaluthara North
10. Dulan Dassanayaka
No 211, Maithree Mawatha,
Vidagama, Bandaragama
11. Waduge Shammi Chinthaka
Fernando
No 294/A, Katupathgoda Road,
Kumbuka West,
Gonapola
12. Sachindra Thushara De Zoysa
No 174, Wattegedara Junction,
Maharagama
13. Mohomed Nazim Zainul Luthufi
No 6/2, Megoda
Kolonnawa,
Wellampitiya
14. Mohomed Najeem Mohomed
Fazeer
No 478/4/6, Thakkiya Road
Daluwakotuwa
15. Mahapatabendige Srinath Perera
No 74A, Wadduwa Road
Moronthuduwa
16. Dhanapala Archchige Prema Arune
Kumarasiri
No 30/14, Sanchi Archchi Wattage
Colombo 12
17. Kariyawasam Pandi Kankanamge
Upali Ranjan
No 103V, Sunflower Graden,

Kahathuduwa, Polgasowita

18. Sardha Kumara Manjula Pathiraja
No 27/7D, Koholwila Road
Gonawala (WP), Kelaniya

19. Kalinga Nalaka Priyawansha
No 117 F, Indigasthuduwa
Meegama
Darga Town

20. Warnakulasooriya Mahamuge
Madhushani Sugandhika Fernando
No.33/9 , W. David Perera Mawatha
Koswatta , Baththaramulla.

PETITIONERS

-Vs-

Honourable Attorney-General,
Attorney-General's Department,
Colombo 12.

RESPONDENTS

TO: **HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

On this day of September 2020

The **Petition** of the Petitioners above-named appearing by Mr. Senaka Perera their registered Attorney-at-Law, states as follows:

1. The Petitioners are citizens of the Democratic Socialist Republic of Sri Lanka.
2. The Petitioners state that the Honourable Attorney-General is made a Respondent to this application under and in terms of **Article 134(1)** of the Constitution.

3. The Petitioners are practicing as Attorneys-at-Law in various courts in Sri Lanka and Members of Bar Association of Sri Lanka.
4. The Petitioners state that the Bill titled “ 20th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka “ was published as a supplement to part II of the Gazette of 28th of August 2020./ The said gazette was only issued on 02nd of September 2020 and placed on the Order Paper of the Parliament on 22nd September 2020 (hereinafter at times referred to as the “Proposed Amendment ”).

(True copies of the English and Sinhala and Tamil versions of the said Proposed Amendment "20th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka " are annexed hereto marked "**P-1**" , "**P-2**" and "**P- 3**" pleaded as part and parcel hereof.)

5. The Petitioners state that, as described in the long title, “ As an Act to amend the Constitution of the Democratic Socialist Republic of Sri Lanka ” is to amend the constitution and *inter alia* repeal the 19th Amendment of the Constitution of the Democratic Socialist Republic of Sri Lanka.
6. Several Petitions were filed challenging the said Bill, seeking an order from the court stating the necessity of a **special majority of the parliament together with the approval of the public at a referendum** in order to pass the bill.
7. The Petitioners state that they are entitled to invoke the Jurisdiction of Your Lordships’ Court in terms of **Article 121** inasmuch as the Bill has now been tabled in Parliament.
8. The Petitioner states that the Proposed Amendment and/or following provisions of the Proposed Amendment are inconsistent with the Constitution and the Constitutional Principles for the following reasons amongst others:

(a) According to **Clause 3** of the Proposed Amendment, **Article 33** of the Constitution which state the powers and duties of the President is repealed and replaced by the new Article 33. By doing so, the duties which were conferred on the president to **ensure that the Constitution is respected and upheld, promote national reconciliation and integration, ensure and facilitate the proper functioning of the Constitutional Council and the institutions referred to in Chapter VIIA, and on the advice of the Election Commission, ensure the creation of proper conditions for the conduct of free and fair elections and referenda** have been removed. This has placed the executive branch on the top of other two branches giving unlimited powers to the President, which can lead to a dictatorship.

- (b) **Clause 4** of the Proposed Amendment has removed **Article 33A** of the Constitution which stated that the **President shall be responsible to Parliament** for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any written law, including the law for the time being relating to public security. By doing so, the limitations that were created through the 19th Amendment to the Constitution have been removed. Furthermore it has **removed the accountability of the executive branch to the legislature**. According to this clause the president is not answerable to any of the other organs in the government. This **reverts back all the structural developments brought in order to strengthen the democracy** of the people.
- (c) **Clause 5** of the Proposed Amendment has repealed **Article 35** of the Constitution in manner that the President is made immune from both civil and criminal actions including the applications against Violation of Fundamental Rights in terms of **Article 126** of the Constitution. This clause has given the Executive President the **full immunity** from all the legal action and has placed the president above the law. Therefore this Clause is **inconsistent with Chapter III** of the Constitution whereas the **fundamental rights ensured under Article 10,11,12,13,14 and 15 are rendered ineffective against the executive**. Furthermore, the norm that **no person should be above the law is very much violated** and therefore violates sovereignty of people ensured under **Article 3**.
- (d) **Clause 6** of the Proposed Amendment has repealed and replaced **Chapter VII A** of the Constitution whereas **it has replaced the Constitutional Council with a Parliamentary Committee**. The Constitutional Council was established as a **power balancing organ** which imposed checks and balances on the executive. The council also had **direct public representation** as it had **three people from the public**. All these progressive changes brought up have been reversed by the introduction of a parliamentary committee replacing the constitutional council. The number of **membership is reduced to five from ten** and representation of a minor party in the Constitutional Council which was guaranteed under the 19th Amendment was removed with the introduction of the Parliamentary Committee. **The Direct public representation has also been removed** from the committee. By doing so, the **effectiveness and the Influential Power of the Committee has been significantly reduced giving it only a nominal role in decision making**. Therefore the Clause 6 of the Proposed Amendment is **inconsistent with Constitutional Principles such as Separation of Powers**.

- (e) **Clause 7** of the Proposed Amendment has replaced Chapter VIII of the Constitution. Accordingly the limit imposed by **Article 46 (1)** of the Constitution on the number of cabinet ministers and non-cabinet ministers has been totally removed **allowing the president to appoint any number of cabinet and non-cabinet ministers as per his will**. This clause has opened the flood gates removing all the checks and balances giving the president the chance to manipulate the cabinet to his **political advantage** which would have a heavy burden on the national economy. Furthermore, this change was done **without any clear mandate of the public as it is out of mandate**. This would induce **corruption and crossovers** and allow the ruling party to get people from the opposition offering any number of ministerial positions. This also **undermines the opposition** in the parliament. Therefore it is essential that this clause is referred to the public and approved in a referendum
- (f) **Clause 8** of the Proposed Amendment has repealed **Article 54** of the Constitution by removing the words **“on the recommendation of the Constitutional Council”** giving president the sole authority to appoint members to the **“Public Service Commission”** and to remove its members according to his free will without consulting the Parliamentary Committee. It has an **adverse effect on the independence of the Public Service whereas the fairness and unbiasedness of appointments, transfers, dismissals and disciplinary control of public servants** would not be guaranteed. Therefore the clause 8 is **inconsistent with Chapter IX** of the Constitution as it **interferes with the independence of the public service commission**. This clause is **inconsistent with the Freedom of Occupation, Trade or Profession guaranteed under Article 14(g)**. Furthermore it will lead to **bribery and corruption** as the **whole public service is placed under the sole control of the president**.
- (g) **Clause 9 and Clause 10** of the Proposed Amendment respectively repeals **Article 56 & 57** replacing the words **‘as specified by the commission’** with the words **‘as specified by the cabinet of ministers’** conferring power upon the cabinet of ministers to interfere in appointing committees within the public service commission. This has further strengthened the executive branch allowing it to take control over the public service.
- (h) **Clause 12** of the Proposed Amendment has repealed **Article 61E** of the Constitution by removing the words **“subject to the approval of the constitutional council”** giving the president the sole power and authority to appoint the **Attorney General** and the

Inspector General of Police according to his free will without consulting the Parliamentary Committee. Hence this clause too has **removed all the checks and balances** imposed on the president in exercising his powers. These **two positions are key positions** in regard to law and order of the country. One is the head of the law enforcement authority and the other is the chief prosecutor. Placing both these appointments under a single person can lead to **extreme dictatorship and abuse of power**. Therefore this clause is inconsistent with the principle of **Separation of Powers** and **violates Article 3 read together with Chapter III of the Constitution**.

- (i) **Clause 13** of the Proposed Amendment has repealed **Article 65** of the Constitution by giving the president the sole power and authority to appoint the **Secretary General of Parliament** according to his free will without consulting the Parliamentary Committee. It may lead to abuse of power.
- (j) **Clause 14** of the Proposed Amendment has repealed **Article 70** of the Constitution by replacing the words *“provided that the President shall not dissolve Parliament until the expiration of a period of **not less than four years and six months** from the date appointed for its first meeting”* by the words *“**not less than one year of the day of the General Election**”*. This has given the power to the President to dissolve the Parliament any day after one year from the day of the general election. This creates the **opportunity for the executive branch to interfere with the scope of the legislative branch destroying the Balance of Powers** among the three organs of government. Therefore this clause is inconsistent with **Article 3 & Article 4** of the Constitution where it is stated that the **legislative power of people shall be exercised by Parliament**. This clause directly affects the **Sovereignty of the People**. The people elect members to the parliament for a **specific period of time** and this clause allows the president to overpower the mandate of the people and the sovereignty of people will be overthrown. Furthermore, even if the parliament is dissolved, the cabinet still remain in force so this clause can be used as a mean to abuse power and take the full control of the government into the hands of a single party.
- (k) **Clause 15** of the Proposed Amendment has repealed **Article 78** of the Constitution by replacing the words *“Every Bill shall be published in the Gazette at least **fourteen days** before it is placed on the Order Paper of Parliament.”* by the words *“at least **seven days** before”*. By reducing fourteen days to seven days, the opportunity for the public to actively involve in law making by giving

their opinion has been significantly reduced. This clause also has a direct effects on the **Sovereignty of the People**. Sri Lanka do not have post judicial review of laws in comparison to other countries such as India. The **only way that a citizen has to challenge a law** that is inconsistent with the constitution is pre-judicial review of bills where a bill can be challenge before the supreme court before it is been passed. Clause 15 of the proposed Amendment **further narrows down the pre-judicial review** of bills by reducing the time period from 14 days to 7 days. This further **undermines the rights of people and therefore is inconsistent with Article 3 read together with Article 4 of the Constitution**.

- (l) **Clause 16** of the Proposed Amendment has repealed **Article 85** by introducing a new sub article as **Article 85(2)** which gives the power to the president to **refer certain bills which are rejected in the Parliament for a public referendum** at his discretion. This clause allows the president to overpower the Parliament and is **inconsistent with the principles of “Representative Democracy.”** This allows the ruling party to manipulate the choice of people by passing laws without giving proper information to the public.

- (m) **Clause 17** of the Proposed Amendment has repealed **Article 91** of the Constitution by **removing the item xiii of Article 91(d)**. This clause has **removed the barrier imposed by the 19th Amendment for Dual Citizens to hold office as members of Parliament**. Since dual citizens are deprived from representing the other two branches of the government namely the **judiciary** and the **executive**, a serious question arises as to why dual citizens are allowed to represent the parliament. Furthermore, when a person is allied to two or more states, his **faithfulness towards one state is doubtful when it comes to crucial matters of national interest**.

- (n) **Clause 19** of the Proposed Amendment has repealed **Article 103** of the Constitution by removing the words *“three members appointed by the President on the recommendation of the Constitutional Council,”* This clause has given the authority to the president to appoint members to the Election Commission and appoint one person as the chairman of the commission as per his discretion without consulting the Parliamentary Committee. **This allows the president to influence the body which is responsible for governing the election process which elects himself and the legislature**. Since the **elections are the root of democracy**, giving power to the

president to interfere with the election process by appointing members to the election commission at his free will, is inconsistent with **Article 3** of the Constitution and therefore needs the **approval at a referendum**.

- (o) **Clause 20,21, 22** of the Proposed Amendment inter alia **reduces the powers of the Independent Election Commission** which would lead to the **violation of the right to have free and fair election**. This would violate Article 3 of the Constitution and undermine the democracy.
- (p) **Clause 23** of the Proposed Amendment has repealed **Article 107(1)** of the Constitution **allowing the president to appoint the Chief Justice, President of the Court of Appeal, Judges of the Supreme Court and the Court of Appeal according to his discretion without consulting the Parliamentary Committee**. This clause has given the sole power and authority to appoint judicial officers to senior positions without any checks or balances. Furthermore this clause has given the opportunity to the **executive branch to interfere with the judicial branch** which could **destroy the balance of powers and the public trust towards the judiciary**. Therefore this clause is **inconsistent with Article 4(c)** which states that the **judicial power of the people shall be exercised by the Parliament through courts and tribunals**. This clause has a **direct effect on people's sovereignty ensured under article 3** and therefore needs the public approval at a referendum.
- (q) **Clause 27** of the Proposed Amendment has introduced **Article 122** to the Constitution giving the opportunity to the cabinet of ministers to place bills on the table of the Parliament in their view are urgent in national interest **without publishing it on the Gazette** before seven days. This has created the opportunity to pass laws without the knowledge of the general public. Therefore this clause is **inconsistent with Article 3** of the Constitution which states that ***in the republic of Sri Lanka the sovereignty is in the people and is inalienable***.
- (r) **Clause 32** of the Proposed Amendment has removed **Articles 153A, 153B, 153C, 153D, 153E, 153F, 153G and 153H** of the Constitution **abolishing the Audit Service Commission** which was established by the 19th Amendment. This has a **serious effect on the accountability** of the actions of the government and could have a severe damage on the **public trust** towards the government. **Sovereignty of the People** is effected by this clause and therefore it is **inconsistent with Article 3 of the Constitution**. This
- (s) **Clause 27** of the Proposed Amendment has repealed **Article 155** of the Constitution by giving the president the power to **appoint persons**

to the National Police Commission at his discretion without consulting the Parliamentary Committee. This clause too removes the limitations imposed on the president in exercising his powers. This clause has a direct **effect on the rights of the people** and therefore **inconsistent with Article 3 and the Chapter III of the Constitution**.

(t) **Clause 55** of the Proposed Amendment has repealed **Chapter XIX B** of the Constitution by abolishing **NATIONAL PROCUREMENT COMMISSION** which was established to formulate fair, equitable, transparent, competitive and cost effective procedures and guidelines, for the procurement of goods and services, works, consultancy services and information systems by government institutions. This could have an adverse effect on the efficiency of the government service.

9. The petitioners state that all these clauses proposed in this amendment bill was **Unknown to the Public** until the general election was over and was only published after the election. Even though the repealing of the 19th Amendment was used as a slogan during the election campaign, no proper information was given to the public as to the clauses in the proposed 20th amendment. **The petitioners argue that the mandate which was given at the general election was given without having access to the details of this particular bill and therefore needs the approval of people at a referendum.**
10. The petitioners state that the Constitution essentially recognizes two categories of articles/provisions — those which can be amended by a two-thirds majority of members of Parliament and those which can only be amended if approved by the people at a referendum in addition to being approved by a two-thirds majority in Parliament. **Accordingly, Article 3 which talks about the sovereignty of people which belongs to the latter category is clearly threatened by the proposed 20th Amendment to the Constitution and therefore needs an approval of people at a referendum.**
11. The petitioners state that **Clause 6** of the proposed amendment has given the power to the president in all the key decisions whereas the Parliamentary Committee proposed by clause 6 only have power to **make observations and recommendations but not binding decisions**. The president is given the authority **to completely disregard the recommendations of the Parliamentary Committee and act on his will**. Furthermore it is **only consists of the members from the parties which the prime minister and the leader of the opposition represents**. The representation of minority parties are totally disregarded.

12. The petitioners state that the proposed 20th Amendment to the Constitution confers untrammelled and unfettered powers/discretions on the President and the Cabinet of Minister and therefore is **inconsistent with Article 12(1)** of the Constitution which ensures equal treatment before the law.
13. The petitioners state that the proposed 20th Amendment to the Constitution centralizes power around a single entity which is the executive and therefore is **inconsistent with Article 4** of the Constitution.
14. The petitioners state that the proposed 20th Amendment to the Constitution through its significant changes to the current constitution **changes the shape of the Constitution** by **re-introducing an executive based system** of governance instead of the parliamentary based system and therefore needs the mandate of the people at a public referendum in addition a special majority in the Parliament.
15. The petitioners state that the proposed 20th Amendment to the Constitution removes all the checks and balances established to ensure the balance of powers and therefore is **inconsistent with the Constitutional Principles such as Rule of Law, Independence of Judiciary, Separation of Powers and Constitutionalism**.
16. The petitioners state that the proposed Twentieth Amendment represents a **clear danger to Sri Lanka's fragile constitutional democracy**. It has the **potential to reignite the violence of the past**.
17. The petitioners state that, by placing the power to appoint the **Attorney General, Inspector General of Police and the Honourable Judges of the Supreme Court and Court of Appeal including the Chief Justice**, the whole legal system is placed under the control of one person. By doing so, the president is given the **power to manipulate and use the legal system as per his discretion without any checks or balances**. This places the executive president in a supreme position where he is not answerable to anyone. This is clearly **inconsistent with Article 3 read together with Article 14 where the freedom of expression is ensured**.
18. The petitioners state that this proposed amendment induces and promotes **corruption, abuse of power, dictatorship and anti-democratic principles**.
19. All the **progressive steps taken to strengthen the democracy and the rights of people have been reversed** through this proposed amendment.

20. The petitioners state that the **cumulative effect** of the aforesaid Proposed 20th Amendment to the Constitution is **inconsistent with the existing Constitution and the Democratic Principles**.

21. The Petitioners state that in the aforesaid circumstances the entire Bill (the Proposed 20th Amendment to the Constitution) and/or one or more of the Sections thereof will not become law unless passed by two-thirds of the whole number of the members in Parliament **and** approved by the people at a **referendum**.

WHEREFORE, THE PETITIONERS RESPECTFULLY PRAY THAT YOUR LORDSHIPS' COURT BE PLEASED TO:

- (a) Hear the Petitioners;
- (b) Determine that clause 5 and/ or clause 6 and/ or clause 7 and/ or clause 8 and/ or clause 9 and/or clause 12 and/ or clause 13 and/ or clause 14 and/ or clause 15 and/ or clause 16 and/ or clause 17 and/ or clause 19 and/ or clause 20 and/ or 21 clause 22 and/ or clause 23 and/ or clause 27 and/ or clause 28 and/ or clause 32 of the Bill titled 20th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka and of the proposed Amendment as whole are thus and otherwise contrary to and/ or inconsistency with the Provisions of the article 3 of the Constitution.
- (c) Determine that one or more of the said provisions of the said Bill titled "Twentieth Amendment to the Constitution" or the bill as a whole is/are inconsistent with the provisions of the Constitution and require **to be passed by not less than two-thirds of whole number of members in Parliament and approved by the people at a Referendum by virtue of the provisions of Article 83;**
- (d) Grant such further and other relief(s) as to your Lordships Court shall Seem Meet.

Attorney-at-Law for the Petitioners