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

"BUREAU OF REHABILITATION BILL"

SC (SD) No. 54/2022	**Petitioner**	Deshabandu Suresh Rupasinghe Gunewardena, 28/3A, 4th Lane, Epitamulla Road, Pitakotte.
	Counsel:	Nuwan Peiris
SC (SD) No. 55/2022	**Petitioner:**	(1) Revd. Amila Jeewantha Peiris, Doloswela, Niwithigala.
		(2) Wekandawela Rahula Thero, Sri Bodhirukkaramaya, Kudabubula, Julampitiya.
		(3) Buwaneka Perera, 507/B, Anagarika Dharmapala Mawatha, Thalawathugoda.
		(4) Gunatillekage Melani Rasanga, 33/26, Galawila Road, Homagama.
	Counsel:	Nuwan Bopage with Chathura Nettasinghe and Hansaka Chandrasinghe
SC (SD) No. 56/2022	**Petitioner:**	Don Amila Suyama Egodamahawatte, 100/4, Balagala Road, Hendala, Wattala.
	Counsel:	Shantha Jayawardena with Thanuka Nandasiri, Manoj Nanayakkara, Thilini Vidanagamage, L. Dharmapala and T. Jayasundera
SC (SD) No. 57/2022	**Petitioner:**	(1) Centre for Policy Alternatives (Guarantee) Limited,

6/5, Layards Mawatha, Colombo 5.

(2) Dr Paikiasothy Saravanamuttu,
3, Ascot Avenue, Colombo 5.

Counsel: Suren Fernando with Luwie Ganeshathasan and Khyati Wikramanayake

SC (SD) No. 58/2022 **Petitioner:** Ambika Sathkunanathan,
27, Rudra Mawatha, Colombo 6.

Counsel: Pulasthi Hewamanna with Harini Jayawardhana, Fadhila Fairoze and Githmi Wijenarayana

SC (SD) No. 59/2022 **Petitioner:** S.M. Marikkar,
22/2, Walawwatta Place,
Nawala, Rajagiriya.

Counsel: Tharaka Nanayakkara with Budwin Siriwardhena

SC (SD) No. 60/2022 **Petitioner:** Mohammed Aslam Othman,
149, Kew Road, Colombo 2.

Counsel: Hejaaz Hizbullah with Shifan Maharoof

SC (SD) No. 61/2022 **Petitioner:** Tharindu Iranga Jayawardena,
176/3, Oruthota, Gampaha.

Counsel: Swasthika Arulingam with Jayantha Dehiattage

Respondent: Attorney General

Counsel: Kanishka De Silva Balapatabendi, Deputy Solicitor General with Indumini Randeny, State Counsel and Sajith Bandara, State Counsel

BEFORE:	E.A.G.R. Amarasekara	Judge of the Supreme Court
	Mahinda Samayawardhena	Judge of the Supreme Court
	Arjuna Obeyesekere	Judge of the Supreme Court

The Court assembled for hearings at 10.00 a.m. on 3rd October 2022 and at 10.30 a.m. on 4th October 2022.

A Bill titled, "Bureau of Rehabilitation" [*the Bill*] was published as a Supplement to Part II of the Gazette of 9th September 2022. It was presented in Parliament by the Minister of Justice, Prison Affairs and Constitutional Reforms and was placed on the Order paper of Parliament on 23rd September 2022.

Articles 120, 121 and 123 of the Constitution

In terms of Article 120 of the Constitution, *"The Supreme Court shall have sole and exclusive jurisdiction to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution."*

Article 121(1) goes on to stipulate that:

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

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

Where a primary determination is made as provided in Article 123(1) as to any inconsistency with the Constitution, the consequential determinations the Court is required to make are specified in Article 123(2), which reads as follows:

> *"Where the Supreme Court determines that the Bill or any provision thereof is inconsistent with the Constitution, it shall also state –*
>
> *(a) whether such Bill is required to comply with the provisions of paragraphs (1) and (2) of Article 82; or*
>
> *(b) whether such Bill or any provision thereof may only be passed by the special majority required under the provisions of paragraph (2) of Article 84; or*
>
> *(c) whether such Bill or any provision thereof requires to be passed by the special majority required under the provisions of paragraph (2) of Article 84 and approved by the People at a Referendum by virtue of the provisions of Article 83,*
>
> *and may specify the nature of the amendments which would make the Bill or such provision cease to be inconsistent."*

Twelve Petitioners have accordingly invoked the jurisdiction of this Court in terms of Article 121(1) by filing the above numbered eight petitions in the Registry of the Supreme Court on 29th and 30th September 2022. A majority of the learned Counsel for the Petitioners, while submitting that the Bill taken as a whole is inconsistent with the provisions of the Constitution and therefore needs to be approved by the special majority of Parliament and by the People at a Referendum, submitted that in any event, Clauses 3, 4, 6, 17, 24, 25, 26, 27, 28, 29, 30, 34, 35 and the definition of "*rehabilitation*" in Clause 37 of the Bill, taken individually, are inconsistent with Articles 3, 4, 10, 11, 12(1), 12(2), 13(2), 13(4) and 14A of the Constitution, and hence needs to be approved by the special majority of Parliament and by the People at a Referendum.

Upon receipt of the said petitions, the Registrar of this Court issued notice on the Hon. Attorney General as required by Article 134(1) of the Constitution.

This Court heard all the learned Counsel for the Petitioners and the learned Deputy Solicitor General. In the course of her submissions, the learned Deputy Solicitor General informed this Court that amendments will be moved at the Committee Stage of Parliament to several Clauses of the Bill, including the Preamble and Clauses 3, 4, 23, 25, 26, 27, 28, 29 and 35. The said amendments will be referred to, when we discuss the said Clauses.

Reference of the Bill to Provincial Councils

Mr. Nuwan Peiris, the learned Counsel for the Petitioner in SC (SD) Application No. 54/2022, submitted that rehabilitation is a subject that appears in Item 7 of List 1 of the Ninth Schedule to the Constitution [Provincial Council List], and this Bill therefore attracts the provisions of Article 154G(3) of the Constitution, which reads as follows:

> *"No Bill in respect of any matter set out in the Provincial Council List shall become law unless such Bill has been referred by the President, after its publication in the Gazette and before it is placed on the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and –*
>
> *(a) where every such Council agrees to the passing of the Bill, such Bill is passed by a majority of the Members of Parliament present and voting; or*
>
> *(b) where one or more Councils do not agree to the passing of the Bill, such Bill is passed by the special majority required by Article 82:*
>
> *Provided that where on such reference, some but not all the Provincial Councils agree to the passing of a Bill, such Bill shall become law applicable only to the Provinces for which the Provincial Councils agreeing to the Bill have been established, upon such Bill being passed by a majority of the Members of Parliament present and voting."*

Item 7 that was referred to by Mr. Peiris is titled, "*Social Services and Rehabilitation*" and covers the subjects of probation and child care services, the rehabilitation of destitute persons and families, the rehabilitation and welfare of physically, mentally and socially handicapped persons and the provision of relief to the disabled and unemployable. One may argue that the objective of this Bill does not fall within Item 7 and the necessity to refer this Bill to the Provincial Councils does not arise.

In any event, it is admitted that there has not been compliance with the above requirement in Article 154G(3) for the reason that duly constituted Provincial Councils do not exist at this point in time. In the **Colombo Port City Economic Commission Bill** [SC (SD) Application Nos. 04-23/2021, at page 23], this Court, having considered the applicability of Article 154G(3) determined as follows:

> *"It is the view of the Court that the requirement to refer a Bill to every Provincial Council is a procedural step in the legislative process. However, in interpreting this provision (in a situation where a Bill has not been referred to a Provincial Council) it is necessary to consider the application of the maxim 'lex non cogit ad impossibilia' – law does not compel a man to do that which he cannot possibly perform.*
>
> *Court has previously held in Ananda Dharmadasa and Others v. Ariyaratne Hewage and Others [(2008) 2 SLR 19], that the principle 'lex non cogit ad impossibilia' is applicable in interpreting procedural requirements in the Constitution.*
>
> *The existence of a Provincial Council constituted in accordance with the law is a pre-requisite to decide whether there is non-compliance with this procedural step in a given situation. It is pertinent to note that at present, none of the Provincial Councils have been constituted in accordance with the law. Therefore, referring a Bill to Provincial Councils at this point of time, for the expression of its views is an act which cannot possibly be performed. Thus, non-compliance with this procedural step which cannot be performed, in the present circumstances, should not adversely impact on the legislative power of Parliament, which is a part of inalienable sovereignty of the People."*

This position was re-iterated in the **Twenty First Amendment to the Constitution Bill** [SC (SD) Application Nos. 31, 32, 34, 36 and 37/2022, at page 8] where Article 154G(2) applied, and in the **Petroleum Products (Special Provisions) (Amendment) Bill** [SC (SD) Application Nos. 50-52/2022, at page 20].

In the above circumstances, we see no merit in the said submission.

Vague and overbroad provisions of a Bill and their nexus to Article 12(1)

The most fundamental point of dispute between the learned Counsel for the Petitioners and the learned Deputy Solicitor General was on the nature of the Bill and its scope. The learned Deputy Solicitor General, while emphasising that the Bill only seeks to create a framework within which rehabilitation centres can operate, submitted that the function of this Court is to consider the provisions of the Bill as it stands and not speculate whether there can be an arbitrary exercise of power in implementing the provisions of the Bill.

In support of her submission, the learned Deputy Solicitor General drew the attention of this Court to the determination in the **Third Amendment to the Constitution Bill** [Decisions of the Supreme Court on Parliamentary Bills (1978-1983), Vol. I, 139 at page 147] where it was held that:

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

In 2002, this Court considered the **Welfare Relief Benefits Bill** [Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Vol. VII, 279] which was intended to provide the necessary legal framework for the payment of all welfare relief benefits. Having considered *inter alia* the provisions of the bill including those relating to the selection process for the recipients of such benefits, the criteria for eligibility to receive assistance in terms of a scheme formulated under the bill, the date of commencement and the duration of the payments under a scheme and the fact that all schemes shall be published

in the Gazette and placed before Parliament prior to the commencement of such schemes, this Court concluded that the said provisions offer **adequate safeguards** to ensure that the selection of the recipients under each scheme will be made in a non-discriminatory manner thereby ensuring compliance with Article 12 of the Constitution.

Responding to an argument that there would be favouritism in the selection process, this Court in its Determination stated as follows:

> *"It is not within the jurisdiction of the Court to speculate as to what would happen in the implementation of the scheme.* ***The provisions of the Bill should be examined objectively to ascertain whether there are sufficient safeguards to prevent discrimination on any of the grounds referred to in Article 12 (2) of the Constitution and to prevent arbitrariness in the decision making process.*** *The provisions referred to above are in our view adequate safeguards in this regard"* [emphasis added] [at page 282].

The above test has been cited with approval thereafter in several determinations of this Court including in the **Twentieth Amendment to the Constitution Bill** [Decisions of the Supreme Court on Parliamentary Bills (2019-2020), Vol. XV, 87 at pages 133-134], the **Colombo Port City Economic Commission Bill** [supra, at page 26] and the **Petroleum Products (Special Provisions) (Amendment] Bill** [supra, at pages 9-10].

The thrust of the submissions of the learned Counsel for the Petitioners was twofold. The first was that the provisions of the Bill are vague, lack clarity and are overbroad, and that as such the Bill is arbitrary and therefore inconsistent with the provisions of Article 12(1) of the Constitution. The second was that such a law can lead to the arbitrary implementation of its provisions and therefore violate Article 12(1). The Petitioners claimed that the assertion that the Bill was only a framework law only served to exacerbate the vagueness and potential for arbitrary implementation.

Vague provisions prevent persons from understanding the ambit of the law. Citizens will not have the knowledge of what is permissible and what is not. Governmental authorities cloaked with powers under vague provisions will not know the ambit of their powers and as such the implementation of such powers would become necessarily arbitrary. As was held by this Court in the **Prevention of Terrorism (Temporary Provisions) Amendment Bill** [SC (SD) Application Nos. 13-18/2022]:

> *"When a provision of law is vague, it would only benefit the wrongdoer. Such a provision would not uphold the Rule of Law"* [at page 22].
>
> *"This Court has stated time and again that vagueness must be avoided in the bills in order to make such provisions consistent with Article 12(1) of the Constitution"* [at page 23].

In assessing whether the provisions of a bill are vague or lack clarity, the question before this Court would be whether the bill has been drawn up with the amount of clarity and precision as would enable a reasonable person to discern which actions are forbidden, or which actions are required. If the operation and boundaries of the bill in question cannot be identified without resorting to guesswork, then the provisions of the bill would be vague, and therefore arbitrary. Even if the provisions of the impugned Bill are unambiguous, if it fails to provide adequate safeguards in the exercise of such power, that too will be arbitrary. Thus, provisions that are vague and those that do not have adequate safeguards violate Article 12(1) of the Constitution.

In considering the application of a bill or its provisions, it is only plausible and real-world possibilities that would be entertained by this Court. The threat of potential abuse should not be based on fanciful hypotheses, and should always be guided by the perspective of the proverbial reasonable person. There should be a realistic possibility that the provisions of the Constitution would be abused through the provisions of the law. In such a situation, this Court undoubtedly possesses the jurisdiction to consider such possibilities, and would not have to wait for any actual or imminent infringement. The need for this Court to be proactive and vigilant is underscored by the absence of post-enactment review.

In assessing the provisions of this Bill, we shall carefully consider *inter alia* if the provisions of the Bill are clear in the manner in which it shall be enforced, and whether the Bill has in place adequate criteria and sufficient safeguards:

(a) for the achievement of the objective of the Bill;

(b) in the exercise by the Bureau of its powers, functions and duties,

in order to prevent arbitrariness in the decision-making process. It is only if the said matters are answered in the affirmative that a conclusion can be reached that the provisions of the Bill are consistent with the provisions of the Constitution.

Overview of the Bill

The Bill contains thirty-eight Clauses. According to its long title, the Bill seeks to provide for the establishment of a bureau to be called and known as the Bureau of Rehabilitation [*the Bureau*] and to regulate its powers, duties and functions. The Preamble to the Bill refers to the importance of regulating the rehabilitation of *"misguided combatants, individuals engaged in extreme or destructive acts of sabotage and those who have become drug dependent persons."*

Clause 3 of the Bill sets out the objective of the Bureau and reads as follows:

> *"The objective of the Bureau shall be to rehabilitate drug dependant persons, ex-combatants, members of violent extremist groups and any other group of persons who require treatments and rehabilitation by adopting various therapies in order to ensure effective reintegration and reconciliation, through developing socio-economic standards."*

The powers, duties and functions of the Bureau are set out in Clause 4. Part II of the Bill is titled, '*Administration and Management of affairs of the Bureau*' and consists of Clauses 5 – 14. Provisions with regard to the appointment of the Chief Executive Officer of the Bureau [*who shall be known as the Commissioner-General of Rehabilitation*], the Staff of

the Bureau, designation of members of the Armed Forces to exercise and discharge the powers, duties and functions under the Act and the use of the services of Officers of the Department of Health are contained in Clauses 15 – 18, respectively. Clauses 19 and 20 deal with the finances of the Bureau. Part V is titled '*General*' and contains Clauses 21 – 38.

It was submitted by the learned Deputy Solicitor General that as of now, the rehabilitation of *"drug dependent persons and ex-combatants"* are managed by the Office of the Commissioner-General of Rehabilitation created under the provisions of the Public Security Ordinance. The Bill seeks to confer this power on the Bureau, and as submitted by the learned Deputy Solicitor General, create an overarching framework for the establishment of specific rehabilitation and treatment centres under the auspices of the Bureau and for the Bureau to carry out rehabilitation and treatment programmes. In order to accommodate such transition, Clause 36 of the Bill provides *inter alia* for the transfer of all movable and immovable property of the Commissioner-General of Rehabilitation to the Bureau and for all officers and employees of the Commissioner-General of Rehabilitation to continue to hold office under the Bureau.

The learned Deputy Solicitor General submitted that the objective of the Bill is to introduce an institutional framework to facilitate in terms of an existing law or a future law (a) the voluntary rehabilitation of persons and (b) the rehabilitation of persons. It was the position of the learned Deputy Solicitor General that in terms of the present Bill, the Bureau will not have the power to rehabilitate any person on its own initiative, even if such person voluntarily seeks such rehabilitation, and that provisions with regard to the rehabilitation of any person at a centre operated by the Bureau would have to be in terms of a specific Act of Parliament which shall identify the specific category of persons who should be subjected to such rehabilitation.

The learned Deputy Solicitor General's submissions can be summarised as follows:

(a) the Bill only seeks to create a framework for rehabilitation of persons and therefore at this juncture, what is required is only a broad categorisation of the persons who could be admitted for rehabilitation;

(b) the Bill does not empower the Bureau to conduct rehabilitation and/or treatment of any person without enabling legislation, or in other words, the Bureau cannot, in terms of the Bill, provide rehabilitation to any person, unless a specific law mandates or enables the Bureau to do so;

(c) in view of the fact that the only law that is currently in force with regard to rehabilitation is the Drug Dependant Persons (Treatment and Rehabilitation) Act, No. 54 of 2007, the role of the Bureau shall be limited to the rehabilitation of drug dependent persons, until and unless specific laws are enacted in respect of the other classes of persons referred to in the Bill;

(d) the admission of any other person for treatment and rehabilitation at a rehabilitation centre operated by the Bureau would take place only in terms of specific laws that are to be enacted in the future, specifically identifying the categories of persons to whom such laws shall apply.

It is in this context that the learned Deputy Solicitor General submitted that an exhaustive definition of the categories of persons referred to in Clause 3 – i.e., *"ex-combatants," "members of violent extremist groups"* and *"any other group of persons"* – cannot be provided in this Bill and that for the purposes of this Bill, what is required is a broad indication of the classes of persons who may, by prospective legislation, be directed for rehabilitation or request rehabilitation.

The learned Deputy Solicitor General further submitted that the intention of the legislature in introducing this Bill is to depart from the punitive approach that is currently in force in respect of those found guilty of committing certain categories of offences and move towards a curative or reformative approach to law enforcement in respect of those classes of persons that are identified in the Bill.

None of the Petitioners disputed the importance of integrating a process of rehabilitation into the criminal justice system, and providing a legal framework within which the institutions tasked with the responsibility of rehabilitation of offenders could operate.

The position of the Petitioners, however, was that any such legal framework must be carried out under strict judicial scrutiny and crafted with utmost care in order to ensure adherence to, and respect for, the rights and liberties guaranteed by the Constitution of those undergoing rehabilitation.

Constitutionality of the Bill as a whole

In examining the constitutionality of the Bill as a whole, we shall first consider the policy and the rationale for the Bill in the context of the said submissions of the learned Deputy Solicitor General.

Policy and Rationale

The Bill was submitted by the Minister of Justice for the approval of the Cabinet of Ministers by Cabinet Memorandum dated 16th March 2021, and was approved by the Cabinet of Ministers by its decisions dated 19th April 2021 and 22nd August 2022.

The justifications provided in the Cabinet Memorandum for the Bill are:

(a) Offering a fair opportunity to drug dependent persons for rehabilitation instead of imprisonment;

(b) Establishment of a systematic rehabilitation mechanism to address the issue of overcrowding of prisons;

(c) In view of past incidents of breach of harmony, ex-combatants and members of violent extremist groups to be subject to rehabilitation to ensure effective reintegration and reconciliation through developing socio-economic standards.

Accordingly, the Cabinet Memorandum has proposed the creation of a Bureau of Rehabilitation to deal with drug dependant persons, ex-combatants, members of violent extremist groups and any other groups of persons that require rehabilitation. The Cabinet Memorandum has thus specifically identified certain groups of persons and sought to create an institution to rehabilitate those groups of persons.

The Preamble of the Bill in its present form identifies *"misguided combatants," "individuals engaged in extreme or destructive acts of sabotage"* and *"those who have become drug dependent persons."* Paragraphs 1 and 2 of the Preamble are sought to be amended at the Committee Stage of Parliament by deleting the reference to the above persons and substituting them with, *"ex-combatants," "members of violent extremist groups," "those who have become drug dependent persons"* and *"any other person who requires treatment and rehabilitation."*

The third paragraph of the Preamble, which has not been sought to be amended at the Committee Stage of Parliament, specifically states that *"it has become a matter of national importance to establish a Bureau for the purpose of rehabilitating the* ***above said persons***" [emphasis added]. These groups have been referred to again in Clause 3 of the Bill which sets out the objective of the Bureau. The amendment that is sought to be moved at the Committee Stage of Parliament to Clause 3 continues to refer to the rehabilitation of *"drug dependent persons," "ex-combatants," "members of violent extremist groups,"* and *"any other group of persons"* with the only addition being that the rehabilitation of such persons *"may be provided for by law."*

Thus, the form, structure and language of the Bill, and its underlying Cabinet Memorandum are at odds with the submission of the learned Deputy Solicitor General that the Bill is only a framework law for future enactments to specify the categories of persons who will come within its ambit. As we have observed, the Cabinet Memorandum and the Bill have already identified the groups of persons and, moreover, have stated that the rehabilitation of such persons constitutes an issue of national importance.

The submission of the learned Deputy Solicitor General is not reflected either in the Cabinet Memorandum or in the wording of Clause 3, as it presently stands. The resultant position is that the Bill seeks to be the law that enables the rehabilitation of an extremely wide category of persons, without any criteria being laid down by the Bill in determining who is an *"ex-combatant, a member of a violent extremist group or any other person who*

requires treatment and rehabilitation." To that extent, we are of the view that Clause 3 is arbitrary and is violative of Article 12(1).

The Bill also goes far beyond the policy rationale of shifting from a punitive approach to a reformative approach as described by the learned Deputy Solicitor General. At present, for instance, there are three categories of persons who are liable to be sent for rehabilitation under the Drug Dependant Persons (Treatment and Rehabilitation) Act – i.e., persons who volunteer [Section 9], persons who are identified by the Police as drug dependant persons [Section 10(1) – (3)] and persons convicted under the Poisons, Opium and Dangerous Drugs Ordinance and who are drug dependant persons [Section 10(4)]. Of these three categories, the first two categories of persons are not subject to punitive sanctions. It is only the last category of persons who are convicted of a crime and would thus be the subject of punitive sanctions, who would be the beneficiaries of the intended shift from a punitive approach to a reformative approach.

Furthermore, having specifically identified the groups of persons that the Bill seeks to encompass, and having proclaimed that rehabilitating those groups of persons is a matter of national importance, the Bill does not seek to define "*ex-combatants*" or "*members of violent extremist groups.*" More importantly, the lack of a definition of these categories of persons raises the possibility that these categories too may not necessarily be subjected to a judicial process and could potentially be categorised as such by way of executive action. In fact, Annex I to the Cabinet Memorandum seeks to include "*suspects arrested during the course of investigations*" as falling within the scope of referrals to centres run by the Bureau. In the absence of a Court of competent jurisdiction pronouncing the guilt of any person, there is no scope for a shift from a punitive approach to a curative one, as no person can be subject to punitive sanctions in respect of a criminal offence without a judicial order. In the aforesaid circumstances, there is a fundamental mismatch between the language of the Bill read with the Cabinet Memorandum and the purpose of the Bill as articulated by the learned Deputy Solicitor General.

Vagueness and lack of clarity in core provisions

The absence of definitions of the categories of persons targeted by the Bill not only renders the Bill vague and violative of Article 12(1) of the Constitution, but has far reaching consequences. As pointed out by several of the learned Counsel for the Petitioners, the answer that subsequent specific laws will deal with or define the persons who require rehabilitation is a dangerous route for this Court to adopt in the specific context of this case.

It would be wholly inappropriate for this Court to permit the creation of concepts without legal definitions and undefined, vague clauses to exist in this Bill. This Court cannot evade its constitutional duty conferred by Article 123 in examining this Bill on the basis that a future law will fill in all the blanks of this Bill. Furthermore, in a constitutional framework that does not provide for post-enactment judicial review and only a limited time period for the challenge of a Bill, there is no guarantee that this Court will definitely get the opportunity to consider the constitutionality of such subsequent Bills.

The learned Deputy Solicitor General submitted that an amendment will be moved to Clause 3 of the Bill at the Committee Stage of Parliament, by inserting the words "*as may be provided for by law*" to reflect the position of the Attorney General that this Bill is only a framework law and that specific laws enabling the reference of persons to centres for rehabilitation managed by the Bureau will be enacted.

Clause 3 was therefore proposed to be amended by the learned Deputy Solicitor General as follows:

> "*The objective of the Bureau shall be to rehabilitate drug dependant persons, ex-combatants, members of violent extremist groups and any other group of persons as may be provided for by law who require treatments and rehabilitation by adopting various therapies in order to ensure effective reintegration and reconciliation, through developing socio-economic standards.*"

It was submitted that the above amendment would now make it clear that a specific law enabling the reference of persons for rehabilitation by the Bureau must be enacted by Parliament prior to the Bureau carrying out any rehabilitation. The proposed language, however, is ambiguous with regard to whether the phrase "*as may be provided by law*" applies only to "*other groups of persons*" or whether, as submitted by the learned Deputy Solicitor General, it applies to all the categories. It also does not take away in its entirety the lack of clarity that currently exists in Clause 3, for the reason that "*ex-combatants*" and "*members of violent extremist groups*" continue to remain undefined.

For the aforesaid reasons, we are of the following opinion:

(a) The Bill as a whole is inconsistent with Article 12(1) of the Constitution and therefore needs to be approved by the special majority of Parliament;

(b) However, the said inconsistency shall cease if:

  (i) all references to "*ex-combatants,*" "*violent extreme groups*" and "*any other group of persons*" are deleted from the Bill;

  (ii) the Bill is limited to the rehabilitation of drug dependent persons and such other persons as may be identified by law;

and subject to the further observations that would be made by this Court in connection with individual Clauses below.

Clause by clause analysis

As the Bill contains provisions with regard to drug dependant persons and general provisions relating to the manner in which centres for rehabilitation shall operate, we shall now consider the arguments of the learned Counsel for the Petitioners with regard to the specific Clauses of the Bill.

Clause 3 (objective of the Bureau) and Clause 4 (powers, duties and functions of the Bureau)

Clause 3 of the Bill reads as follows:

> *"The objective of the Bureau shall be to rehabilitate drug dependant persons, ex-combatants, members of violent extremist groups and any other group of persons who require treatments and rehabilitation by adopting various therapies in order to ensure effective reintegration and reconciliation, through developing socio-economic standards."*

Paragraphs (a) to (o) of Clause 4 of the Bill contains the powers, duties and functions of the Bureau. A majority of the learned Counsel for the Petitioners submitted that paragraphs (a) and (b) thereof are vague, lack clarity and are therefore inconsistent with Article 12(1) of the Constitution, and hence need to be approved by the special majority of Parliament.

Paragraphs (a) and (b) of Clause 4 read as follows:

> *"The powers, duties and functions of the Bureau shall be to –*
>
> *(a) provide treatment and rehabilitation to drug dependant persons who requests treatment and rehabilitation or is required by law to be provided with treatment and rehabilitation;*
>
> *(b) rehabilitate ex-combatants, members of violent extremist groups and any other group of persons who requests treatment and rehabilitation or is required by law to be provided with treatment and rehabilitation;"*

The first submission of the learned Counsel for the Petitioners was that Clause 4(b) is vague due to the words and phrases, *"ex-combatants, members of violent extremist groups and any other group of persons."* We have already opined that the references to *"ex-combatants, members of violent extremist groups and any other group of persons"* render this Bill inconsistent with the provisions of Article 12(1) of the Constitution. Hence,

the necessity for this Court to consider the arguments of the learned Counsel for the Petitioners relating to the said phrases vis-à-vis Clause 3 and Clause 4(b) does not arise.

The second submission of the learned Counsel for the Petitioners was with regard to the words, "*who requests treatment*" and "*is required by law*" that appear in both paragraphs (a) and (b) of Clause 4. Mr. Suren Fernando, the learned Counsel for the Petitioners in SC (SD) Application No. 57/2022, submitted that Clause 4(b) is capable of being interpreted in many different ways and will end with the same result – i.e., the Bureau will have the power to provide rehabilitation on its own initiative.

The learned Deputy Solicitor General, reiterating her submission with regard to the overall objective of the Bill, submitted that:

(a) drug dependant persons, ex-combatants, members of violent extremist group and any other group of persons could be subjected to a process of rehabilitation only if a particular law provides for the rehabilitation of such category of persons, regardless of whether it is voluntary admission to a centre or mandated admission; and

(b) it was never the intention of the legislature to circumvent judicial oversight with regard to the personal liberties of people.

A plain reading of the above two Clauses makes it clear that entry to a rehabilitation centre maintained by the Bureau can occur in two different ways. The first is where a person seeks rehabilitation of his own volition or in other words volunteers to undergo a process of rehabilitation without reference to any particular law. The second category is where persons are referred for rehabilitation in terms of the provisions of any law.

While rehabilitation of certain classes of offenders may be more suitable than imposing punitive punishments on them:

(a) any reference for rehabilitation of a person who volunteers to undergo such rehabilitation must be done only where such person has offered his or her informed

or genuine consent to undergo such a process with the details thereof being known beforehand, as opposed to consent being obtained through coercion, duress or undue influence or **as an alternative to protracted remand**, and therefore it is prudent that such consent is obtained through a mechanism that ensures judicial scrutiny;

(b) any other reference for rehabilitation must be through an order made by a Court of competent jurisdiction,

with clear definitions of such persons, detailed provisions with regard to (a) and (b) and adequate safeguards to ensure due compliance with the fundamental rights of such persons, being laid down in the enabling law. In the absence of the criteria or procedures with regard to (a) and (b) in the Bill and adequate safeguards, we are of the view that Clause 3 and Clauses 4(a) and (b) of the Bill are overbroad and arbitrary.

Having carefully examined the provisions of Clauses 3, 4(a) and (b), we are in agreement with the learned Counsel for the Petitioners that the said provisions lack clarity as the Bureau could provide rehabilitation to any person who requests treatment, which is contrary to the submissions of the learned Deputy Solicitor General. In these circumstances, we are of the view that Clauses 4(a) and (b) are arbitrary and are inconsistent with the provisions of Article 12(1). Furthermore, we drew the attention of the learned Deputy Solicitor General to the Sinhala text of Clauses 4(a) and (b) of the Bill which may give a meaning contrary to what has been expressed in the English text and the Tamil text.

The learned Deputy Solicitor General submitted that the following amendments will be moved at the Committee Stage of Parliament to Clauses 4(a) and (b) with a view to making the said provisions clear and remove the ambiguity that presently exists.

Clause 4(a) is proposed to be amended as follows:

"Provide treatment and rehabilitation to drug dependent persons who in terms of the Drug Dependent Persons (Treatment and Rehabilitation) Act, No. 54 of 2007

request treatment and rehabilitation or are required by such law to be provided with treatment and rehabilitation."

While in terms of Article 80(3), this Court cannot pronounce upon or in any manner call in question, the validity of the provisions of the Drug Dependent Persons (Treatment and Rehabilitation) Act, we are of the view that if Clause 4(a) is amended as proposed by the learned Deputy Solicitor General, the inconsistency shall cease and the said Clause can be passed by a simple majority of Parliament.

Clause 4(b) is proposed to be amended as follows:

"rehabilitate ex-combatants, members of violent extremist groups and any other group of persons who, in terms of a relevant law which provides for such treatment and rehabilitation, request treatment and rehabilitation or are required by such law to be provided with treatment and rehabilitation;"

The amendment proposed by the learned Deputy Solicitor General does not take away in its entirety the inconsistency Clause 4(b) has with Article 12(1) for the reason that the reference to *"ex-combatants, members of violent extremist groups and any other group of persons"* still remain. However, we are of the view that if the words, *"ex-combatants, members of violent extremist groups and any other group of persons"* are deleted, and if Clause 4(b) is amended as follows, the inconsistency shall cease and the said Clause can be passed by a simple majority of Parliament:

"provide rehabilitation to any person who in terms of a relevant law, requests rehabilitation or is required by such law to be provided with rehabilitation;"

We shall now consider the submission of Mr. Fernando that Clause 3 is vague with regard to the *"adoption of various therapies,"* and the submission of Mr. Pulasthi Hewamanna, the learned Counsel for the Petitioner in SC (SD) Application No. 58/2022 that the words, *"in order to ensure effective reintegration and reconciliation, through developing socio-economic standards"* are vague and not capable of any meaning. These two submissions

have a nexus to Clauses 6, 35 and 37, and therefore we would discuss these three Clauses to the extent that it impacts upon Clause 3.

It would perhaps be appropriate to commence with the following definition of "*rehabilitation*" found in Clause 37 of the Bill, as the word, "*therapy*" has a nexus to such definition:

> "*rehabilitation means treatment and rehabilitation, aftercare and support services which includes a set of interventions designed to optimize functioning and reduce disability in individuals with health and mental conditions when interacting with their environment, to be as independent as possible in everyday activities and enables participation in education, work, recreation and a meaningful life.*"

Thus, the Bill treats all persons undergoing rehabilitation as individuals with disabilities in health and mental conditions. Rehabilitation is the core of this Bill, and the definition of the said term may be inappropriate to two categories of persons that the Bill seeks to bring within its ambit.

The learned Deputy Solicitor General did submit that even though the above definition is cast in broad terms to accommodate the various forms of rehabilitation that may be provided for by regulations once the enabling laws envisaged are enacted, the said definition contains three important components of the programme – i.e., treatment, rehabilitation and aftercare. It was her position that any exhaustive definition is not possible due to the fact that the kind of rehabilitation would depend from category to category and from person to person and to insert a more specific definition at this point would only frustrate and stifle the policy framework that is sought to be enacted under the present Bill. We must state that the necessity to keep the definition broad does not take away the requirement for the Bill as a whole to have sufficient safeguards that will thereby ensure the rights of a person undergoing rehabilitation.

This brings to the fore, two important issues raised by the learned Counsel for the Petitioners.

The first is, whatever the rehabilitation mechanisms that are adopted must ensure compliance with the full gamut of the fundamental rights enshrined in the Constitution.

The second is that detailed provisions relating to the treatment, rehabilitation and aftercare that any category of persons would undergo must be stipulated, thereby ensuring that the person undergoing rehabilitation has full knowledge thereof. This, according to the learned Deputy Solicitor General, is sought to be done by way of regulations made by the Minister under Clause 35 of the Bill.

Clause 35 reads as follows:

> *"(1) The Minister may make regulations for the purpose of carrying out and giving effect to the principles and provisions of this Act.*
>
> *(2) In particular and without prejudice to the generality of the powers conferred on subsection (1), the Minister may make regulations for –*
>
> *(a) the maintenance of Centres for Rehabilitation; and*
>
> *(b) the procedure for the rehabilitation, treatment and aftercare:*
>
> *Provided that, the Minister shall obtain the concurrence of the National Dangerous Drugs Control Board, when any regulation in relation to the Centres for Rehabilitation for the treatment and rehabilitation of drug dependant persons is made.*
>
> *(3) Every regulation made by the Minister within three months after its publication in the Gazette be brought before Parliament for approval. Any 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.*
>
> *(4) Notification of the date on which any regulation is so disapproved shall be published in the Gazette."*

The learned Deputy Solicitor General submitted that an amendment will be moved at the Committee Stage of Parliament to Clause 35(1) by deleting the words *"principles and."*

There are several issues that arise with regard to Clause 35(2). The first is that in addition to making regulations relating to the maintenance of the centres, the Minister is required to make regulations only with regard to *"the procedure for the rehabilitation, treatment and aftercare."* We are of the view that the failure to specify by way of regulations the treatment, rehabilitation and aftercare that any category of persons would undergo leaves the definition of *"rehabilitation"* overbroad and is therefore arbitrary. The learned Deputy Solicitor General submitted that this issue will be addressed during the Committee Stage of Parliament by deleting the word, *"procedure"* and substituting with the word, *"programme"*. The insertion of the word, *"programme,"* resolves the concern that we have expressed.

The second is that in any event, the Minister, similar to this Court, may not have the expertise to decide on the kind of treatment, rehabilitation and aftercare that should be provided. This issue was sought to be addressed by the learned Deputy Solicitor General by informing this Court that an amendment will be moved during the Committee Stage of Parliament by adding the following proviso to Clause 35(2) of the Bill:

> *"Provided further that the Minister shall obtain the concurrence of the Council under this Act in making regulations in relation section 35(2)(a) and 35(2)(b) of this Act."*

The learned Deputy Solicitor General also submitted that an amendment will be moved to Clause 4 during the Committee Stage of Parliament by the insertion of the following new paragraph, numbered as Clause 4(e):

> *"advice the Minister with regard to programmes for the rehabilitation, treatment and aftercare having regard to the basic norms of Human Rights."*

The said amendments recognise and correctly so, that the Minister does not have the expertise in the relevant area and must therefore rely on the Council in making the

regulations. However, this gives rise to another issue, which is whether the Council has the expertise to advise the Minister in this regard.

The answer to this is found in Clauses 5 and 6 of the Bill, which are re-produced below:

Clause 5

"(1) The administration, management and control of the affairs of the Bureau shall be vested in a Governing Council (in this Act referred to as the "Council").

(2) The Council shall, for the purpose of administering the affairs of the Bureau, exercise, perform and discharge the powers, duties and functions conferred on, assigned to or imposed on the Bureau by this Act."

Clause 6

"The Council shall consist of –

(a) the following ex-officio members, namely –

(i) a representative of the National Dangerous Drugs Control Board;

(ii) the Secretary to the Ministry of the Minister assigned the subject of Defence or his representative not below the rank of an Additional Secretary of that Ministry;

(iii) the Secretary to the Ministry of the Minister to whom the Bureau of Rehabilitation is assigned under Article 44 or 45 of the Constitution or his representative not below the rank of an Additional Secretary of that Ministry;

(iv) the Secretary to the Ministry of the Minister assigned the subject of Health or his representative not below the rank of an Additional Secretary of that Ministry;

(v) *the Secretary to the Ministry of the Minister assigned the subject of Education or his representative not below the rank of an Additional Secretary of that Ministry; and*

(vi) *the Inspector General of Police or his representative not below the rank of a Deputy Inspector General of Police; and*

(b) *three members appointed by the Minister who shall possess academic and professional qualifications and has experience in the fields of rehabilitation, social integration and law and order (hereinafter referred to as "appointed members").*"

While this Court certainly does not underestimate the competency and expertise of the above persons referred to in Clause 6(a) in their respective fields, there is no assurance that such persons will have any experience or expertise with regard to rehabilitation. Even assuming that all three persons appointed under Clause 6(b) possess academic and professional qualifications and have experience in the fields of rehabilitation and social integration, a majority of the members of the Council still would not possess the expertise in the field of rehabilitation. As pointed out by Mr. Hewamanna, this leaves a huge vacuum in the expertise that is required to undertake the objective set out in Clause 3. The absence of expertise will prevent the Council from providing any meaningful advice to the Minister thereby making the regulations worthless and leaving the definition of "*rehabilitation*" vague and overbroad.

The result is that the definition of "*rehabilitation*" in Clause 37, the regulation making power of the Minister in Clause 35(2), and the composition of the Council in Clause 6, taken cumulatively, are vague and are violative of Article 12.

The learned Deputy Solicitor General submitted that the composition of the Council is a matter of policy and drew our attention to the determination of this Court in the **Seventeenth Amendment to the Constitution Bill** [Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Vol. VII, 249], where it was held that the process of nomination and allocation of representation do not involve questions of constitutionality

and are matters of legislative policy that falls within the purview of Parliament. The matters addressed in the said Determination did not relate to areas where specialist knowledge was required and as such is wholly inappropriate to a Bill such as this, where the body sought to be vested with power requires competence over a specialised area.

In the **Petroleum Products (Special Provisions) (Amendment) Bill** [supra], an argument was presented that even though the Energy Supply Committee established under the Energy Supply Act and tasked with the responsibility of recommending and advising the Minister with regard to the issuance of licenses comprised of representatives of the relevant stakeholders, so that necessary recommendations and advice could be tendered to the Minister taking into consideration the criteria as spelt out in the Petroleum Products (Special Provisions) Act, the Committee proposed under the Amendment Bill lacked such representation and that the change of composition of the Committee will result in the Minister exercising his powers arbitrarily without proper consultation with other stakeholders in violation of Article 12(1) of the Constitution.

This Court agreed with the said submission and held as follows [at page 17]:

> *"The composition of the Committee must be such that all relevant criteria in the Petroleum Products Act will be considered in making recommendations or giving advice to the Minister. The composition of the Committee as presently envisaged in the Bill does not do so. Hence Clause 3(2) of the Bill is inconsistent with Article 12(1) of the Constitution and may only be passed by the special majority required under the provisions of paragraph (2) of Article 84."*

This Court thereafter went on to hold that the inconsistency will cease if the composition of the Committee is changed to include the Secretary to the Ministry in charge of the subject of Economic Policy Development and the Secretary to the Ministry in charge of the subject of Investment Promotion.

In the **Engineering Council, Sri Lanka Bill** [Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 69 at page 70] this Court held that the failure to include Engineering Technicians and a fair representation of all the categories of

"Engineering Practitioner" on the Council results in a violation of Article 12(1) of the Constitution.

It would therefore be seen that this Court has time and again held that the ultimate decision maker under a particular law – in this case the Council – must have the necessary expertise and experience to carry out its core functions. Putting together a few officials of the State who may not have experience or expertise in the core functions of the Bureau, mixed with a few industry representatives, does not enable the Council to discharge its statutory duties and functions. We are of the view that the inconsistency in Clause 6 shall cease if the number of the appointed members are increased to five, and of whom two persons shall possess academic and professional qualifications and experience in rehabilitation, two persons shall possess academic and professional qualifications and experience in social integration, and for the other member to possess academic and professional qualifications and experience in law and order.

Having addressed the second issue arising from Clause 35(2), we shall now advert to the third issue, which is that in terms of Clause 35(3), regulations shall be placed before Parliament for its approval within three months after its publication, and that in the event of the regulations not being approved, then, such regulations shall stand rescinded from that date but without prejudice to what has been done in terms of the said regulations during that period. Taking into consideration (a) the fact that detailed provisions relating to rehabilitation would be set out only in the regulations, (b) the importance of having such provisions in place in order for the proper implementation of the Bill, (c) the fact that what is sought to be done by way of regulations is not time-sensitive unlike for example in fiscal legislation, and (d) the fact that a contravention of the Regulations attracts penal sanctions, we are of the view that regulations made under the Bill should become effective only once they are approved by Parliament. To do otherwise would place at peril the rights and liberties of the people undergoing rehabilitation. Hence, we are of the view that Clause 35(3) is arbitrary and is inconsistent with the provisions of Article 12(1) of the Constitution. However, such inconsistency would cease if Clause 35(3) is amended to reflect the above position.

In the above circumstances, we are of the view that the inconsistencies in Clauses 6, 35 and 37 [definition of "*rehabilitation*"] shall cease if the said provisions are amended cumulatively as follows:

Clause 6(b)

"the following five members appointed by the Minister:

(i) two persons who shall possess academic and professional qualifications and have experience in the field of rehabilitation;

(ii) two persons who shall possess academic and professional qualifications and have experience in the field of social integration; and

(iii) one person who shall possess academic and professional qualifications and have experience in the field of law and order

(hereinafter referred to as "appointed members")."

Clause 11(1) relating to the quorum of the Council may be amended accordingly.

Clause 35

"(1) The Minister may make regulations for the purpose of carrying out and giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister shall make regulations in respect of the following –

(a) the maintenance of Centres for Rehabilitation;

(b) the programmes for rehabilitation, treatment, aftercare and support services in respect of each category of persons who will be rehabilitated by the Bureau;

(c) the terms and conditions relating to the release of persons admitted to a Centre for Rehabilitation; and

(d) the maintenance of a database, records and log books at Centres for Rehabilitation,

Provided that, the Minister shall obtain the concurrence of the National Dangerous Drugs Control Board, when any regulation in relation to the Centers for Rehabilitation for the treatment and rehabilitation of drug dependant persons is made.

Provided further that the Minister shall obtain the concurrence of the Council appointed under this Act in making regulations under this Act.

(3) Every regulation made by the Minister shall be published in the Gazette and shall be brought before Parliament for approval as soon as may be convenient. Such regulations shall come into force upon its approval by Parliament or any subsequent date as may be stipulated by Parliament."

<u>Clause 37</u>

"'rehabilitation' means the procedures and programmes for rehabilitation, treatment, aftercare and support services that shall be prescribed by regulations made under this Act."

We are also of the view that the ambiguity in the words, "*by adopting various therapies in order to ensure effective reintegration and reconciliation, through developing socio-economic standards*" in Clause 3 shall cease if Clauses 6, 35 and 37 [definition of "*rehabilitation*"] are amended as aforesaid.

Hence, Clause 3 shall be amended to read as follows:

"The objective of the Bureau shall be to rehabilitate drug dependant persons or any other person as may be identified by law as a person who requires rehabilitation and which may include treatment and adoption of various therapies in order to ensure effective reintegration and reconciliation, through developing socio-economic standards."

Clause 17 – Authorised members

In order to place in its proper perspective the submissions that were made with regard to Clause 17, it is important to refer to two matters at the outset. The first is that in terms of Clause 2(2), the Bureau shall be a body corporate. The second is to the three Clauses of the Bill that relate to those who shall discharge the powers, duties and functions under the Bill – i.e., Clauses 5, 15 and 16.

The starting point is Clause 5, which reads as follows:

"(1) The administration, management and control of the affairs of the Bureau shall be vested in a Governing Council (in this Act referred to as the "Council").

(2) The Council shall, for the purpose of administering the affairs of the Bureau, exercise, perform and discharge the powers, duties and functions conferred on, assigned to or imposed on the Bureau by this Act."

The next is Clause 15, the relevant parts of which are re-produced below:

"(1) There shall be a Chief Executive Officer of the Bureau who shall be called and known as the Commissioner-General of Rehabilitation (hereinafter referred to as the "Commissioner-General"), appointed by the Council in consultation with the Minister and on the recommendation of the Minister assigned the subject of Defence. ...

(2) The Commissioner General shall subject to the general directions and supervision of the Council –

(a) be charged with the administration of the affairs of the Bureau and all the Centres established under it including the administration and control of the staff;

(b) be responsible for the execution of all decisions of the Council; and

(c) carry out all such functions as may be assigned to him by the Council.

(4) The Commissioner-General may, with the approval of the Council, wherever he considers it necessary to do so, delegate in writing to any ***officer or employee*** *of the Bureau, any of his powers, duties or functions conferred or imposed on, or assigned to him by this Act and the officer or employee to whom any such power, duty or function is delegated shall exercise, perform or discharge them subject to the directions of the Commissioner-General"* [emphasis added].

The final clause is Clause 16. While Clause 16(1) of the Bill provides that, "*Subject to the provisions of this Act, the Bureau may employ or appoint such officers and employees as may be necessary for the efficient exercise, performance and discharge of its powers, duties and functions.*", Clause 16(2) confers on the Council the power to determine the terms and conditions of service of officers and employees and exercise disciplinary control over such employees and officers.

The cumulative effect of the above three Clauses is that:

(a) The administration, management and control of the affairs of the Bureau shall be vested in the Council;

(b) The Council shall, for the purpose of administering the affairs of the Bureau, exercise, perform and discharge the powers, duties and functions conferred on, assigned to or imposed on the Bureau;

(c) The Commissioner-General shall be charged with the administration of the affairs of the Bureau, subject to the general directions and supervision of the Bureau;

(d) The Commissioner-General may delegate in writing his powers, duties or functions to any officer or employee of the Bureau;

(e) Officers and employees of the Bureau shall exercise, perform and discharge the powers, duties and functions of the Bureau;

(f) The Council shall have full control over the officers and employees of the Bureau.

Clause 17 of the Bill reads as follows:

"(1) The President may, upon the request of the Minister, for the purposes of this Act, by Order published in the Gazette, designate all or any of–

(a) the members of the Sri Lanka Army raised and maintained in accordance with the provisions of the Army Act (Chapter 357);

(b) the members of the Sri Lanka Navy raised and maintained in accordance with the provisions of the Navy Act (Chapter 358); and

(c) the members of the Sri Lanka Air Force raised and maintained in accordance with the provisions of the Air Force Act (Chapter 359),

as authorised members of the forces who may ***exercise, perform and discharge the powers, duties and functions under this Act*** *subject to the provisions of subsection (2).* [emphasis added].

(2) The Minister may, by Order published in the Gazette, specify the areas which the powers, duties and functions under this Act may be exercised, performed and discharged by the authorised members of the Forces.

(3) The powers, duties and functions conferred or imposed upon authorised members of the Forces by this section shall be exercised, performed and discharged notwithstanding that such powers, duties and functions are not

conferred or imposed upon them by the provisions of the Army Act (Chapter 357), the Navy Act (Chapter 358) or the Air Force Act (Chapter 359)."

When one considers Clause 17 in the light of the aforementioned provisions of Clauses 5, 15 and 16, it is clear that the administration and management of not only the Council but even the entire Bureau could be entrusted to the members of the Armed Forces by the President upon the request of the Minister. It is in this background that Mr. Hewamanna submitted that there is no rational and proximate nexus between the objective of the Bill and the use of members of the Forces in the rehabilitation of persons and that in the absence of a nexus, the said Clause is inconsistent with Article 12(1).

The learned Deputy Solicitor General submitted that the decision to obtain the assistance of Armed Forces to discharge the functions and duties under the Act is a matter of policy, and is an issue that goes to the desirability of which entity is more appropriate to assist in the discharge of functions under the present Bill as opposed to constitutionality. It is our view that the course of action provided in Clause 17 is not contemplated by the Cabinet Memorandum and therefore, such an action is contrary to the policy objective set out in the Cabinet Memorandum and the rationale.

Furthermore, there is lack of clarity with regard to the status of the members of the Forces within the Bureau – i.e., are they officers or employees of the Bureau and if so, whether the provisions of the Bill that applies to officers and employees shall apply to the designated members of the Forces. As the powers, duties and functions exercised by the said members of the Armed Forces are not powers, duties and functions conferred on them under the respective Acts [Army Act, Air Force Act or the Navy Act], it is not clear if such members would be subject to the disciplinary procedures contained in such Acts, thus leaving Clause 17 vague. It is also noted that the provisions of Clause 26 in terms of which an employee of the Bureau who strikes, wounds, ill-treats or neglects a person undergoing rehabilitation shall be guilty of an offence may not apply to the members of the Armed Forces in view of the above lack of clarity.

In these circumstances, we are of the view that Clause 17 lacks clarity and is overbroad in its application and is therefore arbitrary, with the result that the said Clause is inconsistent with Article 12(1) of the Constitution. Clause 17 shall therefore have to be approved with the special majority of Parliament.

Clause 23 – Centers for Rehabilitation

Clause 23 of the Bill reads as follows:

> *"For the purposes of this Act, the Minister may, by Order published in the Gazette, establish Centres for Rehabilitation for the treatment and rehabilitation of ex-combatants, members of violent extremist groups, violent extremist person and any other person or group of persons:*
>
> *Provided, the Treatment Centres established under this Act to provide treatment and rehabilitation to drug dependant persons shall be published in the Gazette under the provisions of section 2 of the Drug Dependant Persons (Treatment and Rehabilitation) Act, No. 54 of 2007 and shall be subjected to the provisions of that Act."*

We are of the view that the findings of this Court that the application of the provisions of the Bill to "*ex-combatants, members of violent extremist groups, and any other person or group of persons*" is inconsistent with Article 12(1), would apply to this Clause, too. Our findings would extend to a further category, namely "*violent extremist person*" that is referred to only in this Clause. However, we are of the view that the said inconsistency would cease if reference to all other persons other than drug dependant persons is deleted and this Clause is suitably amended to reflect the position that only the rehabilitation of drug dependant persons and such persons who are identified by law and whose rehabilitation is provided for by law will take place at a centre managed by the Bureau.

The learned Deputy Solicitor General submitted that Clause 23 as it presently stands shall be re-numbered as Clause 23(1) and an amendment will be moved at the Committee Stage of Parliament by inserting the following provisions numbered as Clauses 23(2) to (7):

"(2) It shall be the duty of every Magistrate to visit every Centre for Rehabilitation situated within the Judicial Division in respect of which he is appointed, at least once in every month to ensure that the persons undergoing rehabilitation at the Centre are protected to the extent provided for in the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994.

(3) For the purpose of subsection (2), the Magistrate who visits the Centre for Rehabilitation, shall –

(a) personally see the person undergoing rehabilitation, and look into his well-being, welfare and conditions under which he is kept at such Centre; and

(b) record his observations and any complaint the persons undergoing rehabilitation may make.

(4) Where the Magistrate is of the opinion, that the persons undergoing rehabilitation may have been subjected to torture, the Magistrate may direct that the person undergoing rehabilitation be produced before a judicial medical officer or a government medical officer for medical examination, and a report be submitted by such medical officer to the Magistrate.

(5) Where the report of such medical officer reveals that the person undergoing rehabilitation has been subjected to torture, the Magistrate shall make an appropriate order.

(6) The Magistrate shall also direct the Inspector General of Police to commence an investigation into the alleged torture in order to enable the Attorney-

General to institute criminal proceedings against the person who is alleged to have committed the torture.

(7) The Human Rights Commission of Sri Lanka may on its own volition or on a complaint received, visit every Centre to ensure that that the rights of the persons undergoing rehabilitation at the Centre are protected to the extent provided by law, and make appropriate recommendations in terms of the Human rights Commission of Sri Lanka, Act No. 21 of 1996."

While we appreciate the initiative on the part of the learned Deputy Solicitor General to introduce the above safeguards, we are of the following view:

(a) An Officer-in-Charge of every centre must maintain records and log books pertaining to the rehabilitees in a manner prescribed by regulations. Hence, the words, "*and may examine the records and log books maintained at the Centre*" shall be inserted at the end of Clause 23(3)(a), thereby enabling the Magistrate who visits the centre to examine such records and log books.

(b) The words, "*including an order that such person be immediately admitted to a Government Hospital for medical treatment and that the Officer-in-Charge of such Centre immediately inform the Court that made the order for the rehabilitation of such person of the findings of the Government Medical Officer*" must be inserted at the end of Clause 23(5).

Clause 24 – supply of drugs to a person within a centre

Clause 24 of the Bill reads as follows:

"Any person without authority introduces or attempts to introduce into any Centre for Rehabilitation, or supplies or attempts to supply any person in such Centre with a dangerous drug, narcotic drug or psychotropic substance or any unauthorised article commits an offence under this Act and shall be liable on conviction after summary trial by a Magistrate to a fine not exceeding five hundred thousand rupees

or to imprisonment of either description for a period not exceeding two years or to both such fine and imprisonment."

The learned Deputy Solicitor General submitted that Clause 24 has been introduced to ensure that no person brings or supplies any dangerous drug, narcotic drug or psychotropic substance or any unauthorised article to a rehabilitation centre without lawful authority. It was therefore her position that this Clause only intends to make it an offence to introduce or supply any such substance to a rehabilitation centre without lawful authority.

The learned Counsel for the Petitioners sought to argue that this Clause would provide for persons employed in the Bureau to administer any dangerous drug, narcotic drug or a psychotropic substance [defined in Clause 37] to a person undergoing treatment or rehabilitation without the consent of such person. The learned Deputy Solicitor General submitted that in certain instances prescribing of these substances may be required as part of the rehabilitation of a drug dependant person, and it is for that reason the Clause contemplates a person bringing in or supplying any drug that is required by the rehabilitation centre but with authority of the centre.

We are in agreement with the submission of the learned Deputy Solicitor General that this provision is required in order to prevent persons other than employees and officers entering a centre carrying such substances for the use of the persons undergoing rehabilitation. However, the words, *"or any unauthorised article"* have not been defined and to permit such a provision which is vague and unclear especially when a violation attracts penal sanctions, is in our view, arbitrary and inconsistent with Article 12(1). Hence, Clause 24 requires to be approved by the special majority of Parliament. The said inconsistency shall however cease and Clause 24 can be passed by the simple majority of Parliament if the words, *"as may be prescribed"* are inserted after the words, *"or any unauthorised article."*

Clause 25 – duty to maintain secrecy

Clause 25 of the Bill reads as follows:

> *"(1) Every member of the Council, the Commissioner-General and every officer or employee of the Bureau shall, before entering into the duties of his office sign a declaration that he will not disclose any information received by him or coming to his knowledge in the exercise, performance and discharge of his powers, duties and functions under this Act, except for the purpose of giving effect to the provisions of this Act.*
>
> *(2) All records pertaining to a person in the custody of a Centre for Rehabilitation shall be confidential and shall not be released except on an order of court or in connection with an investigation in respect of the commission of a serious offence within a Centre for Rehabilitation.*
>
> *(3) Any person who contravenes the provisions of subsection (2) commits an offence under this Act, and shall be liable on conviction after summary trial by a Magistrate to a fine not exceeding one hundred thousand rupees or to imprisonment of either description for a term not exceeding twelve months or to both such fine and imprisonment."*

Mr. Fernando submitted that Clause 25 is overbroad, and acts as a complete prohibition in obtaining any information relating to the functioning of a centre for rehabilitation. He submitted further that to impose such restrictions is contrary to Article 14A of the Constitution and the provisions of the Right to Information Act No. 12 of 2016.

The learned Deputy Solicitor General submitted that the purpose of Clause 25 was to preserve the dignity of persons in the custody of a centre for rehabilitation, by ensuring that information relating to them is kept confidential. She drew our attention to Clause 25(1) that permits the disclosure of information *"for the purpose of giving effect to the provisions of this Act,"* and submitted that Clause 25(2) expressly provides that records

could be released by way of an "*order of court or in connection with an investigation in respect of the commission of a serious offence within a Centre for Rehabilitation*."

Mr. Fernando submitted that even though right to information can be restricted as provided by Article 14A itself or in terms of the Right to Information Act, Clause 25 seeks to take away the carefully calibrated safeguards by imposing an almost blanket prohibition on providing information and imposing penal sanctions for a violation thereof.

The learned Deputy Solicitor informed Court that the following amendments would be moved at the Committee Stage of Parliament to Clause 25 of the Bill to address the concerns raised by the learned Counsel for the Petitioners:

Clause 25(1)

By the addition of the words, "*or the provisions of the Right to Information Act*" at the end of Clause 25(1).

Clause 25(2)

By deleting the existing Clause 25(2) and substituting with the following:

> "*(2) All records pertaining to such person in the custody of a Centre for Rehabilitation shall be confidential and shall not be released except:*
>
> *(a) upon request by such person or the next of kin of such person; or*
>
> *(b) on an order of court or in connection with an investigation in respect of the commission of an offence within a Centre for Rehabilitation.*
>
> *provided that such person or the next of kin of such person (unless such person has instructed not to share the information) shall be entitled to receive information pertaining to the person in the custody of the rehabilitation, including information relating to the treatment or rehabilitation of such person.*"

We are of the opinion that Clause 25 limits the applicability of Article 14A thereby making Clause 25 inconsistent with Article 14A of the Constitution, and hence, Clause 25 requires to be approved by the special majority of Parliament. The said inconsistency would however cease:

(a) if Clause 25(1) is amended as proposed by the learned Deputy Solicitor General; and

(b) by the insertion of Clause 25(2) as proposed by the learned Deputy Solicitor General, subject to the following:

  (i) the insertion of the words, *"or an Attorney-at-Law representing such person"* at the end of Clause 25(2)(a) and in the proviso to Clause 25(2) after the words in parentheses;

  (ii) the deletion of the words, *"within a Centre for Rehabilitation"* at the end of Clause 25(2)(b).

Clause 26 – striking of persons undergoing rehabilitation

Clause 26 of the Bill reads as follows:

> *"Any person employed in a Centre for Rehabilitation who without reasonable cause strikes, wounds, ill-treats or willfully neglects any person under rehabilitation commits an offence under this Act and shall be liable on conviction after summary trial by a Magistrate to a fine not exceeding two hundred thousand rupees or imprisonment of either description for a period not exceeding eighteen months or to both such fine and imprisonment."*

The principal argument of the learned Counsel for the Petitioners was that:

(a) Clause 26 recognises that where there is reasonable cause, it is permissible for an employee of the Bureau to strike, wound, ill treat or wilfully neglect any person under rehabilitation and who are therefore under the care, watch, control and custody of the Bureau and its officers and employees;

(b) Regardless of the reasonableness of such action, no person undergoing rehabilitation should be subjected to such action, or be willfully neglected;

(c) To recognise that such a course of action is permissible is contrary to Article 11 of the Constitution, in terms of which *"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*

Article 11 is entrenched by Article 83 and the Constitution does not provide for the derogation from the provisions of Article 11 for whatever reason. Thus, any finding that Clause 26 is inconsistent with Article 11 would require this Clause to be approved by the special majority in Parliament and by the People at a Referendum.

The learned Deputy Solicitor General submitted that a similar provision is found in the Drug Dependant Persons (Treatment and Rehabilitation) Act, and to deem Clause 26 unconstitutional would be to call into question the validity of existing law. In the **Petroleum Products (Special Provisions) (Amendment) Bill** [supra; at page 14], this Court, having referred to the determination of this Court in the **Special Goods and Services Tax Bill** [SC (SD) Application Nos. 01-09/2022; at page 20] held that, *"Article 80(3) of the Constitution will not prevent the examination of the constitutionality of a similar provision in a bill before Court merely due to the same provision being part of another Act."*

The learned Deputy Solicitor General submitted further that the intention of Clause 26 is to ensure that persons exercising powers and functions under the Act, only use reasonable and proportionate force when they are confronted with a situation which requires the use of force.

This Court has however held over the years that:

(a) Even hardcore criminals are entitled to the full protection of Article 11 – Amal Sudath Silva v Kodituwakku, Inspector of Police and Others [(1987) 2 Sri LR 119];

(b) The protection offered by Article 11 is not restricted to the physical harm caused to the body, but would certainly extend beyond physical violence to a situation where a person has suffered psychologically or emotionally due to such action – Adhikary v Amarasinghe [(2003) 1 Sri LR 270] and Amarasinghe v Seneviratne [(2010) 2 Sri LR 205].

Although Clause 22 provides that any act done in good faith will not give rise to any civil or criminal liability, we are of the view that the words, "*without reasonable cause*" recognise that an employee of a centre can violate Article 11. We are therefore of the view that Clause 26 as it presently reads is inconsistent with Article 11 and shall be approved by the special majority of Parliament and by the people at a Referendum. The inconsistency shall however cease and the said provision may be passed by a simple majority if the words, "*without reasonable cause*" are deleted.

Clause 27 – obstruction of an employee to be an offence

Clause 27 of the Bill reads as follows:

> *"Any person who obstructs or attempts to obstruct any person employed in any Centre for Rehabilitation in the performance of his duties under this Act, commits an offence under this Act and shall be liable on conviction after summary trial by a Magistrate to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment."*

The primary contention of the learned Counsel for the Petitioners was that Clause 27 does not impose any requirement that the obstruction be unlawful for it to be an offence, resulting in even lawful obstruction being caught in the wide net cast by the wording of the Clause. It was submitted further that the Penal Code as it presently stands already offers sufficient protection to any person employed in any centre for rehabilitation.

This Clause lacks clarity and gives rise to questions such as what does "*obstruct*" mean, what is an "*attempt to obstruct*," and at what point should such obstruction occur.

Accordingly, we hold that this Clause suffers from the malady of its overbroad nature. The learned Deputy Solicitor General submitted that in order to provide much needed clarity, an amendment will be moved at the Committee Stage of Parliament to Clause 27, which shall then read as follows:

> *"Any person who unlawfully obstructs or attempts to unlawfully obstruct any person employed in any Centre for Rehabilitation in the performance of his lawful duties under this Act, commits an offence under this Act and shall be liable on conviction after summary trial by a Magistrate to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment."*

While we are of the view that Clause 27 as it stands now is inconsistent with Article 12(1) of the Constitution and requires to be passed by the special majority of Parliament, the said inconsistency shall cease if Clause 27 is amended as proposed by the learned Deputy Solicitor General.

Clause 28 – apprehension of persons escaping from a centre

Clause 28 reads as follows:

> *"(1) Where any person undergoing rehabilitation in a Centre for Rehabilitation established under the provisions of this Act, escapes from such Centre, he may be apprehended by any police officer, any authorised member of the Forces or any officer appointed under this Act and returned to the Centre for Rehabilitation.*
>
> *(2) It shall be the duty of any person employed in a Centre for Rehabilitation to preserve order and discipline among the persons undergoing rehabilitation in the Centre and for such purpose it shall be lawful for such person to use all such means including minimum force, as may reasonably be necessary to compel obedience to any lawful directions given by him."*

The learned Counsel for the Petitioners submitted that Clause 28(1) is vague in that it fails to provide for the following:

(a) that a person who volunteers for rehabilitation must have a right to leave the centre if such person no longer wishes to undergo rehabilitation;

(b) a person apprehended must be returned to the centre without delay.

The learned Deputy Solicitor General informed this Court that the following amendments shall be moved to Clause 28 at the Committee Stage of Parliament:

(a) insertion of the word, "*immediately*" prior to the word, "*returned*" in Clause 28(1);

(b) insertion of the following Clause as Clause 28(3) – "*It shall be the duty of the Commissioner-General of Rehabilitation, or a person duly authorised by him to immediately inform the Magistrate within the Judicial Division in which such Centre is located of any exercise powers under section 28(1) and (2).*"

The officers and employees of the Bureau are responsible for each and every person who is admitted to a centre for rehabilitation, and therefore steps have to be taken to apprehend such persons who leave the centre without authorisation. The submission of the Petitioners that a person who volunteers for rehabilitation must have the liberty to walk away at any time is a matter that must be addressed by regulations and has been referred to in the amendments proposed by this Court to Clause 35.

We are also of the view that:

(a) the words, "*any authorised members of the Forces*" in Clause 28(1) must be deleted in view of the findings reached in relation to Clause 17;

(b) as submitted by Mr. Shantha Jayawardena, the learned Counsel for the Petitioner in SC (SD) Application No. 56/2022, the words, "*all such means including*" in Clause 28(2) as it presently reads are inconsistent with Article 11, thereby requiring that it

be approved by the special majority of Parliament and by the People at a Referendum. The inconsistency shall however cease and the said provision can be passed by a simple majority if the words, "*all such means including*" are deleted.

Clause 29 – penalties

Clause 29 of the Bill reads as follows:

> *"Where any person contravenes any provision of this Act or any rule or regulation made thereunder and no penalty has been specified under this Act in respect of such contravention, such person shall, on conviction after summary trail by a Magistrate, be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment."*

It was submitted by the learned Counsel for the Petitioners that the creation of offences by way of rules, without the need for such rules to be approved by Parliament, is illegal. It was further submitted that this Clause provides for the imposition of a penalty for the contravention of rules or regulations which are as yet unmade and undefined, and that it would have a compounding effect in view of the vagueness attached to the regulation making power of the Minister.

The **Colombo Port City Economic Commission Bill** [supra] contained a similar clause where a contravention of rules, codes, directions or guidelines issued by the Commission was to be met with penal sanctions. This Court, having considered the said clause agreed with the submission that to impose penal sanctions without Parliamentary control is a contravention of the provisions of Article 76 read with Articles 3 and 4 of the Constitution. We are therefore of the view that Clause 29 is inconsistent with Articles 3 and 4.

The learned Deputy Solicitor General however submitted that an amendment would be moved at the Committee Stage of Parliament, to delete the words "*or any rule*" from Clause 29. Clause 29 may therefore be passed by a simple majority if it is amended as proposed by the learned Deputy Solicitor General.

Clause 30 – maintenance of a database

Clause 30 of the Bill reads as follows:

> *"(1) The Bureau shall create, manage and maintain a database which will include all particulars of the rehabilitees. Such database shall also include details of previous rehabilitation assistance that each rehabilitee may have received from any other State authority or agency*
>
> *(2) The Bureau shall take all necessary steps including technical safeguards to ensure the security of all its databases and data."*

Mr. Hewamanna had two complaints with Clause 30. The first is that the phrase "*all particulars*" is overbroad and that the Bureau must only collect such particulars as are necessary for the proper and effective rehabilitation of such person. The second was that a person undergoing rehabilitation faces the risk of being branded and thereby stigmatized for the rest of his life and therefore, it is important that the Bill contains provisions for the deletion of such data within a given number of years. The learned Deputy Solicitor General submitted that collection and preservation of such data is required for the proper discharge of the functions of the Bureau.

While we are in agreement with the learned Deputy Solicitor General that the collection of particulars in respect of each person is required for the proper functioning of the Bureau, we are of the view that this should extend to recording details relating to the rehabilitation that a person has undergone as part of the rehabilitation process and are matters that must be prescribed by regulations. We are however not inclined to take the view that the provisions of Clause 30 are overbroad.

Clause 34 – Rules

Clause 34 of the Bill reads as follows:

"(1) Subject to the provisions of this Act, the Council may make rules in respect of all or any of the following matters:

(a) all matters for which rules are authorised or required to be made under this Act;

(b) the meetings of the Council and the procedure to be followed at such meeting;

(c) the appointment, promotion, remuneration and disciplinary control of officers and employees and the grant of leave and other emoluments to officers and employees; and

(d) any matter connected with the affairs of the Bureau."

(2) Every rule made by the Bureau shall be approved by the Minister and published in the Gazette and shall come into operation on the date of its publication or on such later date as may be specified therein."

The only instance identified in the Bill where the Council has been authorised to make rules is found in Clause 4(l) of the Bill, in terms of which the Council has the power to "*make rules in respect of the administration of the affairs of the Bureau.*" The learned Counsel for the Petitioners submitted that conferring the Council with the power to make rules in respect of "*any matter connected with the affairs of the Bureau*" as provided by Clause 34(1)(d) confers unrestricted power to the Bureau and is therefore arbitrary. The learned Deputy Solicitor General however submitted that a degree of flexibility must be given to the Council in its rule making power in order to ensure optimum functionality of the Bureau.

We have carefully considered the submissions of the learned Counsel for the Petitioner and the learned Deputy Solicitor General and it is our view that given the specific role that is expected of the Bureau to which we have already adverted to, Clause 34(1)(d) is overbroad and is arbitrary and is inconsistent with Article 12(1) of the Constitution. Clause 34 must therefore be approved by the special majority of Parliament. The said

inconsistency shall however cease if the following proviso is added at the end of Clause 34(1):

"Provided that the Council shall not have the power to make rules in respect of any matter in which regulations are required to be made in terms of this Act."

Summary of the Determination

A. The Bill as a whole is inconsistent with Article 12(1) of the Constitution and as such may be enacted only by the special majority required by Article 84(2). However, this inconsistency shall cease if:

(i) all references to *"ex-combatants," "violent extreme groups"* and *"any other group of persons"* are deleted from the Bill;

(ii) the Bill is limited to the rehabilitation of drug dependent persons and such other persons as may be identified by law.

B. Clauses 3, 4(a), 4(b), 6(b), 23, 24, 25(2), 27, 28(1), 34, 35 and 37 [the definition of *"rehabilitation"*] of the Bill are inconsistent with Article 12(1) of the Constitution and as such may be enacted only by the special majority required by Article 84(2). However, the said inconsistencies shall cease if the said clauses are amended as follows:

Clause 3 – *"The objective of the Bureau shall be to rehabilitate drug dependant persons or any other person as may be identified by law as a person who requires rehabilitation and which may include treatment and adoption of various therapies in order to ensure effective reintegration and reconciliation, through developing socio-economic standards."*

Clause 4(a) – *"Provide treatment and rehabilitation to drug dependent persons who in terms of the Drug Dependent Persons (Treatment and Rehabilitation) Act, No. 54 of 2007 request treatment and rehabilitation or are required by such law to be provided with treatment and rehabilitation."*

Clause 4(b) – *"provide rehabilitation to any person who in terms of a relevant law, requests rehabilitation or is required by such law to be provided with rehabilitation;"*

Clause 4 – by the insertion of the following new paragraph (e) – *"advice the Minister with regard to programmes for rehabilitation, treatment and aftercare having regard to the basic norms of Human Rights."*

Clause 6(b) – *"the following five members appointed by the Minister:*

(i) two persons who shall possess academic and professional qualifications and have experience in the field of rehabilitation;

(ii) two persons who shall possess academic and professional qualifications and have experience in the field of social integration; and

(iii) one person who shall possess academic and professional qualifications and have experience in the field of law and order.

(hereinafter referred to as "appointed members")."

Clause 23 – by the deletion of the words, *"ex-combatants, members of violent extremist groups, violent extremist person and any other person or group of persons"* and this Clause being suitably amended to reflect the position that only the rehabilitation of drug dependant persons and such persons who are identified by law and whose rehabilitation is provided for by law will take place at a centre managed by the Bureau.

Clause 23 – by the insertion of new sub-clauses numbered as Clauses 23(2) to 23(7) as proposed by the Attorney General and referred to at pages 36 and 37 above, subject to the following:

(i) Clause 23(3)(a) – by the insertion of the words, *"and may examine the records and log books maintained at the Centre"* at the of this paragraph.

(ii) Clause 23(5) – by the addition of the words, *"including an order that such person be immediately admitted to a Government Hospital for medical treatment and that the Officer-in-Charge of such Centre immediately inform the Court that made the order for the rehabilitation of such person of the findings of the Government Medical Officer"* at the end of this Clause.

Clause 24 – by the insertion of the words, *"as may be prescribed"* after the words, *"or any unauthorised article."*

Clause 25(2) – by the insertion of Clause 25(2) as proposed by the Attorney General and referred to at page 40 above , and subject to the following:

(i) the addition of the words, *"or an Attorney-at-Law representing such person"* at the end of Clause 25(2)(a), and in the proviso to Clause 25(2) after the words in parentheses;

(ii) the deletion of the words, *"within a Centre for Rehabilitation"* at the end of Clause 25(2)(b).

Clause 27 – by the insertion of the words, *"unlawfully"* and *"lawful"* as proposed by the Attorney General and referred to at page 44 above.

Clause 28(1) – by the deletion of the words, *"any authorised member of the Forces,"* and the insertion of the word, *"immediately"* as proposed by the Attorney General and referred to at page 45 above.

Clause 28 – by the insertion of the following new paragraph proposed by the Attorney General – *"It shall be the duty of the Commissioner-General of Rehabilitation, or a person duly authorised by him to immediately inform the Magistrate within the Judicial Division in which such Centre is located of any exercise of powers under section 28(1) and (2)."*

Clause 34 – by the insertion of the following proviso at the end of Clause 34(1) –

"Provided that the Council shall not have the power to make rules in respect of any matter in which regulations are required to be made in terms of this Act."

Clause 35 – in the manner referred to at pages 29 and 30 above.

Clause 37 – *"'rehabilitation' means the procedures and programmes for rehabilitation, treatment, aftercare and support services that shall be prescribed by regulations made under this Act."*

C. Clause 17 of the Bill is inconsistent with Article 12(1) of the Constitution and as such may be enacted only by the special majority required by Article 84(2).

D. Clause 25(1) of the Bill is inconsistent with Article 14A of the Constitution and as such may be enacted only by the special majority required by Article 84(2). However, the said inconsistency shall cease if Clause 25(1) is amended by the addition of the words, *"or the provisions of the Right to Information Act"* at the end of the said Clause.

E. Clauses 26 and 28(2) of the Bill are inconsistent with Article 11 of the Constitution and as such may be enacted only by the special majority required by Article 84(2) and upon being approved by the People at a Referendum as stipulated by Article 83. The said inconsistencies shall cease if:

(i) the words, *"without reasonable cause"* in Clause 26 are deleted;

(ii) the words, *"all such means including"* in Clause 28(2) are deleted.

F. Clause 29 of the Bill is inconsistent with Article 76 read together with Articles 3 and 4 of the Constitution and as such may be enacted only by the special majority required by Article 84(2) and upon being approved by the People at a Referendum as stipulated by Article 83. The said inconsistency shall cease if Clause 29 is amended by the deletion of the words, *"or any rule."*

We place on record our deep appreciation of the assistance given by the learned Deputy Solicitor General and all learned Counsel for the Petitioners.

E.A.G.R. AMARASEKARA, J
JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J
JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J
JUDGE OF THE SUPREME COURT