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

"PREVENTION OF ORGANISED CRIMES BILL"

SC/SD/171/2026

Petitioner : Dias Bandaralage Ajith Shantha Kumara Jayathilaka
181/B/5/D,
Suhada Mawatha,
Arawwala,
Pannipitiya.

Counsel : Petitioner appeared in person.

SC/SD/172/2026

Petitioner : Malinda Channa Pieris Seneviratne
601/2,
Havelock Road,
Colombo 06.

Counsel : Romesh De Silva PC, with
Niran Anketell, Mohamed Farisz and Bandara Pathmakulasooriya.

SC/SD/173/2026

Petitioners : 1. Rajeev Amarasuriya
President,
Bar Association of Sri Lanka

2. Nalin De Silva
President,

Bar Association of Sri Lanka

Both at
The Bar Association of Sri Lanka
No: 153, Mihindu Mawatha,
Colombo 12.

Counsel : Saliya Pieris, PC, with Suren Gnanaraj, Gayan Jayawardena, Imalka Iddamalgoda, Sakuni Weeraratne, Jagadeesha Ranasinghe, Amindri Sinnathamby, Anuk Dharmasena and Layangi Dissanayake instructed by Kamal Bacha Ramzeen.

SC/SD/174/2026 Petitioner : Law and Society Trust
102/3 Barnes Place,
Colombo 07.

Counsel : Ermiza Tegal with Mark Schubert, Vihangi Liyanagamage, Nisara Wickramasinghe, Alagaratnam Jinoshan and Oshadhi Hapuarachchi, instructed by Tharmarajah Tharmaja.

SC/SD/175/2026 Petitioners : 1. Tharindhu Uduwaragedera,
No: 85/3-1/1,
Prathibimbarama Road,
Dehiwala.

2. Mohamed Fazeer,
No:85/3-1/1,
Prathibimbarama Road,
Dehiwala.

Counsel : Hejaaz Hizbullah with Mohamed Shifan, Roshana Fernando, Nehansa Weerasinghe, Marshadha Mackie, Uvindu Indrakeela Kuruwitabandara, Oshadhi Ganisha Hapuarachchi, and Alagaratnam Jinoshan instructed by Tharmarajah Tharmaja.

SC/SD/176/2026

Petitioner : R. M. Ranjith Madduma Bandara
No. 31/3,
Kandewatte Terrace, Nugegoda.

Counsel : Tharaka Nanayakkara with Rahul Priyadarshi, Bandara Jayawardhana, Lihini Fernando and Madhushanka De Silva instructed by Poornima Rathnayaka.

SC/SD/177/2026

Petitioner : Rockland Distilleries (Pvt) Ltd.
No. 160/24, Kirimandala Mawatha,
Colombo 05, Sri Lanka.

Counsel : Daminda Tikiri Bandara Wijayaratne

with Sandaruwan Perera Mapatuna, Parami Gunawardana, Delana Mudiyanselage Madhushanka Dissanayake, Amasha Pathirana, Hussain Ahamed Naveed Ahamed and Sundramoorthy Janagan instructed by Poornima Rathnayaka.

SC/SD/178/2026

Petitioners : 1. Centre for Policy Alternatives (Guarantee) Limited
No. 6/5, Layards Road,
Colombo 5.

2. Dr. Paikiasothy Saravanamuttu,
No. 3, Ascot Avenue,
Colombo 5

Counsel : Suren Fernando with Niranjan Ganeshathasan, Chetana Wikramanayake and Shabnam Mohamed instructed by Nathali Shenelle Livera.

SC/SD/179/2026

Petitioner : Lahiru Weerasekara
Organizing Secretary Youth for CHEnge Organization
383/1, Kalapaluwawa,
Rajagiriya.

Counsel : Chanana Geeth Karunathna, with Jagadeesha Ranasinghe, Rehan Marso and Ayeshani Peiris instructed by Dinusha Lakmali.

SC/SD/180/2026

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

Counsel : Pulasthi Hewamanna with Fathima Fadhila Fairoze, Panchali Fernando and Priyamvatha Subramaniam instructed by Brintha Chandragesh.

SC/SD/181/2026

Petitioners : 1. The Sri Lanka Liquor Licensees Association,
No. 194/1,
Colombo Road,
Peradeniya.

2. Don Gregory Ajith Udugama,
27/9,
Bomaluwa Road,
Mawilmada, Kandy.

3. Tangavelu Dharmendraraj,
No. 07, Dakwariya Bazar,
Rangala.

	Counsel	:	Sanjeeva Jayawardena PC instructed by Samaththuwa Wasam Amila Kumara.
SC/SD/182/2026	Petitioner	:	Prabath Sudarshana Wickremesinghe Gunawardana No. 22/12, Regent City, Demanhandiya.
	Counsel	:	Eraj De Silva PC with Bandara Wijayaratne, Sanjana Sandaruwan Perera Mapatuna, Parami Wickramasinghe Gunawardana, Madhushanka Dissanayake, Amasha Pathirana, Hussain Ahamed Naveed Ahamed instructed by Sanduni Poornima Rathnayaka.
SC/SD/183/2026	Petitioner	:	JUSTICE FOR THE PEOPLE (GUARANTEE) LIMITED No. 3/1, Daya Road, Colombo 6.
	Counsel	:	Mathiaparanan Abraham Sumanthiran PC

with Judith Ariyanayagam, Benislos Thushan and Sivaruban Sivanja instructed by Nathali Shenelle Livera.

SC/SD/184/2026

Petitioner : Professor G.L. Peiris
No. 37, Kirula Place,
Colombo 05.

Counsel : Ali Sabry PC with Ruwantha Cooray, Muhammed Nafath Muhammed Naamiq and Deshan Navintha Aluvihare instructed by Darshana Bandara Randeniya.

SC/SD/185/2026

Petitioner : VA DISTILLERIES (PVT) LTD.
Head Office No 101/B,
Katuwawala,
Boralesgamuwa, Sri Lanka.

Counsel : Sanjeeva Jayawardena PC with Rukshan Lakshitha instructed by Ashoka Shyamalee.

SC/SD/186/2026

Petitioner : Rev Medirigiriye Issara Dhamma
Sri Dhammarathana Buddhist Center,
Naiwala, Veyangoda.

Counsel : Swasthika Arulingam with Hansaka Dewthilina Chandrasinghe instructed by Nayanapriya Gunarathne.

SC/SD/187/2026

Petitioners :

1. Kankanam Manage Prasad Priyanga Manage,
   27/3, Rosmead Place,
   Colombo 07.

2. Polwattage Thilanga Nadeera,
   145A, Vajira Road,
   Bambalapitiya.

3. Indika Sampath Merenchige,
   No. 310,
   Negambo Road, Welisara,
   Ragama.

Counsel : Sanjeeva Jayawardena PC instructed by Amila Kumara.

SC/SD/188/2026

Petitioners :

1. Tharindu Iranga Jayawardhana,
   No. 176/3,
   Oruthota, Gampaha.

2. Lucille Mary Ann Abeykoon,
   No: 3/4 A, Digana Road,
   Nattarampotha, Kandy.

	Counsel	:	Suren Dhanushka Emmanuel Perera with Mewan Bandara Eriyagama, Kasuni Cooray and Sewwandi Perera instructed by Kasuni Cooray.
SC/SD/189/2026	Petitioner	:	International Distillers Limited, Melfort Estate, Kothalawala, Kaduwela.
	Counsel	:	Sanjeeva Jayawardena PC with Ikram Mohamed PC instructed by Ashoka Shyamalee.
SC/SD/190/2026	Petitioners	:	1. Committee for Protecting the Rights of Prisoners (Guarantee) Limited, No. 245/12, Serpentine Road, Borella - Colombo 8. 2. Rangoda Hettiarachchige Senaka Perera No. 151/2, Welagedara, Attanagalla.
	Counsel	:	Soloman Dias with Maneesha

Priyangwada Kumarasinghe, Piumi Nimansa Meetiyagoda and Imasha Dilrukshi instructed by Yashodara Illangasinghe.

SC/SD/191/2026

Petitioner : Luxury Brands (Private) Limited,
No. 61,
Janadhipathi Mawatha,
Colombo 01.

Counsel : Sanjeeva Jayawardena PC with instructed by Amila Kumara.

SC/SD/192/2026

Petitioner : Don Pubudu Randinith Jayagoda
The Educational Secretary,
Frontline Socialist Party,
No. 22/1, Melder Place,
Nugegoda.

Counsel : Sanjeewa Bopege with Hansaka Dewthilina Chandrasinghe, Sachith Pinnaduwa instructed by Nayanapriya Gunarathne.

SC/SD/193/2026

Petitioners : 1. Distilleries Company of Sri Lanka PLC,
No. 110,

Norris Canal Road,
Colombo 10.

2. DCSL Breweries Lanka Limited,
No 201, De Saram Place,
Colombo 10.

3. Periceyl (Private) Limited,
No. 110,
Norris Canal Road,
Colombo 10.

Counsel : Sumathi Dharmawardhana PC with Suren Gnanaraj, Sakuni Weeraratne, Mindula Weerawardane, Vimanya Vimalarajah, Nethara Vaas and Anuk Dharmasena instructed by Dinesh Vidanapathirana.

Intervenient Petitioner : Don Shirley Cleetus Mallawarachchi
1006, Pannipitiya Road,
Battaramulla.

Counsel : Surath Marapana with Hiranthi Molligoda and Paneetha Wickremesinghe instructed by Sarravanan Neelakandan.

SC/SD/194/2026

Petitioner : Ceylon Beverage Holdings PLC
No. 61,
Janadhipathi Mawatha,

Colombo 01.

Counsel : Sanjeeva Jayawardena PC instructed by Amila Kumara.

SC/SD/195/2026

Petitioner : Haputhanthri Gamage Sagara Kariyawasam
No. 1316,
Nelum Mawatha,
Jayanthipura, Battaramulla.

Counsel : Kumara Abraham Galappaththi with Mihira Bambarabotuwa instructed by Anuradha Senarath.

SC/SD/196/2026

Petitioner : Lion Brewery (Ceylon) PLC,
No. 61,
Janadhipathi Mawatha,
Colombo 01.

Counsel : Sanjeeva Jayawardena PC instructed by Amila Kumara.

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

Counsel : Viraj Dayaratne PC, Act. Attorney-General, Sudarshana De Silva PC, ASG with Suharshi Herath SDSG, Avanti Perera DSG, Chathuri Udayanga Wijesuriya SC, and Mahin Pabasara De Silva SC, for the Respondents.

BEFORE : **P. PADMAN SURASENA, CJ.**
ACHALA WENGAPPULI, J.
SAMPATH B. ABAYAKOON, J.

The Bench assembled for hearing the Petitions on 04-11-2026 and 09-11-2026.

Court, at the outset, with the concurrence of the learned Counsel for all the parties consolidated the Applications bearing numbers SC/SD/171/2026, SC/SD/172/2026, SC/SD/173/2026, SC/SD/174/2026, SC/SD/175/2026, SC/SD/176/2026, SC/SD/177/2026, SC/SD/178/2026, SC/SD/179/2026, SC/SD/180/2026, SC/SD/181/2026, SC/SD/182/2026, SC/SD/183/2026, SC/SD/184/2026, SC/SD/185/2026, SC/SD/186/2026, SC/SD/187/2026, SC/SD/188/2026, SC/SD/189/2026, SC/SD/190/2026, SC/SD/191/2026, SC/SD/192/2026, SC/SD/193/2026, SC/SD/194/2026, SC/SD/195/2026, and SC/SD/196/2026. Thereafter, the Court proceeded to hear the submissions of all Counsel who appeared for the Petitioners in all these cases and the submissions of the Hon. Acting Attorney-General and then concluded the hearing.

The Bill titled "Prevention of Organised Crimes" (hereinafter sometimes referred to as the Bill or the POC Bill) was published in the Gazette on 06-10-2026 and was placed on the Order Paper of Parliament on 20-10-2026.

The above-mentioned Petitioners have filed these Petitions invoking the jurisdiction vested in this Court by virtue of Article 121 read with Articles 120 and 123 of the Constitution challenging the constitutionality of the Bill. The Petitioners have prayed for a determination from this Court under Article 123 of the Constitution.

The Bill contains sixty-seven clauses. Their marginal notes read as follows:

- Clause 1 - Short title
- Clause 2 - Objects of the Act
- Clause 3 - Application of this Act
- Clause 4 - Being a member of an organised criminal group
- Clause 5 - Attempting to commit, abetting, conspires & c. to commit a serious crime
- Clause 6 - Acts in furtherance of a common criminal object
- Clause 7 - Harbouring & c.
- Clause 8 - Causing intimidation or harm to persons investigating or assisting & c.
- Clause 9 - Recruiting members for an organised criminal group
- Clause 10 - Participation in an organised criminal group
- Clause 11 - Allowing an organised criminal group to use premises
- Clause 12 - Offences relating to racketeering activities
- Clause 13 - When a person is said to have knowledge of a fact
- Clause 14 - Publication of matter relating to a serious crime under this Act
- Clause 15 - A serious crime committed by an incorporated body
- Clause 16 - A Legal person to be liable for a senior officer acting on behalf & c.
- Clause 17 - Power to stop and search & c.
- Clause 18 - Procedure when an arrest is made & c
- Clause 19 - Notification of the arrest
- Clause 20 - Production before a Magistrate
- Clause 21 - Detention Orders

- Clause 22 - Extension of the period of detention
- Clause 23 - Suspect may be released on bail
- Clause 24 - Restriction Orders
- Clause 25 - Detention during remand custody
- Clause 26 - Suspect to have access to an Attorney-at-Law in remand or detention
- Clause 27 - Detention until the conclusion of the trial
- Clause 28 - Judicial authorisation for special investigative techniques
- Clause 29 - Joint investigations
- Clause 30 - Proceedings before the Magistrate's Court
- Clause 31 - A serious crime to be cognizable and the High Court to try serious crimes under this Act
- Clause 32 - Application of the Code of Criminal Procedure Act
- Clause 33 - Application of the Electronic Transactions Act, No.19 of 2006
- Clause 34 - Prosecution not to be time-barred
- Clause 35 - Interpretation
- Clause 36 - Powers of a police officer under this Act
- Clause 37 - Duty of the police officer to prevent the commission of a serious crime under this Act
- Clause 38 - Use of force to stop a vehicle or vessel & c.
- Clause 39 - Taking over the control of any vehicle or vessel & c.
- Clause 40 - Suspension or delaying the taking off or sailing of a vessel or aircraft & c.
- Clause 41 - Directly submitting items to a Government Analyst or other expert
- Clause 42 - Transfer of material for investigation
- Clause 43 - Obtaining information from bank, financial institution, & c.
- Clause 44 - Obtaining information from service providers
- Clause 45 - Unlocking data and information
- Clause 46 - Certain provisions of the Evidence Ordinance not applicable

- Clause 47 - Statement signed by the suspect to be admissible
- Clause 48 - Certain statements made to the Magistrate and at the identification parade admissible
- Clause 49 - Admissibility of certain documents
- Clause 50 - Section 54 of the Evidence Ordinance not applicable
- Clause 51 - Provisions of sections 46, 47, 48 and 49 not to apply
- Clause 52 - Giving false evidence
- Clause 53 - Preconditions to be satisfied for the admissibility of a statement made to a Magistrate
- Clause 54 - Non-disclosure of information and identity of the informer
- Clause 55 - Disclosure of information by an informer
- Clause 56 - Tipping-off
- Clause 57 - Forfeiture
- Clause 58 - Special provisions relating to sentencing
- Clause 59 - Protection of action
- Clause 60 - Amendment to the Extradition Law, No. 8 of 1977
- Clause 61 - Existing extradition arrangements with States deemed to provide for serious crimes in the Act
- Clause 62 - Minister may treat the Convention as an extradition arrangement between Sri Lanka and certain States, in respect of serious crimes in the Act
- Clause 63 - Duty of the Minister to notify the requesting State of measures taken against persons for whose extradition a request is made
- Clause 64 - Assistance to a State
- Clause 65 - Legal obligation to give information
- Clause 66 - Interpretation
- Clause 67 - Sinhala text to prevail in case of inconsistency

The Petitioners have prayed for a determination and declaration that some clauses of the Bill and/or the Bill as a whole is inconsistent with one or more of the Articles 1, 3, 4, 10,

11, 12, 13, 14, 15, 17, 75 and 105 of the Constitution. It is on that basis that the Petitioners have sought to argue before us that the provisions in Article 83 of the Constitution shall apply to this Bill and therefore the Bill shall only become law if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present), and is approved by the People at a Referendum and a certificate is endorsed thereon by the President in accordance with Article 80.

(I) Long Title; Preamble; Clause 2 (Objects of the Act); Clause 3 (Application of this Act); and the First Schedule of the Bill

The first argument advanced by the Petitioners is that the Government, in the pretext of giving effect to the United Nations (UN) Convention Against Transnational Organised Crime, is attempting to impose undue restrictions to curtail Fundamental Rights of citizens of this country. It is their position that the scope of the POC Bill extends far beyond the scope and the expectations set out in the UN Convention against Transnational Organised Crime.

In order to evaluate this argument, let us first reproduce below, the Long Title and the Preamble of the Bill.

> The Long Title of the Bill:
>
> *AN ACT TO GIVE EFFECT TO THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME; TO PROVIDE FOR THE PREVENTION, INVESTIGATION AND PROSECUTION OF SERIOUS CRIMES THROUGH EFFECTIVE NATIONAL AND INTERNATIONAL COOPERATION; TO PROTECT SOCIETY FROM THE THREATS POSED BY ORGANISED CRIMINAL GROUPS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.*

The Preamble of the Bill:

WHEREAS a United Nations Convention against Transnational Organised Crime (hereinafter referred to as the "Convention") was adopted by the General Assembly of the United Nations at New York on November 15, 2000:

WHEREAS Sri Lanka has ratified the said Convention on September 22, 2006:

WHEREAS serious crimes have escalated in its scale, sophistication and adverse impact, posing a serious threat to the public safety, national security, the economy and the rule of law, thereby necessitating the strengthening of the legal framework for the prevention, investigation, prosecution and punishment of serious crimes:

AND WHEREAS it has become necessary for the Government of Sri Lanka to make legislative provisions to give effect to Sri Lanka's obligations under the aforesaid Convention and to strengthen the legal framework for preventing and combating serious crimes in Sri Lanka:

NOW THEREFORE BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

…

Having regard to the above reproduction, we observe that the answer to the first argument of the Petitioners lies in the Long Title and the Preamble of the Bill itself. We see the following included in the Long Title of the Bill:

(i) to give effect to the United Nations Convention Against Transnational Organised Crime;

(ii) to provide for the prevention, investigation and prosecution of serious crimes through effective national and international cooperation;

(iii) to protect society from the threats posed by organised criminal groups; and

(iv) to provide for matters connected therewith or incidental thereto.

Out of these four, we can identify three main objectives of the Bill from its Long Title. Thus, we observe that giving effect to the United Nations Convention Against Transnational Organised Crime, is just one out of the said three main objectives which the Bill seeks to achieve. The second objective is to provide for the prevention, investigation and prosecution of serious crimes through effective national and international cooperation; the third objective is to protect the society from the threats posed by organised criminal groups. Thus, giving effect to the United Nations Convention Against Transnational Organised Crime, is not the sole objective of the Bill.

The General Assembly of the United Nations has adopted the Convention against Transnational Organised Crime on November 15, 2000. Sri Lanka has ratified the said Convention on September 22, 2006. It is only in 2026 that the Government of Sri Lanka is attempting to pass the instant Bill which also has a reference to giving effect to the provisions of the Convention. This is however the second such occasion as the government has placed before the Order Paper of Parliament, another Bill pertaining to the Prevention of Organised Crimes in 2003.

We observe that the operations of organised criminal groups are gradually increasing in the country. The manner in which the activities of such groups are conducted has become a menace to the society. They have already posed a threat not only to the public safety, the national security and the law enforcement mechanism of the country but also the day-to-day lives of ordinary people. The operations of organised criminal groups have also jeopardised and reduced the effectiveness of the administration of justice system of the country. Needless to say, that this menace has a devastating effect on the national economy. Nevertheless, the country has not enacted a strong domestic legislation to meet these threats and free the society from their impact although twenty years have lapsed since Sri Lanka has ratified the United Nations Convention against Transnational Organised Crime (UNTOC). On this issue, we would like to appreciate that even the Petitioners at no time sought to argue that there is no such requirement to bring a robust

legal framework to fight the criminal activities engaged in by organised criminal groups in the country. The primary complaint of the Petitioners was that the provisions contained in the Bill would adversely affect the enjoyment of the Fundamental Rights which the Constitution has guaranteed to all citizens.

It is in the above backdrop that we would at the outset like to refer to the case of Janath S. Vidanage and Others v. Pujith Jayasundara, Inspector General of Police.[1] In this case, a seven-judge bench of this Court highlighted the obligation of the government in maintaining the security of the country. The following excerpt shows the importance of the said obligation:

> "*A conjoint reading of the constitutional imperatives such as Articles 4(b), 30(1), 44(2) and 52(2) makes it patently clear that the Minister of Defence is placed under a charter of duties and obligations from which he cannot resile as regards national security and internal security of the country. It is often said that national security and liberty of individuals stand out as two sides of a coin which binds the state to a strong commitment. On the day in question, to wit the 21st of April 2019, the President of the country who was also the Commander-in-Chief of the Armed Forces had undertaken these obligations which our Constitution, domestic laws and regulations, amply declare aloud demanding allegiance to the commitment of maintaining defence and security of the nation.*"[2]

Furthermore, we also observe that the Constitution has laid down directive principles of state policy in Article 27 of the Constitution. Article 27(15) would be relevant for the present discussion.

> Article 27(15):
>
> "*The State shall promote international peace, security and co-operation, and the establishment of a just and equitable international economic and social order and*

[1] SC/FR/163, 165, 166, 184, 188, 191, 193, 195-198, 293/2019, SC Minutes of 2023.01.12.
[2] ibid, Paragraph 69.

shall endeavour to foster respect for international law and treaty obligations in dealings among nations."

It is also important to note that Article 27(1) of the Constitution has stated that the above directive principles "shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society." It is on those directive principles that the Government has to formulate the Bills. We observe that the POC Bill falls within the purview of the above principles.

If the organised criminal groups are predominantly active on the streets, citizens of the country will have to live in constant fear. This would definitely affect the day-to-day livelihood of the common man and would in turn affect their freedom and the enjoyment of the Fundamental Rights which the Constitution has guaranteed to them. This is why this Court in Kumaranatunge v. Samarasinghe, Additional Secretary, Ministry of Defence and Others[3] stated as follows:

"*I have already pointed out that the freedom from arbitrary arrest and detention guaranteed by Articles 13(1) and (2) of the Constitution is subject to such restrictions as may be prescribed by law in the interests, inter alia, of national security and public order. Law in this context is defined as including "regulations made under the law for the time being relating to public security". It is well recognised that individual freedom has in times of public danger to be restricted when the community itself is in jeopardy, when the foundations of organised government are threatened and its existence as a constitutional state is imperilled.*"

Similarly, this Court in Joseph Perera alias Bruten Perera v. The Attorney General and Others[4]:

[3] [1983] 2 Sri LR 63 at 80-81.
[4] [1992] 1 Sri LR 199.

> "*Article 14 of the Constitution deals with those great and basic rights which are recognized and guaranteed as the natural rights inherent in the status of a citizen of a free country. Freedom of speech … goes to the heart of the natural right of an organized freedom-loving society to impart and acquire information … This freedom is not absolute. There is no such thing as absolute or unrestricted freedom of speech and expression, wholly free from restraint; for that would amount to uncontrolled license which would tend to disorder and anarchy. Absolute and unrestricted individual rights do not and cannot exist in a modern State. The welfare of the individual, as a member of collective society, lies in a happy compromise between his rights as an individual and the interests of the society to which he belongs … Our Constitution has rightly struck a proper balance between the varying competing social interests, and has … set forth the restrictions to which the fundamental right of speech and expression may be subject to …*"

Furthermore, this Court in the Special Determination on the Online Safety Bill,[5] stated in reference to the scourge of cybercrime as follows:

> "*In the circumstances, the State has a responsibility to enact legislation to prevent such crimes and protect the people of this country. Such legislation will secure the equal protection of the law enshrined in Article 12(1) of the Constitution. Thus, the determination in Sri Lanka Broadcasting Authority Bill (SC/SD/1/1997-15/1997) has no application to the instant Bill. In any event, most of the laws are enacted to prevent committing crimes. Hence, Parliament need not wait till a crime is committed to enact laws.*"

It is accepted that all civilized nations unequivocally condemn organised crimes. Sri Lanka has also joined hands with the rest of the world in this endeavour. Therefore, we are unable to accept the argument of the Petitioners that the Government in the pretext of giving effect to the UN Convention Against Transnational Organised Crime, is attempting

[5] SC/SD/66-69, 71-77, 79-81, 83-85, 87-101, 103-107, 109, 111-112, 115-118, 120/2023.

to impose undue restrictions and curtail Fundamental Rights of citizens of this country. In any case, we further observe that in terms of Article 34(3) of the said Convention, it is open for any State party to adopt more strict or severe measures than those provided for by the said Convention in order to prevent and combat transnational organised crime. Therefore, we are unable to accept the argument that the government is trying to enact provisions more stringent than those provided for in the Convention in the pretext of giving effect to the provisions of the said Convention. We further hold that objects contained in Clause 2 of the Bill are legitimate objects which the Government is not only entitled to, but also obliged to achieve for the protection of the citizens of the country.

Be that as it may, having taken into consideration, the concerns raised by the Petitioners, Hon. Attorney General has already undertaken to amend the Long Title of the Bill at the Committee Stage. The amended version of the Long Title and the Preamble of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> "*AN ACT TO GIVE EFFECT TO THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME; TO PROVIDE FOR THE PREVENTION, INVESTIGATION AND PROSECUTION OF SERIOUS CRIMES* ***COMMITTED BY ORGANISED CRIMINAL GROUPS AND CONNECTED OFFENCES*** *THROUGH EFFECTIVE NATIONAL AND INTERNATIONAL COOPERATION; TO PROTECT SOCIETY FROM THE THREATS POSED BY ORGANISED CRIMINAL GROUPS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.*
>
> *…*
>
> *WHEREAS serious crimes have escalated in ~~its~~ scale, sophistication and adverse impact, posing a serious threat to the public safety, national security, the economy and the rule of law, thereby necessitating the strengthening of the legal framework*

for the prevention, investigation, prosecution and punishment of ~~serious~~ ***such*** *crimes* ***and connected offences****:*

AND WHEREAS it has become necessary for the Government of Sri Lanka to make legislative provisions to give effect to Sri Lanka's obligations under the aforesaid Convention and to strengthen the legal framework for preventing and combating serious crimes ***committed by organised criminal groups and connected offences*** *in Sri Lanka:*

…"

Clause 3 (Application of this Act)

Clause 3 has sought to explain the scope of the application of the Bill. The complaint made by the Petitioners against this Clause was on the basis that the said Clause is not clear. They also complain that it is vague. The Petitioners also strongly argued that the term "serious crime" in Clause 3 is defined in such a way that ordinary persons who are not members of any organised criminal group will also be caught up in this definition, if such person merely happen to breach an ordinary simple provision of law, such as a violation of a condition of a license issued under the Excise Ordinance. They argued that under such circumstances, such ordinary person who is not a member of any organised criminal group would also be liable to be detained for a prolonged period of time where as such a wrong doer under the existing regime of law would only face some minor punishment such as a fine. It is on that basis that the Petitioners argued that Clause 3 is not consistent with the objects of the Bill as Clause 2(b) has stated the 'facilitation of the investigation and prosecution of serious crime' as one of the main objects of the Bill. The Petitioners therefore submitted that the provisions of this Bill would have an internal conflict among them and hence would not be workable but would instead be counterproductive.

The following decision of this Court taken from its Special Determination pertaining to the Bureau of Rehabilitation Bill,[6] would be relevant in that regard:

> "*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.*"

Thus, we see merit in the above submissions made by the Petitioners. We therefore indicated to the Hon. Acting Attorney General that in such a situation Clause 3 would be inconsistent with Article 12(1) of the Constitution and therefore shall become law only if the number of votes cast in favour, thereof amounts to not less than two thirds of the whole number of members, (including those not present) and a certificate by the Speaker in accordance with the provisions of Article 80(1) of the Constitution.

We are pleased that the Hon. Acting Attorney General agreed to reconsider the said provisions and advice the Government accordingly. Pursuant to the above, the Hon. Attorney General has undertaken to amend both Clauses 2 and 3 at the Committee Stage. The amended version of Clause 3 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

[6] SC SD 54-61/2022, Page 9.

The provisions of this Act shall apply to the prevention, investigation, prosecution and punishment of:

(1) ***Offences specified in the*** *First Schedule hereto* ***or any offence punishable by a maximum term of imprisonment of either description for a term of at least four years or more (in this Act referred to as the "serious crime"), where such serious crime is committed by a member of an organised criminal group; and***

(2) ***Other*** *offences specified in this Act* ***committed by any person;***

being -

(a) any citizen of Sri Lanka within or outside the territory of the Republic of Sri Lanka; or

(b) any person –

(i) wholly or partly, in Sri Lanka;

(ii) in or over the territorial waters of Sri Lanka;

(iii) in the airspace of the territory of Sri Lanka;

(iv) on board or in respect of an aircraft or vessel registered in Sri Lanka or chartered by any person in Sri Lanka;

(v) on board or in respect of a vessel or an aircraft within the territory of the Republic of Sri Lanka, including the territorial waters and airspace of the territory of the Republic of Sri Lanka;

(vi) wholly or partly within the office premises of a diplomatic or consular mission of Sri Lanka or in respect of such premises, or at a diplomatic or a consular office of Sri Lanka, or at the residence of the Head of such diplomatic or consular mission or the residence of any diplomatic or consular officer or any other employee of such mission;

(vii) ~~*wholly or partly within the office premises situated outside of Sri Lanka of a statutory board of the Government of Sri Lanka, or in respect of such premises, or within the residence of an employee of such statutory board.*~~

In the above background let us now consider Clause 2 of the Bill and its First Schedule as it originally appears in the Gazette. Clause 2 is as follows:

The objects of the Act shall be –

(a) to prevent, suppress, and disrupt the activities of organised criminal groups and persons who are involved in such organised criminal groups;

(b) to facilitate the investigation and prosecution of serious crime;

(c) to promote and facilitate national and international cooperation in order to achieve these objects; and

(d) to protect members of the public from the harm caused, or likely to be caused, by such organised criminal groups.

First Schedule

The Petitioners also contended that the inclusion of references to the Excise Ordinance, Fauna and Flora Protection Ordinance, Gambling Regulatory Authority, Intellectual Property and Penal Code in to the scope of the Bill, despite the presence of separate legal regime governing such areas would be inconsistent with Article 12(1) of the Constitution. They also sought to argue that such a move would establish a parallel legal regime. The Petitioners therefore allege that presence of such parallel legal regimes would pose a risk of double jeopardy.

Hon. Acting Attorney General, having taken into consideration, the concerns raised by the Petitioners, has proposed amending the First Schedule by omitting Items 15, 16, 17, and 33 of the First Schedule i.e. omitting the Excise Ordinance and S. 178 of the Intellectual Property Act No. 36 of 2003 (infringement of copyright). Hon. Acting Attorney General has undertaken to effect the above amendments at the Committee Stage.

In order to align the other provisions in the Bill in consonant with the above alteration, the Hon. Attorney General has also undertaken to amend Clause 2(b) at the Committee Stage. The amended version of Clause 2(b) of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> *The objects of the Act shall be –*
>
> …
>
> *(b) to facilitate the investigation and prosecution of serious crime* ***committed by such organised criminal groups and connected offences****;*
>
> …

We agree with Hon. Acting Attorney General that the propose amendment of Clauses 2, 3 and the First Schedule would answer the concerns of the Petitioners.

We therefore hold that if Clauses 2, 3 and the First Schedule are amended in accordance with the above draft, their inconsistency with Article 12(1) of the Constitution will cease.

Follow up amendments to Clauses 11, 12, 29, 30, 31, 33, 36, 39, 42, 48, 49, 50, 52, 53, 55, 57, 58, 61, 62, 63, 64 and 66, arising as a result of the proposed amendment to Clause 3.

In order to align the other provisions in the Bill in consonant with the above alteration, Hon. Attorney General has already undertaken to make the following amendments in the Clauses mentioned below:

1) Clause 11: amending "…*a serious crime under this Act…" to 'an offence under this Act'* in Clause 11(a); omitting the phrase "…*an offence under any other written law*…", which is' in Clause 11(b).

2) Clause 12(2): amending "…*serious crime under this Act*…" to 'offence specified in subsection (1) of Section 4'; amending "…*such serious crimes*…" to 'such instances of participation or involvement'; amending "…*of the offences*…" to 'such instance'; amending "…*serious crime*…" to 'of such instances'; amending "…*crime*…" to 'offence'.

3) Clause 29(1): amending "…*a serious crime under this Act*…" to 'an offence under this Act'.

4) Clause 30: amending "…*a serious crime under this Act*…" to 'an offence under this Act'.

5) Clause 31: amending "…*serious crime under this Act*…" to 'offence under this Act' in Clause 31(1); amending "…*serious crime under this Act*…" to 'such offences' in Clause 31(2).

6) Clause 33: amending "…*serious crime committed under this Act*…" to 'an offence under this Act'.

7) Clause 36: amending "…*a serious crime under this Act*…" to 'an offence under this Act'; amending "…*serious crime*…" to 'offence'; amending "…*serious crimes*…" to

'any offence under this Act'; omitting the phrase "…*other offences under this Act and*…".

8) Clause 39(1): amending "…*a serious crime*…" to 'an offence under this Act'; amending "…*a serious crime*…" to 'such offence' at the end of the sub section.

9) Clause 42(1): amending "…*serious crime under this Act*…" to 'an offence under this Act'; amending "…*crime*…" to 'offence'.

10) Clause 48: amending "…*a serious crime under this Act*…" to 'an offence under this Act' in the chapeau/introductory paragraph; amending "…*a serious crime under this Act*…" to 'an offence under this Act' in Clause 48(a).

11) Clause 49: amending "*…a serious crime under this Act…*" to 'an offence under this Act' in Clause 49(1); amending both references of "…*a serious Crime*…" to 'such offence' in Clause 49(2).

12) Clause 50: amending "…*serious crimes*…" to 'offences under this Act'.

13) Clause 52(1): amending "…*a serious crime under this Act*…" to 'an offence under this Act'.

14) Clause 53: amending "…*a serious crime under this Act*…" to 'an offence under this Act'.

15) Clause 55: amending "…*a serious crime under this Act*…" to 'an offence under this Act' and amending "…*shall*…" to 'does' in the chapeau/introductory paragraph; amending "…*confidence*…" to 'confidentiality' in Clause 55(a).

16) Clause 57(1): amending "…*a serious crime under this Act*…" to 'an offence under this Act' and "…*the serious crime*…" to 'such offence'.

17) Clause 58: amending "…*a serious crime under this Act*…" to 'an offence under this Act' and subsequently "…*a serious crime under this Act*…" to 'such offence' in Clause 58(a); amending "…*serious crime under this Act*…" to 'an offence under this Act' in Clause 58(b).

18) Clause 61: amending "…*the serious crimes specified in this Act*." to 'offences under this Act'.

19) Clause 62: amending "…*the serious crimes specified in this Act*." to 'offences under this Act'.

20) Clause 63: amending "…*a serious crime under this Act*…" to 'an offence under this Act'; amending "…*that serious crime.*" to 'such offence'.

21) Clause 64(1): amending "…*a serious crime under this Act*…" to 'offences under this Act'.

22) Clause 66 (controlled delivery): amending "…*the serious crime*…" to 'an offence under this Act' and "…*serious crimes under this Act*…" to 'such offences' in sub clause (a); amending "…*serious crimes*…" to 'offences' in sub clause (b); amending "…*serious crimes*…" to 'offences' in sub clause (c); amending "…*serious crimes*…" to 'offence' in sub clause (d).

23) Clause 66 (undercover operation): amending "…*a serious crime*…" to 'an offence under this Act'; amending "…*serious crimes*…" to 'such offences' in sub clause (b); amending "…*serious crimes*…" to 'such offence' in sub clause (c).

Hon. Attorney General has proposed to amend the said Clauses also in order to align those provisions with the rest of the proposed amended Clauses in the Bill. In particular, the said amendments have become necessary in view of the proposed amendment of Clause 3 of the Bill. Similarly, the same position applies to Clauses 31 and 55. This is because although Clauses 31 and 55 were not mentioned in the Petitions, some of the Petitioners (SC SD 177/2026, SC SD 182/2026, SC SD 176/2026)) have contended that the said Clauses would be inconsistent with the Constitution.

(II) PART I - OFFENCES UNDER THE BILL

Clause 4 - Being a member of an organised criminal group

Part I of the Bill is the section which describes the offences and the penalties attached to the said offences. The Petitioners contend that Clause 4 of the Bill is vague, overbroad, and therefore is inconsistent with Articles 12(1), 13, 14(1)(a), (b), (c) and (h) of the Constitution. This argument was advanced on the basis that there exists a possibility of application of Clause 4 of the Bill to ordinary persons, who are not members of any organised criminal group, violating their freedom of association guaranteed by Article 14(1)(f) of the Constitution. The Petitioners highlighted the phrases such as "who agrees with one or more other persons to commit a serious crime in order to obtain, directly or indirectly, a financial or other material benefit" in Clause 4(1) to substantiate this argument.

Moreover, The Petitioners also highlighted the phrases such as "involvement in physical or virtual meetings with known members of the organised criminal group" in Clause 4(2)(a); "whether that person adopts the style of dress, hand signs, language or tattoos used by known members of the organised criminal group" in Clause 4(2)(c); "whether that person associates with known members of the organised criminal group" in Clause 4(2)(d) of the Bill to convince this Court that Clause 4 of the Bill could possibly violate the fundamental right to freedom of association guaranteed to all citizens by Article 14(1)(f) of the Constitution. This was on the basis that ordinary persons who are not members of organised criminal groups would possibly be liable for investigations and prosecutions under the provisions of this Bill.

This Court in the Special Determination in Bureau of Rehabilitation Bill,[7] stated as follows:

[7] SC SD 54–61/2022 at Page 9.

> "*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.*"

Having regard to the way in which Clause 4 of the Bill appears at present, we are of the view that it would be inconsistent with the aforesaid provisions of the Constitution and therefore shall become law only if the number of votes cast in favour, thereof amounts to not less than two thirds of the whole number of members, (including those not present) and a certificate by the Speaker in accordance with the provisions of Article 80(1) of the Constitution.

However, the Hon. Attorney General has agreed to amend Clause 4 at the Committee Stage. The amended version of the Clause 4 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> *(1) Any person who, ~~is or acts~~* ***being*** *a member of an organised criminal group* ***and commits a serious crime commits an offence under this Act and*** *~~and who agrees with one or more other persons to commit a serious crime in order to obtain, directly or indirectly, a financial or other material benefit commits an offence and~~ shall, on conviction by the High Court, be liable to imprisonment of either description for a term not less than five years and not exceeding twenty years and to a fine not exceeding one million rupees.*

(2) In determining whether any person is or acts as a member of an organised criminal group under subsection (1), the matters which a court may consider include, but are not limited to the following: -

(a) involvement in physical or virtual meetings knowingly members of the organised criminal group;

(b) whether that person is identified as a member by known members (whether existing or former members) of the organised criminal group;

(c) ~~whether that person adopts the style of dress, hand signs, language or tattoos used by known members of the organised criminal group;~~

(d) whether that person ~~associates~~ has a suspicious association with known members of the organised criminal group;

…

In the Special Determination in Bureau of Rehabilitation Bill,[8] this Court held as follows:

"*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.*"

[8] ibid.

We are of the view that the above version of Clause 4 will enable a person to sufficiently identify the scheme of offences it has constituted. Therefore, we hold that if Clause 4 is amended in accordance with the proposed draft its inconsistency with Article 12(1) of the Constitution will cease.

Clause 5 (Attempting to commit, abetting, conspire & c. to commit a serious crime), Clause 6 (Acts in furtherance of a common criminal object), and Clause 13 (When a person is said to have knowledge of a fact)

Clause 5 (Attempting to commit, abetting, conspire & c. to commit a serious crime) and Clause 6 (Acts in furtherance of a common criminal object)

The Petitioners referring to Clause 5 of the Bill submitted that it is vague and overbroad. They also submitted that even Attorneys-at-Law would be liable for prosecution under this Clause in the presence of phrases such as 'counsels' and 'counselling'. It is on that basis that they argue that Clause 5 would also be inconsistent with Article 12(1) of the Constitution.

As regards Clause 6, in the course of the argument it transpired that the purpose Clause 6 would serve is unclear. However, the Hon. Attorney General agreed to amend Clause 5 and remove Clause 6 from the Bill at the Committee Stage. The amended version of Clause 5 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> *(1) If any person attempts,* ***aids,*** *abets, conspires, organises, facilitates,* ~~*counsels,*~~ *procures, directs,* ~~*aids,*~~ *incites, encourages,* ~~*instigates,*~~ *commands or advises the commission of* ~~*a serious crime*~~ ***an offence under this Act*** *or prepares to commit* ~~*a serious crime*~~ ***such an offence*** ~~*or does any act preparatory to the commission of a serious crime*~~ *and if as a result of such attempt,* ***aiding,***

abetment, conspiracy, organisation, facilitation, ~~counselling,~~ procurement, direction, ~~aiding,~~ inciting, encouragement, ~~instigation,~~ commanding, advising or preparation, ***such an offence*** *a serious crime is committed, such person shall be liable to the same penalty imposed for ~~the offence in section 6~~* ***such offence****.*

(2) If as a result of such attempt, ***aiding,*** *abetment, conspiracy, organisation, facilitation, ~~counselling,~~ procurement, direction, ~~aiding,~~ inciting, encouragement, ~~instigation,~~ commanding, advising or preparation referred to in subsection (1), ~~the offence under section 6~~ is not committed, such person shall, on conviction by the High court, be liable to imprisonment of ~~either~~* ***any*** *description* ***provided for that offence*** *or with such fine as is provided for that offence or with both for a term ~~not less than two years and not exceeding fifteen years~~* ***which may extend to one fourth part of the longest term provided for that offence or with such fine as is provided for that offence or with both*** *~~and to a fine not exceeding five hundred thousand rupees.~~*

In view of the undertaking given by Hon. Acting Attorney General, we would proceed on the basis that Clause 6 will not form part of the Bill.

Clause 13 (When a person is said to have knowledge of a fact)

The Petitioners contend that Clause 13(1) equates a person's failure to investigate a possible fact with actual knowledge of that fact, thereby allowing criminal liability to be imposed on the basis of what a person ought to have known rather than actual knowledge. Accordingly, it is alleged to be vague and arbitrary and inconsistent with Articles 12(1) and 13(5) of the Constitution, read with Articles 3, 4(c) and 4(d). The Petitioners contend that Clause 13, read with Clauses 6, 10, 11 and 12, creates a serious risk of directors, officers and employees of legitimate businesses being exposed to criminal liability arising from their lawful commercial dealings, management

responsibilities or the conduct of persons associated with their businesses, even in the absence of actual knowledge of any organised criminal activity.

Clause 13 has been reproduced below for reference:

(1) For the purposes of this Act, a person is said to have knowledge of a fact if -

(a) such person has actual knowledge of that fact; or

(b) the court is satisfied that-

(i) such person believes that there is a reasonable possibility of the existence of that fact; and

(ii) such person fails to obtain information to confirm the existence of that fact.

(2) For the purposes of this Act, a person is said to have reason to believe the existence of a fact if the conclusions of such person ought to have reached are those which would have been reached by a reasonably diligent and vigilant person having both-

(a) the knowledge, skill, training and experience that may reasonably be expected of a person in his position; and

(b) the knowledge, skill, training and experience that a person in fact possesses.

Criminalising any attempt to commit an offence, abetment to commit a crime, conspire to commit a crime, are general principles of criminal law which are applied in many statutes and hence already a part of our law. Similarly, acting in furtherance of a common object is also not a new concept. It is a known concept and hence is already part of our law.

We observe that the contentious parts which appeared in the Original Bill in the Gazette Notification have been removed in the proposed new amended version. In the above circumstances, we see no inconsistency between the above Clauses and the provisions of the Constitution.

Clause 7 (Harbouring)

The Petitioners contended that the criminal liability conferred on two categories by identifying them by phrases such as: "*if he is a member of an organised criminal group*"; and "*if he is not a member of an organised criminal group*", in Clause 7 would make the provision unclear. In the course of the argument, we indicated to the Hon. Acting Attorney General to consider whether retention of that part of Clause 7 is necessary. Hon. Attorney General has now agreed to take away that part and amend Clause 7 at the Committee Stage. The amended version of Clause 7 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> *A person who, with the intention of preventing another person from being legally punished, harbours, conceals, assists, or maintains such other person whom he knows or has reason to believe has committed ~~or is committing a serious crime under this Act,~~* ***any offence under this Act*** *commits an offence and shall, on conviction by the High Court, be liable* ***to imprisonment for a term not less than two years and not exceeding five years and to a fine not exceeding one hundred thousand rupees.***
>
> > *~~(a) if he is a member of an organised criminal group, to imprisonment for a term not less than five years and not exceeding ten years and to a fine not exceeding three hundred thousand rupees; or~~*

~~*(b) if he is not a member of an organised criminal group, to imprisonment for a term not less than two years and not exceeding five years and to a fine not exceeding one hundred thousand rupees.*~~

In the amended version proposed by the Hon. Attorney General, application of Clause 7 to non-members of organised criminal groups has been removed. We also agree that applying this Clause to non-members of organised criminal groups would possibly be violative of Article 12(1) of the Constitution. This is because the purpose of this Bill is to fight activities of the organised criminal groups and not to use its provisions against ordinary persons who happen to commit ordinary crimes. In the above circumstances, we are of the view that Clause 7 in the amended form, reproduced above, will not be inconsistent with the provisions of the Constitution.

Clause 8 (Causing intimidation or harm to persons investigating or assisting)

The challenge posed by the Petitioners against Clause 8 was primarily on the basis of lack of clarity in Clause 3 which set out the scope of application of the Bill. Since Hon. Attorney General has already undertaken to present the amended version of Clause 3 which we have adverted to above, at the Committee Stage, we agree with Hon. Acting Attorney General that once Clause 8 is amended as proposed constitutional inconsistencies will cease.

The amended version of Clause 8 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

*(1) Any person who, in relation to the commission of ~~a serious crime under this Act;~~ **any offence under this Act,** uses force, threats or intimidates or promises, offers or gives any undue advantage in order to –*

(a) induce false testimony; or

(b) interfere in the giving of testimony or production of evidence,

commits an offence under this Act, and shall on conviction by the High Court, be liable to imprisonment of either description for not less than five years and not exceeding fifteen years and to a fine not exceeding five hundred thousand rupees.

(2) Any person who, in relation to the commission of ~~a serious crime under this Act,~~ ***any offence under this Act,*** *uses force, threats or intimidation in order to interfere with the duties of law enforcement, prosecution or judicial officials commits ~~an offence under this Act,~~* ***such offence,*** *and shall on conviction by the High Court, be liable to imprisonment of either description for a term not less than five years and not exceeding fifteen years and to a fine not exceeding five hundred thousand rupees.*

In prosecutions relating to crimes committed by the members of organised criminal groups, incidents of interference with witnesses and inducing them with a view of interfering with the process of due administration of justice are prevalent. Therefore, provisions of this nature is a timely requirement. We see no basis to hold that this Clause is inconsistent with the provisions of the Constitution.

We hold that Clause 8, in the above form, would not be inconsistent with the provisions of the Constitution.

Clause 9 (Recruiting members for an organised criminal group)

The Petitioners raised concern that Clause 9 would apply even to persons other than members of organised criminal groups. It is therefore the submission of the Petitioners that Clause 9 of the Bill would unduly curtail the right of association. Having ragard to the purpose of this Bill we see merit in that submission as the phrase "a person" appearing at the beginning of the Clause is vague and overbroad. However, Hon. Attorney General

has agreed to amend Clause 9 at the Committee Stage by replacing the phrase "a person" with the phrase "A person being a member of an organised criminal group,". Thus, the contentious phrase "a person" has now been qualified to read as "A person being a member of an organised criminal group". The amended version of Clause 9 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> *A person* ***being a member of an organised criminal group,***
>
> > *(a) incites, induces or invites another person; or*
> >
> > *(b) uses any violence, threat or intimidation towards any other person in order to incite, induce or invite that other person,*
>
> *to become a member of, or to assist in the management of, a group, knowing or having reasonable grounds to believe that the group is an organised criminal group, commits an offence and shall, on conviction by the High Court, be liable to imprisonment of either description for a term not exceeding fifteen years and to a fine not exceeding five hundred thousand rupees.*

Therefore, in view Hon. Attorney General undertaking to present the amended version of Clause 9 as adverted to above, at the Committee Stage, we hold that once Clause 9 is amended, as proposed above, the Constitutional inconsistencies will cease.

Clause 10 (Participation in an organised criminal group)

The challenge posed by the Petitioners against Clause 10 was primarily on the basis of lack of clarity in Clause 3 which set out the scope of application of the Bill. The Petitioners also contended that Clause 10 of the Bill has failed to sufficiently distinguish between ordinary commercial dealings and intentional participation in criminal activity. It is on that

basis that the Petitioners argued that Clause 10 would be inconsistent with Articles 12(1), 13(5), 13(6) and 14(1)(g) of the Constitution.

As has already been adverted to above, Hon. Attorney General has already undertaken to present the amended version of Clause 3, which we have adverted to above, at the Committee Stage. The amended version of Clause 10 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> *Any person who intentionally or knowingly takes an active part in any other activity of an organised criminal group-*
>
> *(a) knowing either the aim and general activity of the organised criminal group, or its intention to commit ~~a serious crime under this Act~~ **an offence under this Act**; ~~or~~ **and***
>
> *(b) knowing that such person's conduct will contribute to the achievement of the aim of the organised criminal group or its intention to commit ~~an offence under this Act~~ **such offence**,*
>
> *commits an offence and shall, on conviction by the High Court, be liable to imprisonment of either description for a term not exceeding fifteen years and to a fine not exceeding five hundred thousand rupees.*

The Petitioners sought to argue that the presence of the phrase "*any person*" at the beginning of the Clause 10 would encompass those who otherwise should have been subject to the relevant ordinary regime of criminal law. However, we observe that this provision will only apply to a person who intentionally or knowingly takes an active part in the activities of an organised criminal group. Hon. Attorney General in the amended version has clarified the above position further by adding "*an offence under this Act*" and thereafter in Clause 10(b) adding the phrase "*such offence*". In such a scenario we are unable to agree with the Petitioners that Clause 10 of the Bill must not apply to such a

person. Therefore, we hold that Clause 10 in its amended form, would not be inconsistent with the provisions of the Constitution.

Clause 14 (Publication of matter relating to a serious crime under this Act)

The Petitioners contended that Clause 14 of the Bill violates the freedom of expression and poses a risk to members of the press particularly when they report in media details about an incident or about arrested suspects linking to a particular incident. We are of the view that bringing such journalists in particular, would not be consistent with the scheme and the purpose the Bill seeks to achieve. Therefore, it will violate Fundamental Rights of people. This is however subject to upholding the privacy concerns and facilitating administration of justice machinery with regard to such incidents.

However, Hon. Attorney General has already undertaken to present an amended version of Clause 14 at the Committee Stage. The amended version of Clause 14 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

*(1) Any person who prints or publishes the name, or any matter which may make known the identity of any person against whom ~~a serious crime under this Act~~ **an offence under this Act** is alleged or found to have been committed (in this section referred to as the "victim") commits an offence and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding two years or to a fine or to both such imprisonment and fine.*

(2) Nothing in subsection (1) shall apply to the printing or publication of the name, or any matter which may make known the identity of the victim, if such printing or publication is done-

*(a) by or under the order of the officer in charge of the police station or the police officer, making an investigation into such ~~serious crime~~ **offence**, acting in good faith for the purposes of such investigation;*

(b) by or with the authorisation in writing of the victim; or

(c) by or with the authorisation in writing of the next of kin of the victim, where the victim is dead; or the parent or guardian of the victim, where the victim is a minor or is of unsound mind:

Provided that, such authorisation shall not be given by such next of kin to any person other than to the Chairperson, Secretary or Manager, howsoever described, of any welfare institution or organisation incorporated or registered under any written law.

~~(3) Any person who prints or publishes any matter in relation to any proceeding in any court with respect to a serious crime under this Act, without the previous permission of such court, commits an offence and shall on conviction after summary trial before a Magistrate, be liable to a term of imprisonment of either description for a term not exceeding two years or to a fine or to both such imprisonment and fine.~~

In addition to the afore-mentioned proposed amended version, we hold that a carve-out must also be added to Clause 14 to safeguard the rights of journalists. The said carve-out must be as follows:

The provisions contained in Part II (investigations and prosecution), Part III (powers of a police officer) and Part IV (admissibility of statements) shall have no application in respect of an offence punishable under this Section.

Code of Criminal procedure Act No. 15 of 1979 as amended must apply to investigations and prosecution of any offence punishable under this section.

This carve-out can be added to Clause 14 as 14(3) and 14(4). We hold that once Clause 14 is amended as proposed above constitutional inconsistencies will cease.

Clause 15 (A serious crime committed by an incorporated body) and Clause 16 (A Legal person to be liable for a senior officer acting on behalf)

Clause 15 (A serious crime committed by an incorporated body)

The Petitioners contend that Clause 15 of the Bill is inconsistent with Article 12(1) of the Constitution as it has imposed criminal liability on directors of an incorporated body. They further submitted that the extra powers conferred on the investigators under the provisions of this Bill would make such directors of such companies vulnerable pushing them to fall victim of any possible abuse of such power by investigating officers.

We observe that even the provisions such as Sections 261, 287 and 291 of the Code of Criminal Procedure Act has provided for such corporate liability. Additionally, we also observe that Section 10 of the Penal Code has defined "*person*" to include "*any company or association or body of persons, whether incorporated or not*." Furthermore, the Interpretation Ordinance has defined "*person*" to include "*any body of persons corporate or unincorporated*." Therefore, we observe that the concept of corporate criminal liability is not a new phenomenon in law. It is already a part of our law.

We agree with the submissions of the Hon. Acting Attorney General that it has become necessary for the Government to include a provision of this nature in this Bill as the incidents of using incorporated companies to facilitate commission of organised crimes such as Money Laundering has drastically increased. It has become a common occurrence at present. We have earlier adverted to the necessity for the Government to enact adequate laws to protect the society from dangers posed by the organised criminals. Clause 15 and 16 are also measures that have been taken to curb such operations by

organised criminal groups. This is the object of the Bill and it is also the Policy of the Government.

Moreover, Hon. Attorney General has already undertaken to present the amended version of Clause 15 at the Committee Stage. The amended version of Clause 15 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

*(1) Where ~~a serious crime~~ **an offence under this Act** is committed by an incorporated body of persons, all directors of such body at the time of committing such ~~serious crime~~ **offence** shall, in addition to the incorporated body of persons, be individually liable for the committing of such ~~serious crime~~ **offence**, notwithstanding each such director not being responsible for committing the act which constitutes the relevant ~~serious crime~~ **offence**:*

*Provided however, that such director shall not be **deemed to be guilty for having committed such offence if he, on a balance of probability proves before the court, that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.***

(a) ~~prosecuted if he satisfies the investigation officer who conducted the investigation; or~~

(b) ~~deemed to be guilty for having committed a serious crime if he, on a balance of probability, proves before the court,~~

~~that the serious crime was committed without his knowledge or that he exercised all due diligence to prevent the commission of the serious crime.~~

(2) For the purpose of instituting criminal proceedings against directors of an incorporated body of persons, it shall not be necessary to first prosecute and obtain a conviction against the corresponding incorporated body of persons.

Clause 16 (A Legal person to be liable for a senior officer acting on behalf)

The Petitioners contend that Clause 16 of the Bill does not specify the measures an incorporated body should adopt to satisfy the requirements set out under Clause 16 and the method of measuring the adequacy of such measures thereby alleging that Clause 16 is vague, overbroad and inconsistent with Articles 12(1), 14(1)(g) of the Constitution. The Petitioners cited cases such as Financial Transactions Reporting (Amendment) Bill Special Determination (2026)[9] in support of this position.

The Petitioners further contend that Clause 16(2) of the Bill empowers court to impose extensive sanctions on an incorporated body, which when read with the First Schedule of the Bill, results in the imposition severe consequences for a regulatory offence under the Excise Ordinance.

Hon. Attorney General has already undertaken to present the amended version of Clause 16 at the Committee Stage. The amended version of Clause 16 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

(1) ***Where a senior officer of a*** *legal person* ***acting on behalf of or for the benefit of such legal person*** ~~*is liable for a serious crime where a senior officer of the legal person acting on behalf or for the benefit of the legal person*~~ *–*

[9] SC SD 18-19, 21-22/2026.

(a) commits ~~the serious crime~~ ***an offence under this Act****;*

(b) knowingly authorises or permits the commission of the ~~serious crime~~ ***such offence****; or*

(c) knowing ~~a serious crime~~ ***such offence*** *is to be committed on behalf of or for the benefit of ~~the~~* ***such*** *legal person or is willfully blind or reckless to that fact, fails to take reasonable steps and to adopt and effectively implement an appropriate organisational managerial model to prevent the commission of ~~the serious crime.~~* ***such offence;***

such legal person shall be liable for the commission of such offence.

(2) A legal person found guilty ~~of a serious crime under this Act~~ ***for the commission of an offence in subsection (1)*** *shall be subject to one or more of the following sanctions:-*

(a) a fine not exceeding –

(i) one million rupees; or

(ii) three times the total value of the benefit obtained or damage caused that is reasonably attributed to ~~the serious crime~~ ***such offence****;*

(b) order the legal person to publish the judgment by the court including, as appropriate, the particulars of ~~the serious crime~~ ***such offence*** *and the nature of any penalty imposed;*

(c) order the legal person to carry out a stated project for the public benefit;

(d) order that the legal person be placed under judicial supervision for a period not exceeding five years;

*(e) order the temporary or permanent closure of the establishments of the legal person used to commit ~~the serious crimes~~ **such offence** in question;*

(f) order that the legal person be temporarily or permanently disqualified from public bidding, from entitlement to public benefits or aid or from participation in public procurement;

(g) disqualify the legal person temporarily or permanently from the practice of other commercial activities or from the creation of another legal person; or

*(h) if the activity of the legal person involved entirely or predominantly the carrying out of ~~serious crimes~~ **such offence** or if the legal person was created to commit ~~a serious crime~~ **such offence** under this Act, order that the legal person be dissolved; and*

(i) further orders as the court considers just.

(3) For the purpose of this section "senior officer" means an employee, agent or an officer of the legal person with duties of such responsibility that such officer's conduct may fairly be assumed to represent the legal person's policy.

Furthermore, the challenge to Clause 15 was primarily because of the lack of clarity in Clause 3 of the Bill which defines the application of the Bill. As has already been pointed out earlier, Clause 3 has now been re-drafted bringing in more clarity.

In the above circumstances, we agree with Hon. Acting Attorney General that once Clauses 15 and 16 are amended, as proposed, they would not be inconsistent with any provision of the Constitution.

(III) Part II - INVESTIGATIONS AND PROSECUTIONS

Clause 17 (Power to stop and search), Clause 18 (Procedure when an arrest is made), and Clause 19 (Notification of the arrest)

The Petitioners contend that Clause 17 confers extensive powers of search, arrest and seizure on police officers without requiring prior judicial authorisation, which poses a risk of arbitrary searches, arrests and interference with personal liberty and property thereby resulting in Clause 17 being inconsistent with Articles 12(1), 13(1) and 14(1)(g) of the Constitution. This was on the basis that a suspect arrested under Prevention of Terrorism Act also is not kept in Police custody for such a long period.

Clause 17 is produced below for reference:

> *(1) Where there is a reasonable suspicion of the commission of a serious crime under this Act, a police officer may take such measures, including the following: -*
>
> *(a) stop and search any suspect, vehicle, vessel, train, aircraft or unmanned aerial vehicle: Provided that, where any vessel or aircraft is stopped and searched, the provisions of sections 38, 39 and 40 shall apply;*
>
> *(b) question any suspect;*
>
> *(c) enter and search any premises or land without a search warrant;*
>
> *(d) arrest any person; or*
>
> *(e) take into custody any document, thing or article, used, derived out of, connected with or concerned in committing or reasonably suspected of being used, derived out of, connected with, or concerned in committing a serious crime under this Act.*

(2) Where a police officer exercises the powers conferred on him under subsection (1) in respect of an aircraft or a vessel, the provisions of the Immigrants and Emigrants Act (Chapter 351) shall apply.

(3) Any such document, thing or article so taken into custody shall, as soon as practicable, be produced before the officer in charge of the police station to which the relevant police officer is attached, or be produced before the officer in charge of the nearest police station.

(4) The officer in charge of the police station referred to in subsection (3) shall produce a report in that regard to the Magistrate before whom the relevant document, thing or article is produced, who shall make an appropriate order with regard to the possession or release of any document, thing or article so taken into custody.

We observe that the powers to arrest criminals conferred on Police officers is nothing new. It is already a part of law. This is also the international practice. Here again, the challenge to Clause 17 was primarily because of the lack of clarity in Clause 3 of the Bill which defines the application of the Bill. As has already pointed out Clause 3 has now been re-drafted to make it clear. In any case, Hon. Attorney General has already undertaken to present the amended version of Clause 17 at the Committee Stage. The amended version of Clause 17 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

*(1) Where there is a reasonable suspicion of the commission of ~~a serious crime under this Act~~ **an offence under this Act, by any person**, a police officer may take such measures, including the following: -*

*(a) stop and search any ~~suspect~~ **such person**, vehicle, vessel, train, aircraft or unmanned aerial vehicle: Provided that, where any vessel or aircraft*

is stopped and searched, the provisions of sections 38, 39 and 40 shall apply;

(b) question any ~~suspect~~ ***such person****;*

(c) enter and search any premises or land ~~without~~ ***with*** *a search warrant;*

Provided that where such entry or search cannot be done without affording an opportunity of escape or of concealing evidence of the offence, he shall enter and search without a warrant after recording the grounds of his belief

(d) arrest ~~any person~~ ***such person****; or*

(e) take into custody any document, thing or article, used, derived out of, connected with or concerned in committing or reasonably suspected of being used, derived out of, connected with, or concerned in committing ~~a serious crime under this Act~~ ***such offence****.*

…

Further, we re-iterate an observation made in the Special Determination pertaining to the Protection of the State from Terrorism Bill,[10] by this Court in Joseph Perera Alias Bruten Perera v. The Attorney General, which held as follows:

"*Just as the Chief Justice has stated that over-breadth in the restriction of the freedom of speech and expression has a peculiar evil, the evil of creating chilling effects which deter the exercise of that freedom, any restriction on the powers of the Police in this area of action will also have a peculiar evil, the evil of creating a chilling effect which will inhibit law-enforcement officers from the due performance of their duties which ensure the protection and safety of the citizens and their property. No police officer can predict the final outcome of a case or how a legal*

[10] SC SD 122, 123, 125, 127–133, 135– 140, 142–156, 158, 160–168/2026.

provision would be interpreted by the court. If they are placed in peril and heavy damages awarded in respect of their acts where prosecution were to fail, no police officer would be inclined to perform his functions and may henceforth decide to leave well alone not only doubtful cases but practically all cases, thereby bringing the administration of justice to a standstill. In my view such a construction of the powers of arrest was furthest from the minds of the legislators."

We have already adverted to the obligation on the part of the government to protect the society from organised criminals. We also have to appreciate that special powers need to be conferred on investigators to face the challenges in relation to the operations carried out by well organised criminal groups. We have also held that the enjoyment of Fundamental Rights of the citizens cannot be freely exercised in the presence of organised criminal gangs in the society. Therefore, it is a necessity that the investigators must be equipped with powers such as this to facilitate the conduct of investigations. Then only the prosecutions that will be launched thereafter would be successful.

Furthermore, we observe that there are additional safeguards introduced in this Bill. This is because these powers can only be exercised when there is a reasonable suspicion of the commission of an offence under this Act. We also observe that there is also a necessity to record the reasons under Clause 17(1)(c) when a Police officer enters a place without a search warrant. Further, by virtue of Clause 18, the police officer who makes the arrest is required to produce the arrested suspect forthwith before the officer-in charge of the relevant police station. Moreover, the arresting officer, within twenty-four hours of the arrest, notices the next of kin of the arrested suspect about the arrest. This must be done using the Form set out in the Second Schedule of the Bill. The Officer-in-Charge of the police station is also obliged in law to inform the arrest to the Human Rights Commission using the Form set out in the Third Schedule. In these circumstances, we see no basis to hold that Clause 17 in its amended form is inconsistent with any provision of the Constitution.

The Petitioners also submitted that the Magistrate will not be able to release a suspect taken into custody under the provisions of this Bill in terms of the wording in Clause 18(4). We do not agree with this submission. This is because, in our view, the purpose of Clause 18(4) is to make it mandatory to produce a suspect before the Magistrate even when the investigators have decided to release such suspect to ensure judicial oversight that such suspect is released without any possible harm caused in the hands of Police. We take the view that such provision is to safeguard the rights of such a suspect and hence is salutary.

Clause 20 (Production before a Magistrate)

The Petitioners contend that Clause 20(1) of the Bill permitting a suspect to be held in police custody for up to seventy-two hours prior to his being produced before a Magistrate, would be inconsistent with Articles 12(1) and 13(2), of the Constitution.

Having taken into consideration, the concerns raised by the Petitioners, Hon. Attorney General has already undertaken to present the amended version of Clause 20 at the Committee Stage. The amended version of Clause 20 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

*(1) A suspect who has been arrested and held in custody by a police officer in terms of this Act shall forthwith be produced before the nearest Magistrate in any event not later than **forty eight** hours from the time of such arrest:*

*Provided however, where the arrest has been made within Sri Lanka, the period of time necessary for the journey from the place of arrest to the relevant Magistrate shall be excluded in calculating such **forty eight** hours:*

> *Provided further, where the arrest has been made outside Sri Lanka or on board any aircraft or vessel, the period of time necessary for the journey from the place of arrest to the relevant Magistrate shall be excluded in calculating such* ***forty eight*** *hours.*
>
> *…*

The Petitioners further contend that Clause 20(3)(a) of the Bill requiring the Magistrate to give effect to a Detention Order issued by the Executive, and Clause 20(3)(b) of the Bill requiring the Magistrate to remand a suspect where no Detention Order is produced, has removed effective judicial oversight. It is on that basis that the Petitioners contend that Clause 20 of the Bill is inconsistent with Articles 12(1) and 13 of the Constitution.

In the Special Determination pertaining to the Protection of the State from Terrorism Bill,[11] we have already considered a similar provision and a similar argument. We have held the said similar provisions is not inconsistent with the provisions of the Constitution. For the reasons we have set out in this Determination we have held that the detention of a suspect arrested in connection with an offence under the Bill is not unconstitutional. We have also held that the safeguards in place are adequate. If that be the case, then making it imperative on the Magistrate to act as per Clause 20 of the Bill also cannot be un constitutional. This is because the Magistrate cannot make an order contrary to a valid detention order and release such suspect from detention.

We have already adverted to the obligation on the part of the government to protect the society from organised criminals. We have also held that the enjoyment of Fundamental Rights of the citizens cannot be freely exercised in the presence of organised criminal gangs in the society. Therefore, investigators have to be given necessary powers to facilitate the conduct of investigations. Then only the prosecutions that will be launched against such accused would be successful. The Executive Detention is already part of our law in certain other enactments. There is no basis for us to hold that Clause 20 is

[11] SC SD 122, 123, 125, 127–133, 135– 140, 142–156, 158, 160–168/2026.

inconsistent with any provision of law. Furthermore, we observe that there are additional safeguards introduced in this Bill. This includes judicial oversight.

Clause 21 (Detention Orders)

The Petitioners contend that Clause 21 of the Bill would be inconsistent with Articles 12(1) and 13(2) of the Constitution. The Petitioners contend that Clause 21 of the Bill authorises prolonged deprivation of liberty for the purpose of investigation and interrogation, rather than on the basis of a judicial determination that such continued detention is lawful and necessary.

Hon. Attorney General has already undertaken to present the amended version of Clause 21 of the Bill at the Committee Stage. The amended version of Clause 21 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

*(1) The Inspector General of Police or any officer not below the rank of a Deputy Inspector General of Police authorised by the Inspector General of Police in that behalf may make an application in writing to the Secretary for a Detention Order to detain a suspect who is connected with or concerned in ~~a serious crime~~ **an offence** under this Act at a police station for any purpose specified in subsection (4).*

(2) Upon receipt of an application under subsection (1), where the Secretary is satisfied that reasonable grounds exist to believe that the suspect has to be detained for any of the purposes specified in subsection (4), he may, after recording such reasons, issue a Detention Order substantially in the form set out in the Fifth Schedule, authorising the detention of the suspect.

(3) Every Detention Order issued under this section shall be for a period not exceeding two months at a time, and the aggregate period of detention under such Detention Orders shall not exceed one year from the date of the initial Detention Order issued for the purpose of detaining the suspect under subsection (1).

(4) A Detention Order under subsection (1) shall state the reasons for the issuance thereof and shall be issued where it is necessary for any one or more of the following purposes:-

…

*(b) to obtain material for an investigation and potential evidence relating to the commission of ~~a serious crime~~ **such offence** under this Act; or*

…

*(6) A copy of the Detention Order under this section shall be served on the suspect being detained, within a period of ~~seventy two~~ **forty eight** hours from the issuance of such Detention Order and the acknowledgement thereof by the suspect shall be obtained and filed in the relevant Magistrate's Court.*

…

Although the Petitioners have claimed that the issuance of detention orders are violative of Articles 12, 13 and 4(c) read with 3 of the Constitution, we observe that the extension of the 24-hour time limitation was considered by this Court in the Special Determination pertaining to Anti-Terrorism Bill.[12] In the said Determination, this Court justified the extension on the basis of Article 15(7) of the Constitution.[13]

[12] SC SD 01-13, 18-38/2024.
[13] ibid., page 46.

Further, in the Special Determination on the Protection of the State from Terrorism Bill,[14] Clause 27 of the PST Bill, also has provided for issuance of detention orders. This Court has upheld the constitutionality of that provision in that determination.

It is only the Inspector General of Police or any officer not below the rank of a Deputy Inspector General of Police authorised by the Inspector General of Police who can make an application for a Detention Order to detain a suspect. Such application must be in writing. The application has to be submitted to the Secretary. The Secretary can issue a Detention Order to detain a suspect only if he is satisfied that reasonable grounds exist to believe that such suspect has to be detained. He also has to record reasons for doing so. Such Detention Order can only be issued for any one or more of the purposes mentioned in Clause 21(4). Thus, we observe that there are additional safeguards introduced in this Clause itself. Therefore, we have no basis to hold that Clause 21 is inconsistent with any provision of law.

Clause 22 (Extension of the period of detention)

The Petitioners contend that Clause 22 permitting the executive to extend the period of detention read with Clauses 20 and 21, is inconsistent with Articles 12(1) and 13(2) of the Constitution.

Clause 22 of the Bill has been produced below for reference:

> *(1) Where it is necessary to detain a suspect beyond the period of detention referred to in paragraph (a) of subsection (3) of section 20, such suspect shall upon the expiry of that period, be produced before the High Court together with the Detention Order issued under section 21 and the officer in charge of the relevant police station may through the Attorney General apply to the High*

[14] SC SD 122, 123, 125, 127–133, 135– 140, 142–156, 158, 160–168/2026.

Court for an order to extend the period of detention of such suspect by giving effect to such Detention Order.

(2) The High Court shall record the submissions made in support of the application for an order giving effect to the extention of the period of detention, and any objections raised by the suspect or his Attorney-at- Law to such extention of the Detention Order.

(3) Where there is a necessity to maintain confidentiality of the submissions for the purpose of the investigations, an application shall be made to the High Court in that regard and the High Court may make an appropriate order relating thereto.

(4) Upon consideration of the submissions made under subsection (2), the High Court may-

(a) make an order to give effect to the Detention Order for a further period as may be specified in such order; or

(b) refuse to give effect to the extended Detention Order stating the reasons therefor and upon inquiry, remand the suspect or release him on bail.

(5) The proceedings under this section may be held in camera, subject to the provisions of Article 106 of the Constitution.

Detaining a suspect beyond the original period of detention under this Clause can only be done through an order by the High Court. It is only the Hon. Attorney General who can make such an application before the High Court. Therefore, making such application is not open for the members of Sri Lanka Police. We are of the view that these are additional safeguards. In any case, further detention by an order of the High Court. We see no inconsistency of Clause 22 with any provision of the Constitution.

Clause 23 (Suspect may be released on bail)

The Petitioners contend that Clause 23 of the Bill denying detained suspects under Detention Orders an equivalent statutory right to seek bail, thereby, resulting in unequal treatment and restricting judicial discretion over personal liberty, is inconsistent with Articles 12(1), 13(2), 13(3) and 13(5) of the Constitution read with Articles 3, 4(c) and 4(d). The Petitioners further highlighted the imposition of the death penalty.

Clause 23 of the Bill has been produced below for reference:

(1) A suspect remanded under the provisions of paragraph (b) of subsection (3) of section 20, may be released on bail by the High Court: Provided however, a suspect concerned in committing or having committed a serious crime punishable with life imprisonment or sentence to death under this Act may be released on bail by the High Court only in exceptional circumstances.

(2) A suspect shall not be held in remand in respect of a serious crime under this Act for a period exceeding one year from the date on which he was first remanded.

(3) If any indictment has not been preferred within the period referred to in subsection (2), the High Court shall release the suspect on bail.

The Hon. Attorney General has proposed the amended version of Clause 23. The amended version of Clause 23 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

(1) A suspect remanded under the provisions of paragraph (b) of subsection (3) of section 20, may be released on bail by the High Court:

Provided however, a suspect concerned in committing or having committed ~~a serious crime~~ ***an offence under this Act*** *punishable with life imprisonment or sentence to death under this Act may be released on bail by the High Court only in exceptional circumstances.*

(2) A suspect shall not be held in remand in respect of ~~a serious crime~~ ***such an offence*** *~~under this Act~~ for a period exceeding one year from the date on which he was first remanded.*

…

The Petitioners sought to argue that the jurisdiction to grant bail must be with the Magistrate's Court and not with the High Court. However, in the Special Determination on the Protection of the State from Terrorism Bill,[15] the jurisdiction vested in the High Court under Section 29 of the PST Bill to release a suspect on bail was considered a safeguard and an indication of judicial oversight.

It is pertinent to cite the following excerpt from that Determination:

> *"Moreover, this Court in its Determination regarding the Prohibition of Ragging and other Forms of Violence in Educational Institutions Bill held as follows:*
>
> > *"This determination does not lay down a rule that bail must always be decided by the Magistrate before whom an arrested person is first produced. Parliament may determine which court is to exercise jurisdiction over bail and may prescribe conditions subject to which bail may be granted."*[16]
>
> *Judges of the High Court are judges exercising the appellate power over the judgments and orders pronounced by the Magistrates. Thus, it is the Judges of the*

[15] SC SD 122, 123, 125, 127–133, 135– 140, 142–156, 158, 160–168/2026.
[16] SC SD 6 and 7/1998 at page 61-62.

High Court who are expected by law to correct any errors of facts and law committed by the Magistrates. However, both the Magistrates and the Judges of the High Court are exercising the judicial power of the people. Therefore, the issue as to what Court must be conferred with the jurisdiction to grant bail in a given category of cases would be a matter of policy. We need not interfere with the government's policy making power unless such policy is found to be manifestly unreasonable."

For those reasons we hold that Clause 23 of the Bill is not inconsistent with any provision of the Constitution.

Clause 24 (Restriction Orders)

The Petitioners contended that Clause 24 of the Bill does not provide for a person to obtain the services of an Attorney-at-Law when a restriction order has been made against such person. The Petitioners' contention is that Clause 24(3)(c) has permitted restriction of a person's communication or association with other persons. It is their position that this has interfered with the exercise of Fundamental Rights of freedom of movement, expression and association, and therefore is inconsistent with Articles 12(1), 13(5) and 14(1)(a), (b), (c) and (g) of the Constitution.

However, Hon. Attorney General has agreed to amend Clause 24 at the Committee Stage. The amended version of Clause 24 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

(1) Where, upon an application made by a police officer not below the rank of a Deputy Inspector General of Police, a Magistrate is satisfied, on the basis of material placed before him that –

*(b) a person is engaging in, has engaged in or is preparing to engage in the commission of a ~~serious crime~~ **an offence** under this Act;*

*(c) such person poses a credible and serious risk of committing or facilitating the commission of such ~~serious crime~~ **offence**; and*

*(d) the making of a restriction order is necessary for the purpose of preventing the commission of such ~~serious crime~~ **offence** and that less restrictive measures would not be effective,*

the Magistrate may make a restriction order imposing such conditions as are necessary and proportionate in the circumstances.

…

(3) A restriction order may impose only such measures as are strictly necessary for the purposes specified in subsection (1), including–

…

*(c) restrictions on communication or association with specified persons or entities reasonably believed to be connected with a ~~serious crime under this Act~~ **an offence under this Act**; or*

….

*(6) The person against whom a restriction order is sought shall be given a reasonable opportunity to **obtain access to and advice from an Attorney-at-Law and** be heard ~~and to be represented by an Attorney-at-Law~~, unless the Magistrate determines, for recorded reasons, that urgent circumstances require the order to be ex parte and in such event, the person shall be afforded an opportunity to be heard at the earliest possible time.*

(7) Any person aggrieved by a restriction order may apply to the High Court or the Court of Appeal for revision or judicial review of such order.

…

We have already adverted to the obligation on the part of the government to protect the society from organised criminals. We have also held that the enjoyment of Fundamental Rights of the citizens cannot be freely exercised in the presence of organised criminal gangs in the society. Therefore, investigators have to be given necessary powers to facilitate the conduct of investigations. Then only the prosecutions that will be launched thereafter would be successful. The Executive Detention is already part of our law in certain other enactments.

It is only a Police officer not below the rank of a Deputy Inspector General of Police who can make an application for a Restriction Order. The application has to be made to the Magistrate. The Magistrate can issue a Restriction Order only if he is satisfied with the existence of the grounds enumerated in that Clause. Furthermore, it is open for the Magistrate to impose a condition also in the Restriction Order. We also observe that in terms of Clause 24(3) it is issued where such measures are strictly necessary for the purposes specified in Clause 24 (1). Thus, we observe that there are additional safeguards introduced in this Clause itself.

Although the Petitioners contended that given the broad and potentially indefinite duration of Restriction Orders and the ambiguity surrounding the underlying offences, such restriction orders can be in place for an indefinite time period. This argument is not correct because in terms of Clause 24(5), every restriction order shall be made for a period not exceeding three months at a time. Moreover, such orders are issued to restrict activities of persons, who can be reasonably believed to be connected with an offence under this Bill.

We need to mention another matter with regard to Clause 24(7) of the Bill. We observe that in the Special Determination pertaining to the Protection of the State from Terrorism Bill,[17] we have already considered a similar provision and a similar argument. Clause 24

[17] SC SD 122, 123, 125, 127–133, 135– 140, 142–156, 158, 160–168/2026.

of the POC Bill empowers the Magistrate to impose Restriction Orders in the exercise of judicial power. Therefore, such an order would be reviewable by an appropriate higher Court having jurisdiction in that regard.

Further, Clause 60(7) of the PST Bill considered in the Special Determination pertaining to the Protection of the State from Terrorism Bill provided as follows:

> "*Any person aggrieved by a Restriction Order may apply to the High Court or the Court of Appeal for revision or judicial review of such Order.*"

This provision is similar to Clause 24(7) of the POC Bill. In the Special Determination pertaining to the Protection of the State from Terrorism Bill, this Court, in respect of Clause 60(7) of the PST Bill held as follows:

> "*Although Clause 60(7) has provided specifically for revision or judicial review of such restriction order imposed by the Magistrate we are of the view that Clause 60(7) is superfluous as it would any way be possible for an aggrieved person to apply for the next appropriate Court exercising appellate powers over the orders of a Magistrate. We are of the view that the removal of Clause 60(7) would make the provision regarding the judicial oversight by higher Court unambiguous. Once that is done Clause 60 would not be inconsistent with the Constitution.*"

We have already stated above that Clause 24(7) of the POC Bill is identical to that of Clause 60(7) of the PST Bill. Accordingly, hold that Clause 24(7) of the POC Bill is superfluous. We are of the view that the removal of Clause 24(7) would make the provision regarding the judicial oversight by higher Court unambiguous. Once that is done Clause 24 would not be inconsistent with the Constitution.

Clause 25 (Detention during remand custody)

The Petitioners contend that Clause 25 of the Bill enabling a person in judicial remand custody to be removed and transferred to police detention for further investigation, is inconsistent with Articles 11, 12(1), 13(2) and 13(3) of the Constitution.

Having taken into consideration the concerns raised by the Petitioners, Hon. Attorney General has already undertaken to present the amended version of Clause 25 at the Committee Stage. The amended version of Clause 25 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

Where the officer in charge of a police station receives credible information that any person in remand custody for any ~~serious crime under this Act~~ ***offence under this Act*** *or any offence under any other written law–*

(a) has committed ~~a serious crime~~ ***an offence*** *under this Act;*

(b) has attempted, ***aided,*** *abetted, conspired, organised, facilitated, ~~counseled,~~ procured, directed, ~~aided,~~ incited, encouraged, ~~instigated,~~ commanded, advised or prepared to commit ~~a serious crime under this Act~~* ***an offence under this Act*** *or has done any act preparatory to the commission of ~~a serious crime under this Act~~* ***an offence under this Act****; or*

(c) had committed ~~a serious crime under this Act~~ ***an offence under this Act*** *prior to being arrested, and such officer in charge of a police station was unaware of such fact, such officer in charge of a police station shall report such information to the Attorney General.*

(2) A Judge of the High Court shall, on an application made by the Attorney General, immediately inquire into such information and at the conclusion of

> *the inquiry, if he is satisfied that the allegation against the suspect, appears to be well founded, and where he deems it expedient to keep the suspect under detention for further investigation, he may, on the production of a Detention Order, make an order to give effect to the Detention Order and permit the officer in charge of the police station to –*
>
> *…*
>
> *(d) order that the suspect be kept ~~in isolation~~* ***under a lawful authority decided by court*** *or under security.*
>
> *…*

As has already been adverted to above, we have to appreciate that special powers need to be conferred on investigators with regard to the challenges they face in view of the operations carried out by well organised criminal groups. It is in that context that we have already held that it is necessary for the Government to enact adequate laws to protect the society from dangers posed by the organised criminals. The powers conferred on the investigators under Clause 25 is yet another measure that has been taken to curb the operations by organised criminal groups.

It is only the Officer-in-Charge of Police station who can report such information to the Attorney General. It would be the Attorney General who can make an application. The application must be made to the High Court. The Judge of the High Court has to inquire into such information. It is at the conclusion of such inquiry that the Judge of the High Court can make an order under Clause 25. This only when the Judge is satisfied that the allegation against the suspect is well founded. Thus, we observe that there are adequate safeguards introduced in this Clause itself. Those safeguards will operate to prevent abuses. Therefore, we hold that Clause 25 would not be inconsistent with the provisions of the Constitution.

Clause 26 (Suspect to have access to an Attorney-at-Law in remand or detention)

The Petitioners contend that Clause 26 of the Bill fails to expressly safeguard confidential access to legal counsel and ensure that restrictions on a detainee's communication are lawful, necessary and proportionate, thereby potentially undermining the right to legal representation and the constitutional guarantees of a fair trial and due process.

Clause 26 of the Bill is reproduced below for reference:

> *A suspect remanded or detained under this Act shall have the right to communicate with and be visited by his relatives, Attorney-at-Law or any other person of his choice, subject to the conditions established by written law.*

Giving access to an Attorney-at-Law to visit a suspect in custody is salutary. We must take notice that this is a suspect under investigation concerning an offence committed by a member of an organized criminal group. Nevertheless Clause 26 has given rights to such suspect as per the Clause cited above. In the above circumstances, we see no reason or basis to hold that Clause 26 of the Bill is inconsistent with any provision of the Constitution.

Clause 27 (Detention until the conclusion of the trial)

Clause 27 of the Bill enables an accused person, who has been indicted, to be removed from ordinary remand custody and detained under a separate detention regime until the conclusion of his trial. The Petitioners contend that is inconsistent with Articles 11, 12(1), 13(2), 13(3) and 13(5) of the Constitution.

Clause 27 of the Bill has been produced below for reference:

(1)

(a) If the Secretary is of the opinion that it is necessary or expedient that a person in remand custody against whom an indictment has been forwarded under this Act be kept in the custody of any lawful authority, in the interest of national security or public order or where there is a threat or an apprehension of serious harm to the life of the accused during the pendency of the trial, he may make an application through the Attorney General, to the relevant High Court together with a copy of the Detention Order to detain the accused until the conclusion of the trial setting out the reasons that necessitate the issuance of a Detention Order and after hearing such application and the objections thereto the High Court may make an order giving effect to the Detention Order, subject to such directions to ensure the conduct of a fair trial.

(b) The provisions of subsections (1), (2), (6) and (7) of section 21 shall mutatis mutandis apply in relation to the Detention Order issued under paragraph (a).

(2) The Detention Order made in pursuance of subsection (1) shall be communicated to the Commissioner of Prisons and it shall be the duty of the Commissioner of Prisons to deliver the custody of such person to the authority specified in such order, and the provisions of the Prisons Ordinance (Chapter 54) shall cease to apply in relation to the custody of such person.

As has already been adverted to above, we have to appreciate that special powers need to be conferred on investigators to face the challenges they face in view of the operations carried out by well organised criminal groups. It is in that context that we have already held that it is necessary for the Government to enact adequate laws to protect the society from dangers posed by the organised criminals. The powers conferred on the investigators under Clause 25 is yet another measure that has been taken to curb the operations by organised criminal groups.

We observe that it is only the Secretary who can make an application. As such application must be made through the Attorney General, it would be the Attorney General who can make such application. The application must be made to the High Court. The Judge of the High Court has to inquire into such information. It is at the conclusion of such inquiry that the Judge of the High Court can make an order under Clause 27. The Judge of the High Court is required to give reasons for making an order under this Clause. Thus, we observe that there are adequate safeguards which would militate against any abuse of such power. Therefore, we hold that Clause 25 would not be inconsistent with the provisions of the Constitution.

Clause 28 (Judicial authorisation for special investigative techniques)

The Petitioners challenge the constitutionality of Clause 28 of the Bill on the basis that extensive powers of surveillance, interception of communications and extraction of digital information upon police officers, along with Clause 28(1) providing discretion to a police officer to apply to a Magistrate for authorisation and the lack of a permissible duration of surveillance, the retention and subsequent use of information obtained, or safeguards for protecting confidential communications between Attorneys-at-Law and their clients resulting in inconsistency with Articles 12(1) and 13(3) of the Constitution.

Clause 28 of the Bill has been reproduced below for reference:

> *(1) A police officer not below the rank of a Sub Inspector of Police shall have the power to conduct the following special investigative techniques:-*
>
> *(a) controlled delivery;*
>
> *(b) digital surveillance which includes the interception and recording of digital, voice, and video communication;*
>
> *(c) undercover operations, including those involving the use of decoys;*

(d) laying of traps; and

(e) forensic extraction of data, information and images from computers, mobile phones, digital data storage devices, and other digital equipment: Provided that, a police officer not below the rank of a Sub Inspector of Police may make an ex parte application in camera along with sufficient material to the Magistrate's Court for an order authorising the exercise of any of the powers stated above.

(2) Upon the receipt of an application as afore-stated from a police officer not below the rank of Sub-Inspector of Police, the Magistrate shall, without delay, consider the said application and, upon being satisfied, grant authorisation for the conduct of necessary special investigations. Where necessary, the Magistrate may, in the interest of justice, impose conditions to be complied with.

(3) The Magistrate shall prior to granting authorisation for the conduct of a special investigative technique, consider the necessity and justification for its conduct based on the principle of proportionality for such investigative technique to be carried out.

(4) Following the obtaining of authorisation as referred to above, the police officer not below the rank of Sub-Inspector of Police shall, once in fourteen days report progress of such investigation using the special investigative techniques for which authorisation has been obtained to the relevant Magistrate.

Using special techniques of investigation has not happened for the first time in this Bill. Such provisions are found in other enactments as well. As has been mentioned above, the special powers of investigation with regard to the investigation must be given to the investigators to meet the challenges posed by organised criminal groups in order to protect the society and allow their free enjoyment of their Fundamental Rights.

The provision in Clause 28 of the Bill requires firstly, that these powers be exercised by a police officer not below the rank of a Sub Inspector of Police. Secondly, even such officer has to make the application to the Magistrate. The Magistrate can authorize the conduct of a special investigative techniques on the principle of proportionality. Subsequent to such an order, an officer not below the rank of a Sub Inspector of Police is required to report progress of such investigation using the special investigative techniques for which authorisation has been obtained to the relevant Magistrate once in fourteen days. These are safeguards in place.

In the Special Determination pertaining to Convention on the Suppression of Terrorist Financing (Amendment) Act Bill,[18] this Court has to consider Clause 12 of that Bill which sought to introduce special investigative techniques which included the following:

(a) surveillance and observation;
(b) undercover operations;
(c) video recording;
(d) using listening devices;
(e) controlled deliveries; or
(f) accessing computer data and computer systems

The learned President's Counsel who appeared for the Petitioners in that case sought to argue that the permitting any new investigation techniques would open the door for unknown techniques to be utilized by police officers and these techniques would encroach upon the privacy of persons.

Having considered that submission, this Court proceeded to hold as follows at page 17:

> "*We are unable to accept that the techniques listed in Section 4J are new investigation techniques. Investigators in this country from time immemorial have*

[18] SC SD 17/2026, SC SD 20/2026 & SC SD 24/2026.

been using investigating techniques such as surveillance and observation; undercover operations and controlled deliveries. From somewhat comparatively recent times, they also have started using investigating techniques such as: video recording; using listening devices; and accessing computer data and computer systems. Indeed, Parliament has already brought in laws to make video; audio recordings; and computer data taken from computers, admissible as evidence in both criminal and civil cases. The evidence gathered through techniques such as these have been successfully used in trials in criminal cases by the prosecution. Indeed, many a time such evidence is brought in by the accused persons also to negate the versions of the prosecution.

The method to be adopted by the investigating police officers to exercise these powers would depend on the facts and circumstances of each case. Therefore, we are unable to accept the argument that these powers as set out in the Bill are vague and overly broad; lack legal certainty; and have the potential to lead to arbitrary use and/or abuse of police powers."

Moreover, the wording in Article 14A(2) of the Constitution "*No restrictions shall be placed on the right declared and recognized by this Article, other than such restrictions prescribed by law as are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and of the reputation or the rights of others* …" shows clearly that the guiding principle of Article 14A would be to make available information subject only to those that have been specified by law. What it has specifically taken into account is the importance of maintaining the public safety and the prevention of disorder or crime.

In the above circumstances, we are unable to accept that permitting such powers to be used by the investigators as set out in the Bill when conducting an investigation is inconsistent with Article 12(1) of the Constitution.

Clause 32 (Application of the Code of Criminal Procedure Act)

The Petitioners contend that Clause 32(2) of the Bill which has made Sections 115 and 116 of the Code of Criminal Procedure Act inapplicable for the investigation of offences under this Bill is inconsistent with Articles 12(1), 13(1) and 13(2) of the Constitution.

Having taken into consideration, the concerns raised by the Petitioners, Hon. Attorney General has already undertaken to present the amended version of Clause 32 at the Committee Stage. The amended version of Clause 32 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

*(1) Any ~~serious crime under this Act~~ **offence under this Act** shall be investigated, prosecuted and punished in terms of the provisions of this Act and the Code of Criminal Procedure Act.*

(2) The provisions of sections 115 and 116 of the Code of Criminal Procedure Act shall have no application in relation to a suspect under this Act.

*(3) Notwithstanding anything to the contrary in the Code of Criminal Procedure Act, the provisions of section 306 of that Act shall not apply in the case of any person who pleads or is found guilty, by or before any court, for ~~any serious crime under this Act~~ **offence under this Act**.*

(4) Subject to the provisions of this section, the provisions of the Code of Criminal Procedure Act which are not inconsistent with the provisions of this Act shall, mutatis mutandis, apply to any legal proceeding under this Act.

The argument of the Petitioners was advanced on the basis that the removal of the application of Sections 115 and Section 116 of the Code of Criminal Procedure Act would lead to deprivation of the suspects' right to make any suitable application to the Magistrate. The Petitioners also sought to argue that taking away the applicability of

Sections 115 and 116 of the Code of Criminal Procedure Act has amounted to denial of the judicial supervision of the investigation. This is not so.

The exclusion of the application of Sections 115 and 116 of the Code of Criminal Procedure Act cannot be considered as authorizing police officers to dispense with the requirement of producing an arrested suspect before a Magistrate. We also observe that the requirement to report facts fortnightly to the Magistrate during the continuation of the investigation which is found in Section 120 of the Code of Criminal Procedure Act still applies. Therefore, we are unable to accept the arguments of the petitioners that a person produced before a Magistrate as a suspect under the provisions of this Bill would not have any recourse with regard to his rights because of the removal of the effect of Sections 115 and 116 of the Code of Criminal Procedure Act.

We reject the Petitioners' contention that Clause 32(2) of the Bill which has made Sections 115 and 116 of the Code of Criminal Procedure Act inapplicable for the investigation of offences under this Bill is inconsistent with Articles 12(1), 13(1) and 13(2) of the Constitution.

Clause 34 (Prosecution not to be time-barred)

Clause 34 of the Bill has been produced below for reference:

> *Notwithstanding anything to the contrary in any other law, the right of prosecution for a serious crime under this Act shall not be barred by any length of time.*

The Hon. Attorney General has proposed an amended version of Clause 34 to be presented at the Committee Stage. The amended version of Clause 34 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

Notwithstanding anything to the contrary in any other law, the right of prosecution for a ~~serious crime under this Act~~ ***an offence under this Act*** *shall not be barred by any length of time.*

Be that as it may, we must also mention here that the Petitioners have not challenged Clause 34 of the Bill in their Petitions.

(IV) PART III - POWERS OF A POLICE OFFICER

Clause 37 (Duty of the police officer to prevent the commission of a serious crime under this Act)

The Petitioners contend that Clause 37 has conferred sweeping powers to police officers.

Clause 37 of the Bill has been produced below for reference:

(1) It shall be the duty of every police officer to take any measure as may be appropriate, subject to the provisions of this Act, to prevent the commission of a serious crime under this Act.

(2) For the purpose of subsection (1), any such officer may take such measures-

(a) in good faith;

(b) proportionate to the harm that may be inflicted by the commission of the serious crime alleged to have been committed; and

(c) only to the extent such measures may be necessary to prevent the commission of a serious crime under this Act or for the purpose of apprehending persons who have committed a serious crime under this Act.

The Hon. Attorney General has proposed the amended version of Clause 37 to be presented at the Committee Stage. The amended version of Clause 37 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> *(1) It shall be the duty of every police officer to take any measure as may be appropriate, subject to the provisions of this Act, to prevent the commission of ~~a serious crime under this Act~~* ***an offence under this Act****.*
>
> *(2) For the purpose of subsection (1), any such officer may take such measures-*
>
> *(a) in good faith;*
>
> *(b) proportionate to the harm that may be inflicted by the commission of ~~the serious crime~~* ***an offence under this Act*** *alleged to have been committed; and*
>
> *(c) only to the extent such measures may be necessary to prevent the commission of a serious crime under this Act or for the purpose of apprehending persons who have committed ~~a serious crime under this Act~~* ***such an offence****.*

We observe that the concept of power being given to police officers to prevent commission of crimes is nothing new. It is acceptable worldwide. This is for the protection of the society. We observe that such police officer can use these powers only to the extent that such use is proportionate to the harm that may be inflicted by the commission of the relevant serious crime alleged to have been committed. Further such power can only be used for the purposes set out in Clause 37(c). In the above circumstances, we reject the Petitioners' contention that Clause 37 of the Bill is inconsistent with the provisions of the Constitution.

Clause 41 (Directly submitting items to a Government Analyst or other expert)

The Petitioners contend that Clause 41 of the Bill removes the Magistrate's role in supervising the forwarding of productions for expert examination and leaves the selection of experts to the discretion of the police thereby, when read with Clause 32, is deemed to be inconsistent with Articles 12(1) and 13(3) of the Constitution, read with Articles 3 and 4(d) of the Constitution.

Clause 41 of the Bill has been produced below for reference:

(1) An officer in charge of a police station may directly submit any document, thing or article, which he reasonably believes to be connected with the commission of a serious crime, to the Government Analyst or to any other local or foreign expert for examination and analysis.

(2) The report of the examination shall be directly submitted by the Government Analyst or other expert to the officer in charge of the relevant police station, with a copy to the Magistrate before whom the suspect has been, or is to be produced.

The Hon. Attorney General has proposed the amended version of Clause 41 to be presented at the Committee Stage. The amended version of Clause 41 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

(1) An officer in charge of a police station may directly submit any document, thing or article, which he reasonably believes to be connected with the commission of ~~a serious crime~~ ***an offence under this Act****, to the Government Analyst or to any other local or foreign expert for examination and analysis.*

...

In the Special Determination pertaining to the Poisons, Opium and Dangerous Drugs (Amendment) Bill,[19] this Court stated as follows at page 4:

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

Thus, we observe that in the absence of a provision of this nature, the continuous incarceration of the suspects arrested under POC Bill would be inevitable. In the said Determination this Court held that such a provision would not be inconsistent with the Constitution. In these circumstances, we hold that Clause 41, in the above form, would not be inconsistent with the provisions of the Constitution.

[19] SC SD 120-121/2026.

Clause 43 (Obtaining information from bank, financial institution), Clause 44 (Obtaining information from service providers), and Clause 45 (Unlocking data and information)

Clause 43 (Obtaining information from bank, financial institution)

The Petitioners contend that Clause 43 permits the police to obtain orders compelling the disclosure of confidential financial information without prior notice to the affected person, an opportunity to be heard, or subsequent notification and an opportunity to challenge the order. Accordingly, the Petitioners contend that the absence of adequate procedural safeguards is alleged to be inconsistent with Articles 12(1), 13(3), 13(5) and 14(1)(g), read with Articles 3 and 4(d) of the Constitution.

Clause 43 of the Bill has been produced below for reference:

> *(1) The officer in charge of the relevant police station may apply for an order from a Magistrate to require any bank, non-banking financial institution or designated non-finance business to provide the following information and material to such officer, subject to the provisions of the Prevention of Money Laundering Act, No. 5 of 2006 and the Financial Transactions Reporting Act, No. 6 of 2006: -*
>
> *…*
>
> *Provided however, such police officer may apply for an order under this section only if there exist reasonable grounds of suspicion against any person in the commission of a serious crime under this Act.*
>
> *…*

The Hon. Attorney General has proposed the amended version of Clause 43 to be presented at the Committee Stage. The amended version of Clause 43 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> *(1) The officer in charge of the relevant police station may apply for an order from a Magistrate to require any bank, non-banking financial institution or designated non-finance business to provide the following information and material to such officer, subject to the provisions of the Prevention of Money Laundering Act, No. 5 of 2006 and the Financial Transactions Reporting Act, No. 6 of 2006: -*
>
> *…*
>
> *Provided however, such police officer may apply for an order under this section only if there exist reasonable grounds of suspicion against any person in the commission of ~~a serious crime under this Act~~* ***an offence under this Act****.*
>
> *…*

In respect of the arguments of the Petitioners challenging this Clause, we would state here that the reasons we have given when we considered the arguments of the Petitioners advanced in respect of Clause 28 (Judicial authorisation for special investigative techniques) would apply. For those reasons, we hold that Clause 43, in the above form, would not be inconsistent with the provisions of the Constitution.

Clause 44 (Obtaining information from service providers)

The Petitioners contend that Clause 44(4) empowers a Deputy Inspector General of Police to obtain subscriber information, call records and tower location data without prior judicial authorisation, requiring only that the Magistrate be informed afterwards. The Petitioners contend that absence of reasonable grounds, limits on access and effective judicial oversight permit the unrestricted collection of sensitive personal information, thereby infringing privacy and other Fundamental Rights. Accordingly, Clause 44(4) is alleged to

be inconsistent with Articles 12(1), 13(1) and 14(1)(a), (b), (c), (e) and (g) of the Constitution, with Article 14A(2) recognising privacy as a constitutionally protected interest.

Relevant sub clauses of Clause 44 of the Bill have been produced below for reference:

> *(1) The officer in charge of the relevant police station may apply for an order from a Magistrate to require any telecommunication, satellite or digital service or data service provider to provide information, including –*
>
> *(a) information pertaining to services provided or being provided by such service provider to any person;*
>
> *(b) information pertaining to services enjoyed by any person to whom such services have been made available;*
>
> *(c) any information, data, document, or record that may be stored, archived or otherwise kept by such service provider; or*
>
> *(d) information pertaining to the uploading or downloading of data or information, to or from any instrument through the service provided by such service provider: Provided however, such police officer may apply for an order under this section only if there exist reasonable grounds of suspicion against any person in the commission of a serious crime under this Act.*
>
> *…*
>
> *(4) Notwithstanding the provisions of subsection (1), a police officer not below the rank of Deputy Inspector General of Police may, without an order of a Magistrate, obtain from any telecommunication, satellite, digital service, or data service provider information relating to the identity of the owner or subscriber, calls, and the tower location of any device or instrument and such*

police officer or the officer acting on his behalf shall forthwith inform the Magistrate in writing of the information so obtained.

(5) Any police officer who, being authorised under this Act to obtain from a service provider information relating to the identity of the owner or subscriber, calls, or the tower location of any device or instrument, knowingly obtains such information relating to a third party without lawful justification commits an offence under this Act and shall, upon conviction after summary trial before a Magistrate, be liable to a fine not exceeding one hundred thousand rupees and to such other disciplinary action as may be applicable.

The Hon. Attorney General has proposed the amended version of Clause 44 to be presented at the Committee Stage. The amended version of Clause 44 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

(1) The officer in charge of the relevant police station may apply for an order from a Magistrate to require any telecommunication, satellite or digital service or data service provider to provide information, including –

…

Provided however, such police officer may apply for an order under this section only if there exist reasonable grounds of suspicion against any person in the commission of ~~a serious crime under this Act~~ ***an offence under this Act****.*

…

We observe that it is the Officer-in-Charge of a police station who has been conferred the power to make an application to the Magistrate for an order to execute any of those items

listed in Clause 44. Further, it is only by an order by the Magistrate that such enforcement is possible. Therefore, judicial oversight is present right through.

In those circumstances, we hold that Clause 44, in the above form, would not be inconsistent with the provisions of the Constitution.

Clause 45 (Unlocking data and information)

The Petitioners contend that Clause 45 of the Bill permits extensive access to private communications, encrypted information and digital data without prescribing adequate safeguards concerning the scope, duration or use of such material. They further contend that Clause 45 fails to expressly protect confidential communications between an Attorney-at-Law and his client, thereby permitting investigating authorities to obtain information protected by legal professional privilege. The Petitioner contend that such interference with confidential legal communications undermines the right to obtain legal advice and the right to a fair trial. Accordingly, the Petitioners contend that Clause 45 of the Bill is inconsistent with Articles 12(1) and 13(3) of the Constitution, read with Articles 3, 4(c) and 4(d).

Clause 45 of the Bill has been produced below for reference:

> *(1) For the purposes referred to in subsection (2), a police officer not below the rank of a Superintendent of Police who has reasonable grounds of suspicion against any person in the commission of a serious crime under this Act may make an application to a Magistrate seeking an order authorising such officer –*
>
> *(a) to direct any person who provides locking or encryption services pertaining to any communication or storage services or equipment of any data or information or other thing, to unlock or unencrypt the*

service or equipment and provide information contained therein to such police officer;

(b) to intercept, read, listen or record any postal message or electronic mail or any telephone, voice, internet, or video conversation, conference or any communication through any other medium; or

(c) to access any analogue or digital data or information exchange, or transfer system.

(2) The purposes for which the Magistrate may make an order under subsection (1) shall be –

(a) to determine the identity of a person who has committed;

(b) to determine the location of a person who has committed;

(c) to facilitate the conduct of an investigation into;

(d) to gather evidence against a person who has committed;

(e) to determine whether one or more persons are attempting, abetting, conspiring, organising, facilitating, counselling, procuring, directing, aiding, inciting, encouraging, instigating, commanding, advising or preparing to commit or doing any act preparatory to the commission of; or

(f) to take measures to prevent the commission of,

a serious crime under this Act.

(6) The Magistrate shall, if he is satisfied that the application is made in good faith and the making of such order is reasonably necessary for conducting an investigation, issue such order.

The Hon. Attorney General has proposed the amended version of Clause 45 to be presented at the Committee Stage. The amended version of Clause 45 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

(1) For the purposes referred to in subsection (2), a police officer not below the rank of a Superintendent of Police who has reasonable grounds of suspicion against any person in the commission of ~~a serious crime under this Act~~ ***an offence under this Act*** *may make an application to a Magistrate seeking an order authorising such officer –*

….

(2) The purposes for which the Magistrate may make an order under subsection (1) shall be –

….

(e) to determine whether one or more persons are attempting, ***aiding,*** *abetting, conspiring, organising, facilitating, ~~counselling,~~ procuring, directing, ~~aiding,~~ inciting, encouraging, ~~instigating,~~ commanding, advising or preparing to commit or doing any act preparatory to the commission of; or*

(f) to take measures to prevent the commission of, ~~a serious crime under this Act~~ ***an offence under this Act****.*

…

(4) The provisions of Section 126 of the Evidence Ordinance shall apply to this section.

We observe that it is an officer not below the rank of Superintendent of Police who has been conferred the power to make an application to the Magistrate for an order to execute

any of those items listed in Clause 45. He can do so only when he has reasonable grounds of suspicion against any person in the commission of a serious crime under this Act. Further, it is only by an order by the Magistrate that such enforcement is possible. Therefore, judicial oversight is present right through. In those circumstances, we hold that Clause 45, in the above form, would not be inconsistent with the provisions of the Constitution.

In the above circumstances, we hold that Clause 45, in the above form, would not be inconsistent with the provisions of the Constitution.

(V) PART IV - ADMISSIBILITY OF STATEMENTS

Clause 46 (Certain provisions of the Evidence Ordinance not applicable) and Clause 47 (Statement signed by the suspect to be admissible)

Clause 46 (Certain provisions of the Evidence Ordinance not applicable)

The Petitioners contend that Clause 46 of the Bill permitting statements obtained in police custody to be relied upon in prosecutions is inconsistent with Articles 11, 12(1), 13(3) and 13(5) of the Constitution read with Articles 3, 4(c) and 4(d).

Clause 46 of the Bill has been produced below for reference:

> *Notwithstanding anything to the contrary in any other law, the provisions of sections 25, 26 and 30 of the Evidence Ordinance shall have no application to any proceedings in respect of a serious crime under this Act.*

The Hon. Attorney General has proposed the amended version of Clause 46 to be presented at the Committee Stage. The amended version of Clause 46 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> *Notwithstanding anything to the contrary in any other law, the provisions of sections 25, 26 and 30 of the Evidence Ordinance shall have no application to any proceedings in respect of ~~a serious crime under this Act~~* ***an offence under this Act****.*

Clause 47 (Statement signed by the suspect to be admissible)

The Petitioners contend that Clause 47 of the Bill permitting confessions made to police officers of or above the rank of Assistant Superintendent of Police to be admitted in evidence, notwithstanding the risk of coercion during prolonged police detention and interrogation is inconsistent with Articles 11, 12(1) and 13(3) read together with Articles 4(d) and 3 of the Constitution. The Petitioners further contended that the reference in Clause 47(6) of the Bill, which has a reference to Sub Section 47(5), should be a reference to sub section 47(4).

Clause 47 of the Bill has been produced below for reference:

> *(1) Notwithstanding the provisions of any other law, at the trial of a person indicted for a serious crime under this Act, a statement in writing, signed by such person at any time, and whether –*
>
> *…*
>
> *(3) Any statement admissible in evidence under subsection (1) may be admissible against any other person indicted for jointly committing a serious crime under this Act with the person making the statement, if, and only if, such statement is corroborated in material particulars by evidence other than a statement referred to in subsection (1) of this section.*

(4) Every interview conducted under this section shall be audio and visually recorded, and such recording shall form part of the official record of the investigation.

(5) Any suspect whose statement is to be recorded shall be informed of his right to have access to an Attorney- at-Law of his choice to obtain legal advice prior to such interview or the recording of the statement.

(6) Where, due to technical failure or other exceptional circumstances, it is not practicable to record an interview in terms of subsection (5), the police officer conducting the interview shall –

…

The Hon. Attorney General has proposed the amended version of Clause 47 to be presented at the Committee Stage. The amended version of Clause 47 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

*(1) Notwithstanding the provisions of any other law, at the trial of a person indicted for ~~a serious crime under this Act~~ **an offence under this Act**, a statement in writing, signed by such person at any time, and whether –*

…

*(3) Any statement admissible in evidence under subsection (1) may be admissible against any other person indicted for jointly committing ~~a serious crime under this Act~~ **an offence under this Act** with the person making the statement, if, and only if, such statement is corroborated in material particulars by evidence other than a statement referred to in subsection (1) of this section.*

(4) Every interview conducted under this section shall be audio and visually recorded, and such recording shall form part of the official record of the investigation.

(5) Any suspect whose statement is to be recorded shall be informed of his right to have access to an Attorney- at-Law of his choice to obtain legal advice prior to such interview or the recording of the statement.

*(6) Where, due to technical failure or other exceptional circumstances, it is not practicable to record an interview in terms of subsection ~~(5)~~ **(4)**, the police officer conducting the interview shall –*

…

In Re the Foreign Exchange Bill, this Court held that "*the decision to bring up this Bill is nothing but a matter of policy*" and that:

"*The Policy Making Power is left to the authorities in whom it is vested by law. This Court has been reluctant to intervene in matters of policy unless such policy is found to be manifestly unreasonable.*"[20]

Similarly, in Re the Nation Building Tax (Amendment) Bill, this Court adopted the observation of Warrington LJ. in Short v. Poole Corporation that "*with the question whether a particular policy is wise or foolish the Court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority.*"[21]

Moreover, we are aware that confessions made to Police officers above a certain rank is admissible under the Prevention of Terrorism Act. That is part of our law.

We also observe that there is a requirement to audio and visually record every interview conducted under this Clause. Such recording shall form part of the official record of the

[20] SC SD 1-4/2017.
[21] SC SD 34/2016.

investigation. Further, it is also required that the suspect's right to have access to an Attorney- at-Law of his choice must be informed prior to such interview or the recording of the statement. We are of the view that these safeguards are adequate.

We also observe that Clause 46 has not made Section 24 of the Evidence Ordinance inapplicable in the proceeding with regard to the prosecutions pertaining to the offences under this Bill. This means that in the presence of any inducement, threat or promise, such statements would not be admitted as evidence. On the issues pertaining to admissibility of statements under Section 24 of the Evidence Ordinance our legal system is rife with jurisprudence.

We further observe that in terms of Clause 47(8), the admissibility of such statements has been made subject to "*heightened judicial scrutiny as to its voluntariness and admissibility*" where there are violations of the provisions in Clause 47(7) pertaining to the recording procedure.

In these circumstances, we hold that Clauses 46 and 47, in the amended form, would not be inconsistent with the provisions of the Constitution.

Clause 51 (Provisions of Sections 46, 47, 48 and 49 not to apply)

The Petitioners contend that Clause 51 permits the Court to amend an indictment and convict an accused of an offence that was never charged, without a preliminary inquiry or adequate opportunity to defend against the amended charge, while allowing the judge to form an opinion of guilt before the conclusion of the trial, thereby undermining the presumption of innocence and the right to a fair trial and raising concerns of inconsistency with Articles 12(1), 13(3) and 13(5) of the Constitution.

Clause 51 of the Bill has been produced below for reference:

> *Notwithstanding anything to the contrary contained herein or in any other law, where a person is indicted for a serious crime under this Act, other than the offence under section 7 or 8, and if at any time during the course of the trial, but before judgment, the court, upon being satisfied that the accused –*
>
> *(a) is not a member of an organised criminal group; and*
>
> *(b) has not acted in furtherance of a common criminal object borne by the members of an organised criminal group,*
>
> *is of the opinion that the accused has committed the alleged serious crime included in the indictment, without however, being guilty of the two ingredients mentioned in paragraphs (a) and (b), the judge may amend the indictment and convict him for such offence under such other law notwithstanding the fact that no preliminary inquiry had been held in respect of the said offence:*
>
> …

The Hon. Attorney General has proposed the amended version of Clause 51 to be presented at the Committee Stage. The amended version of Clause 51 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

> *Notwithstanding anything to the contrary contained herein or in any other law, where a person is indicted for ~~a serious crime under this Act~~* ***an offence under this Act****, ~~other than the offence under section 7 or 8,~~ and if at any time during the course of the trial, but before judgment, the court, upon being satisfied that the accused has not committed an offence under this Act but is of the opinion that the accused has committed an offence under any other law, the judge may amend the indictment and convict him for such other offence under such other law*

notwithstanding the fact that no preliminary inquiry had been held in respect of the said offence. –

~~(a) is not a member of an organised criminal group; and~~

(b) ~~has not acted in furtherance of a common criminal object borne by the members of an organised criminal group,~~

~~is of the opinion that the accused has committed the alleged serious crime included in the indictment, without however, being guilty of the two ingredients mentioned in paragraphs (a) and (b), the judge may amend the indictment and convict him for such offence under such other law notwithstanding the fact that no preliminary inquiry had been held in respect of the said offence:~~

…

We observe that similar provisions are found in the Code of Criminal Procedure Act. In terms of Section 177 thereof, where the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

We hold that Clause 51, in the above form, would not be inconsistent with the provisions of the Constitution.

(VI) PART V - DISCLOSURE AND TIPPING OFF and PART VI - GENERALPROVISIONS

Clause 54 (Non-disclosure of information and identity of the informer)

The Petitioners contend that Clause 54 restricts the disclosure of an informer's identity during judicial proceedings and limits the Court's discretion to order such disclosure in proceedings under the Bill, potentially preventing an accused from obtaining material

information necessary to challenge the informer's credibility and secure a fair trial. Accordingly, it is alleged to be inconsistent with Articles 12(1), 13(3) and 13(5) of the Constitution.

Clause 54 is produced below for reference:

(1) Notwithstanding the provisions of subsection (3), information provided by an informer for a serious crime under this Act shall not be admitted in evidence in any proceedings, and a witness in any proceedings shall not be obliged –

(b) to disclose the name and address of any informer who has given information with respect to a serious crime under this Act; or

(c) to answer any question if the answer to that question would lead, or would tend to lead, to the discovery of the name or address of the informer.

(2) If any book, document, or paper which is in evidence or liable to inspection in any proceedings contains any entry in which any informer is named or described, or which may lead to the informer's discovery, the court shall cause those entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery.

(3) If-

(a) in any proceedings before a court for a serious crime punishable under this Act, the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which the informer knew or believed to be false or did not believe to be true; or

(b) in any other proceedings, the court is of the opinion that justice cannot be fully done between the parties to the proceedings without the disclosure of the name of an informer,

the court may permit inquiry and require full disclosure concerning the informer.

Hon. Attorney General has undertaken to amend Clause 54 at the Committee Stage. The amended version of Clause 54 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

(1) Notwithstanding the provisions of subsection (3), information provided by an informer for ~~a serious crime under this Act~~ ***an offence under this Act*** *shall not be admitted in evidence in any proceedings, and a witness in any proceedings shall not be obliged –*

(a) to disclose the name and address of any informer who has given information with respect to a ~~serious crime under this Act~~ ***such offence****; or*

(b) to answer any question if the answer to that question would lead, or would tend to lead, to the discovery of the name or address of the informer.

…

(3) If-

(a) in any proceedings before a court for ~~a serious crime punishable~~ ***an offence*** *under this Act, the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which the informer knew or believed to be false or did not believe to be true; or*

(b) in any other proceedings, the court is of the opinion that justice cannot be fully done between the parties to the proceedings without the disclosure of the name of an informer,

the court may permit inquiry and require full disclosure concerning the informer.

We agree that it is necessary to protect the informants. This will facilitate an efficient investigation by the investigators. Organised criminal groups as its very term denotes, are well organized in committing crimes and are ever evolving in their technique in conducting their activities. Therefore, it has become difficult for the members of Sri Lanka Police to apprehend them and detect their criminal activities. It is in that light that the Government has decided to enact this Bill. Similar provisions are found in Poisons, Opium and Dangerous Drugs Act also. We see no basis to hold that Clause 54, in the above form, would be inconsistent with the provisions of the Constitution.

Clause 56 (Tipping-off)

The Petitioners contend that Clause 56 creates a broadly worded offence of tipping-off, criminalising disclosures of information likely to prejudice an investigation, potentially restricting legitimate and public-interest disclosures and places restrictions on freedom of expression, thereby raising concerns of inconsistency with Articles 12(1) and 14(1)(a) of the Constitution.

Clause 56 of the Bill has been reproduced below for reference:

(1) Any person-

(a) who knows or has reasonable grounds to suspect that a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act; and

(b) who discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation, commits an offence and shall, on conviction by the High Court, be liable to imprisonment of either description for a term not exceeding ten years or to

a fine not exceeding five hundred thousand rupees or to both such imprisonment and fine.

(2) Nothing in subsection (1) shall make it an offence for an Attorney-at-Law or his employee to disclose any information or other matter –

(a) to, or to a representative of, a client of his in connection with the giving of advice to the client in the course of and for the purpose of the professional employment as an Attorney-at-Law; or

(b) to any person-

(i) in contemplation of, or in connection with, legal proceedings concerning the client; and

(ii) for the purpose of those proceedings.

(3) The provisions of subsection (2) shall not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under subsection (1), it is a defence to prove that the person did not know and had no reasonable ground to suspect that the disclosure was likely to be prejudicial in the way described in subsection (1).

(5) A person shall not be guilty of an offence under this section in respect of anything done by the person in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or other penal legislation.

We observe that Clause 56 is a definition of an offence with a carve out clause which found under Clause 56(2) along with safeguards provided in Clauses 56(3), (4), and (5). We further observe that in the Special Determination pertaining to the Protection of the

State from Terrorism Bill,[22] this Court has considered a similar provision and a similar argument in relation to Clause 15 of the PST Bill, and has held that the said similar provision is not inconsistent with the provisions of the Constitution. We similarly observe that in this Determination, Clause 56 is not inconsistent with the provisions of the Constitution when read conjunctively with the carve out under Clause 56(2).

We therefore observe that in light of the above highlighted carve out and safeguards, Clause 56 is not inconsistent with any provision of the Constitution.

Clause 59 (Protection of action)

Clause 59 of the Bill has been produced below:

> *No suit, prosecution or other proceeding, civil or criminal, shall lie against any officer or person for any lawful act or thing which is in good faith done or omitted to be done or purported to be done or omitted to be done in pursuance, or purported pursuance, of the provisions of this Act.*

We observe that the protection extended under this Clause is in respect of acts and omissions done in good faith. Provisions of this nature to protect public officers is not uncommon in our law. In these circumstances, we hold that Clause 59 would not be inconsistent with the provisions of the Constitution.

Clause 65 (Legal obligation to give information)

The Petitioners raised concerns that Clause 65 of the Bill is vague and overbroad and may therefore compel the disclosure of privileged communications. The Petitioners also raised concerns that even a Priest in a church could be compelled to disclose contents of a

[22] SC SD 122, 123, 125, 127–133, 135– 140, 142–156, 158, 160–168/2026.

confession that a member of congregation of such church would have made to such Priest.

The Hon. Attorney General has proposed the amended version of Clause 65 to be presented at the Committee Stage. The amended version of Clause 65 of the Bill would read as follows:

[N. B. deletions have been indicated by strikethrough and the new words added (if any), have been indicated in bold letters.]

Any person who –

(a) knowing or having reasons to believe that any other person –

*(ii) is attempting, **aiding,** abetting, conspiring, organising, facilitating, ~~counselling,~~ procuring, directing, ~~aiding,~~ inciting, encouraging, instigating, commanding, advising or preparing to commit or doing any act preparatory to the commission of ~~a serious crime under this Act~~ **an offence under this Act**; or*

*(c) has committed ~~a serious crime under this Act~~ **such offence**,*

fails to provide such information; or

*(b) having in his possession any information relating to the whereabouts of any person whom he knows has committed ~~a serious crime under this Act~~ **such offence** fails to provide such information or provide misleading information to a police officer,*

commits an offence under this Act and shall on conviction by the High Court, be liable to imprisonment of either description for a term not exceeding seven years or to a fine not exceeding two hundred thousand rupees or to both such imprisonment and fine.

…

(3) The provisions of Section 126 of the Evidence Ordinance shall apply to this section.

Further, in regard to Clause 65, we observe that the provision in Section 126(1) of the Evidence Ordinance also remains part of our law. Section 126(1) of the Evidence Ordinance provides as follows:

> "*No Attorney-at-Law, or notary shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such Attorney-at-law, or notary by or on behalf of his client, or to state the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course of and for the purpose of such employment: Provided that nothing in this section shall protect from disclosure-*
>
> *(a) any such communication made in furtherance of any illegal purpose;*
>
> *(b) any fact observed by any Attorney-at-Law, or notary in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.*"

In the above circumstances, we are unable to accept the argument of the Petitioners that the Attorneys-at-Law are compelled to disclose the privileged communications to which they come by during the discharge of their professional obligations to their clients.

As regards the argument concerning the position of a priest in a church, we have to evaluate the said argument in light of the objects of this Bill. In terms of the provisions of this Clause, there is an obligation on any person to provide to police, the information coming under the purview of this Clause. This is an obligation cast on all citizens by law. The application of this Clause cannot be discriminatory depending on the religion or belief of each citizen. This is because it is going to be part of the criminal law of the country.

Moreover, we see no justification for any person not to provide such information to police because such failure would cause immense injustice to another set of persons (victims). Further, such failures to give such information would take away the liberty and the right of enjoyment of the Fundamental Rights of the latter (victims).

In view of the above, we are unable to accept the submission that Clause 65 is inconsistent with the provisions of the Constitution.

CONCLUSION

For the foregoing reasons, we determine that the Clauses in Bill (L.D.O 10/2026) titled "Prevention of Organised Crimes" are not inconsistent with the Constitution after making the above-mentioned amendments (the amendments to the Clauses have been undertaken by the Hon. Acting Attorney General) at the Committee Stage and can be passed by simple majority of Parliament.

We place on record, our appreciation of the assistance given by the learned President's Counsel and learned Counsel who appeared for the Petitioners and also the Hon. Acting Attorney-General.

P. PADMAN SURASENA
CHIEF JUSTICE

ACHALA WENGAPPULI
JUDGE OF THE SUPREME COURT

SAMPATH B. ABAYAKOON
JUDGE OF THE SUPREME COURT