

**NEWSLINE***Daily by Faraz***“Questioning
The Answers”**

FIVE JUDGES, ONE VERY BIG QUESTION



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in office without first asking the People?

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to the controversial 22nd Amendment today.

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NEWSLINE LEAD STORY

Sri Lanka's Supreme Court takes centre stage today as five judges begin hearing one of the most consequential constitutional disputes to come before the country's highest court in recent years.

Chief Justice Preethi Padman Surasena will preside over the five-member bench together with Justices Achala Wengappuli, Arjuna Obeyesekere, Sampath Abeykoon and Gihan Kulatunga.

Before them are 30 petitions concerning the proposed 22nd Amendment to the Constitution. Twenty-seven oppose the amendment while three have been filed in support.

On paper, the proposal appears remarkably straightforward. Supreme Court judges, who presently retire at 65, would retire at 67. Court of Appeal judges would move from 63 to 65. The proposed amendment also provides that a Chief Justice would retire upon reaching 67 or completing six years as Chief Justice, whichever occurs first.

But this has ceased to be an argument simply about whether judges should work for another two years. The much larger question is whether those additional years can constitutionally be given to judges who are already holding office. That distinction could determine everything.

There is little argument about Parliament's ability, with the required constitutional majority, to legislate for the future. Parliament could determine that judges appointed after a specified date should retire at a different age. Those judges would accept appointment knowing precisely the tenure attaching to their office.

The controversy becomes considerably more complicated if the change applies to judges already sitting on the Supreme Court and Court of Appeal.

The reason is simple enough for the non-lawyer to understand. An incumbent judge appointed on the basis that his or her tenure ends at a particular age would suddenly receive another two years in office through legislation enacted by the political branches of government.

That is where questions of judicial independence and the sovereignty of the People enter the argument.

The Bar Association of Sri Lanka and several petitioners contend that altering the tenure of incumbent judges affects judicial independence sufficiently to engage Article 3 of the Constitution, which declares that sovereignty is in the People and is inalienable.

If the Supreme Court accepts that argument, a two-thirds majority in Parliament may not by itself be enough. Approval by the People at a referendum could also become necessary.

The Government's position is substantially different. It argues that longer judicial tenure is part of a legitimate attempt to address the enormous backlog within Sri Lanka's justice system and retain experienced judges for longer. A petition supporting the amendment also argues that the Bill does not violate judicial independence or Article 3 and therefore does not require a referendum.

There is, however, another unusual feature to this constitutional battle. The judges being asked to determine the constitutionality of the amendment belong to the very institution whose members could potentially benefit from it.

That difficulty has already been raised before the Court.

The BASL sought consideration of the challenge by the full Supreme Court, pointing to the unusual circumstances surrounding legislation affecting the tenure of sitting judges. Instead, a five-member bench has been constituted.

The principle behind the concern is ancient and uncomplicated: no person should ordinarily be the judge of his own cause. Yet somebody must decide whether the legislation complies with the Constitution, and under Sri Lanka's constitutional architecture that responsibility belongs to the Supreme Court.

The Court therefore finds itself in an extraordinary position. It must determine a constitutional question concerning judicial tenure while simultaneously demonstrating that the determination itself is entirely independent of any benefit which might eventually flow to members of the judiciary.

Opposition to the amendment has meanwhile spread considerably beyond Hultsdorp.

Forty professional organisations and trade unions joined the BASL yesterday in calling upon the Government to withdraw the proposed amendment. They include organisations representing university academics, doctors, nurses, railway employees and other professionals and public servants.

Their joint position is that if the Government insists on proceeding with the amendment, the question should ultimately be placed before the People at a referendum.

That brings the controversy back to the deceptively simple question now confronting the five judges.

The issue is not whether a 67-year-old judge is capable of delivering justice. Judges elsewhere remain on the bench considerably longer.

Nor should this debate become an argument about the competence or integrity of individual judges presently serving on Sri Lanka's courts.

The constitutional question is about the rules governing their tenure and, crucially, when those rules may be changed.

There is an important difference between telling tomorrow's judge, before appointment, that retirement will come at 67 and telling today's judge, appointed to retire at 65, that Parliament has decided to give another two years.

One changes the rules for the future. The other changes them while the game is being played.

Sri Lanka has been here before in different forms. Governments of different political colours have discovered the attraction of constitutional amendments when existing constitutional arrangements become inconvenient. Some strengthened institutions. Others concentrated power. Several produced consequences their architects probably never anticipated.



That history is precisely why constitutional safeguards matter most when a government possesses the parliamentary numbers to change the Constitution.

A two-thirds majority provides enormous legislative power. It does not necessarily provide unlimited constitutional power. Certain elements of Sri Lanka's constitutional order remain protected by the sovereignty of the People themselves.

The Supreme Court must now decide whether the proposed extension of judicial tenure crosses that boundary.

Its determination will matter far beyond whether a handful of judges retire at 65 or 67. It could establish an important principle about whether the tenure of judges already in office may be altered by Parliament and, consequently, about the distance that must always remain between political power and judicial office.

The Government says the reform will strengthen the administration of justice. Its opponents say applying it to incumbent judges could weaken judicial independence. Both arguments will now be tested where constitutional arguments ultimately must be tested: before the Supreme Court.

Five judges begin hearing those arguments today.

Be that as it may, the real question before them is larger than two additional years. It is who ultimately owns those years: Parliament, the judges - or the People.

The underlying facts are current as of tonight: the five-member bench and tomorrow's hearing are confirmed, as are the 30 petitions - 27 opposing and three supporting - and the joint opposition announced today by 40 professional organisations and trade unions.

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RAVI ARRESTED, RAVI BAILED - BUT THE QUESTION REMAINS

Former Finance Minister Ravi Karunanayake was arrested by the anti-corruption authorities and released on bail hours later. Behind the familiar procession of arrest, court and bail lies a rather more important question about who was paying whom - and for what. And how much does it cost to actually bring such cases to trial. This is not theatre. Must you bring cases to court where investigations are incomplete?

NEWSLINE REPORT

Former Finance Minister and Colombo District MP Ravi Karunanayake was arrested by the Commission to Investigate Allegations of Bribery or Corruption yesterday after being questioned for several hours over allegations concerning employees recruited to the National Lotteries Board.

Karunanayake was subsequently produced before the Colombo Chief Magistrate's Court and released on bail, bringing to an end the immediate drama of an arrest involving one of Sri Lanka's best-known political figures. The investigation, however, is about something rather less dramatic and potentially more important: the alleged use of public resources for purposes unrelated to the jobs for which State employees were recruited.

According to the allegations under investigation, individuals were recruited to the National Lotteries Board outside approved procedures and were subsequently assigned to duties connected with Karunanayake's personal staff. That is the allegation.

CIABOC is examining whether public funds were consequently spent paying salaries and other expenses for personnel who were not performing the functions for which they had ostensibly been employed.

The allegations remain allegations. Karunanayake is entitled to the presumption of innocence and the prosecution, if the matter proceeds, will have to establish its case according to law.

But the investigation raises a broader question that extends well beyond one politician.

Sri Lanka has lived for decades with an extraordinarily blurred boundary between the resources of the State and the requirements of those temporarily entrusted with running it. Government vehicles, employees, offices and other publicly funded facilities have too often been treated as though they accompany political office.

They do not.

A State employee's salary is ultimately paid by the taxpayer. If someone is recruited by a State institution but is actually working for the personal or political purposes of a minister, the question is not merely whether an administrative rule has been breached. It is whether public money has been used for a purpose for which it was never authorised.

That is precisely the sort of distinction an effective anti-corruption regime should examine.

There is also a larger test for CIABOC. The Commission has become considerably more visible under Sri Lanka's new anti-corruption framework, with investigations and prosecutions involving several prominent political and public figures.



Visibility, however, is not the same thing as success.

The credibility of an anti-corruption institution will ultimately be measured not by the number of famous people photographed entering its offices or appearing outside courthouses, but by the quality of its investigations, the fairness of its prosecutions and the outcomes it is able to secure before independent courts.

That standard must apply irrespective of the political identity of the person being investigated.

Karunanayake has occupied some of the most powerful positions in government, including the finance and foreign affairs portfolios. His political prominence inevitably ensures considerable attention whenever his name becomes connected to a criminal investigation.

The law, however, should be considerably less interested in prominence.

The relevant questions are much simpler. Were people employed by a State institution? Were they paid from public funds? What work did they actually perform? Who authorised the arrangements? And if public money was improperly spent, who bears responsibility?

Those questions will remain long after yesterday's arrest and bail have disappeared from the headlines.

Be that as it may, an arrest is not a conviction and bail is not an acquittal. What matters now is whether the evidence can answer the one question taxpayers are entitled to ask: what exactly were they paying for?

160,000 CANCER INJECTIONS: THE CONTRACT MAY HOLD THE KEY

The Filgrastim consignment remains caught in quarantine over labelling deficiencies while cancer patients face shortages. But NewsLine has examined the purchase contract - and it appears to contain a mechanism specifically allowing penalties for labelling errors.

NEWSLINE INVESTIGATION

The controversy surrounding approximately 160,000 vials of Filgrastim presently held from distribution has taken a significant turn following NewsLine's examination of the contractual provisions governing the supply.

The injections are already in Sri Lanka. Cancer patients need them. Hospitals are facing shortages. Yet the consignment which arrived on July 28 remains unavailable for routine distribution because of deficiencies associated with its labelling.

Health Minister Dr Nalinda Jayatissa has publicly addressed the problem and explained that the stock cannot presently be released because of the regulatory issue.

NewsLine's scrutiny of the procurement documentation, however, raises an important question about whether the Medical Supplies Division already possesses a contractual mechanism for dealing with precisely such a problem.



The purchase contract contains provisions under which penalties may be imposed for specified shortcomings associated with supplied medicines. Among the matters expressly contemplated are deficiencies involving labelling.

That does not automatically mean that the entire consignment can simply be released tomorrow morning.

Regulatory requirements governing medicines exist for good reason and patient safety cannot be compromised merely because the country faces a shortage.

But it does mean that another question now requires an answer.

If the defect affecting this consignment is one contemplated by the contract, and if the contract provides for a financial penalty to be imposed in such circumstances, why cannot that mechanism be used to resolve the present impasse, subject to the necessary assurance that the medicine itself is safe and conforms to the required specifications?

The distinction is crucial.

There would be an entirely different public-health problem if the medicine had failed tests concerning its composition, sterility, potency or safety.

A defective medicine cannot be made safe by imposing a fine on its supplier.



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160,000 CANCER...

A labelling deficiency is different if the underlying medicine is otherwise compliant and the discrepancy can lawfully be corrected or dealt with under the procurement agreement.

That is why the precise nature of the defect matters.

NewsLine is therefore not arguing that officials should ignore the regulations. We are asking whether the regulations and the contract already provide a lawful route through them.

The numbers make the question particularly urgent.

Sri Lanka requires approximately 27,500 vials of Filgrastim each month, with Apeksha Hospital in Maharagama alone accounting for around 9,000 vials. A consignment of 160,000 vials therefore represents several months of national requirements.

Filgrastim is used to stimulate the production of white blood cells and is particularly important for patients whose immune systems have been weakened by chemotherapy and other treatment.

For those patients, this is not an argument about procurement paperwork conducted somewhere inside the bureaucracy. It is about whether the medicine prescribed by their doctors is available when they need it.

Kanthi, the 67-year-old cancer patient whose circumstances NewsLine highlighted yesterday, represents the human reality behind those numbers. She must travel more than 200 kilometres from Southern Sri Lanka to Apeksha Cancer Hospital in Maharagama for treatment. There will be many more Kanthis.

That is why the contractual provision now deserves an immediate and transparent response from the Medical Supplies Division and the Ministry of Health.

Officials should explain precisely what is wrong with the labelling, whether the medicine itself has satisfied the necessary quality and safety requirements, whether the contractual penalty provision applies to the deficiency identified and, if it does, what prevents the Government from invoking it.

The Minister should also be told clearly what options are available under the contract.

Ministers are entitled to rely on the technical advice of their officials. But when a shortage affects medicines required by cancer patients, every lawful option contained in the very agreement under which those medicines were purchased ought to be placed before the Minister.

If the contract cannot be used to release the stock, the authorities should say why. There may be a perfectly legitimate regulatory reason.

A notable feature is that there is a precedent for this sort of supply – the sort that has issues with labelling for instance. There is a clause in the purchase contract to address such issues. The purchaser is not a naïve purchaser doing this for the first time – in as much as the supplier and the manufacturer are not new boys on the block.

It strikes NewsLine that the real issue is that the three departments involved are all protecting their turf and in effect standing on ceremony. In the meantime Sri Lankan citizens afflicted with cancer have their chances of survival heightened.

It leaves a certain distaste – that the State is uncaring. The question then leads to a very potent one. Is the NMRA the SPC and the MSD playing “pandu” with the government? Are they – heaven forbid – engineering discontent and unhappiness by being inflexible and pedantic in their outlook?

If the medication can be used, however, every additional day of delay becomes considerably more difficult to explain.

This should not become a contest between patient safety and patient access. A functioning medicines regulatory and procurement system must be capable of protecting both.

The objective must remain straightforward: establish that the medicine is safe, comply with the law, impose whatever contractual penalty is warranted and, if the legal requirements permit it, get the injections to the hospitals that need them.

Sri Lanka voted for this government in a marked effort to change personality politics – it really is hoped that whoever is not trying to cause discomfort to the elected representatives of the people – including the likes of ‘Kanthi’ who may well have voted at the last general elections.

Be that as it may, 160,000 vials sitting in quarantine cannot treat a single patient. If the contract itself provides a lawful way through the problem, somebody needs to explain why that door remains closed.

CUSTOMS BEATS THE TARGET – AGAIN

Eight months into 2026 and Sri Lanka Customs has beaten its revenue target every single month. By August 27 it had already collected nearly Rs.200 billion for the month. Something appears to be working.

NEWSLINE BUSINESS

Sri Lanka Customs is quietly producing one of the more encouraging sets of numbers coming out of the public sector this year, exceeding its monthly revenue target for the eighth consecutive month.

The target for August was approximately Rs.190.3 billion. By August 27, with several days of the month still remaining, Customs had already collected around Rs.199.6 billion.

That put collections more than Rs.9 billion ahead of the monthly target even before August had ended. More significantly, the performance is not confined to a particularly good month.

Customs revenue during the first eight months of 2026 has reached approximately Rs.1.83 trillion against a full-year target of about Rs.2.21 trillion.

That means the department had collected more than 80 per cent of its annual target with four months of the year remaining.

For a country still rebuilding its public finances after the economic collapse, these are numbers worth paying attention to.

Customs is one of the State’s principal revenue-generating institutions. Money collected at the border ultimately helps finance everything from hospitals and schools to salaries, infrastructure and debt obligations.

The obvious question is what lies behind the improvement.

Part of the answer may be the recovery in imports as economic activity normalises. Higher import volumes naturally generate additional Customs revenue, while changes in duties and taxes can also increase collections.

But improved enforcement, valuation procedures, digitalisation and efforts to reduce leakages may also be contributing. If they are, the Government should provide the numbers demonstrating precisely where the gains have been made.



There is an important distinction between collecting more money because Sri Lanka is importing more and collecting more because the State has become better at collecting what it was always entitled to receive.

Both are positive for government revenue, but the second would represent something considerably more important: an improvement in the machinery of the State itself.

Customs has historically operated in an environment where allegations of undervaluation, misclassification and corruption have repeatedly surfaced. The sums passing through the institution are enormous, making effective controls essential.

That history makes sustained revenue outperformance particularly interesting.

If Customs continues at anything approaching its present pace, the annual target could be reached well before December 31.

The achievement deserves recognition, but it also deserves examination. Revenue targets should not become merely numbers that departments announce when they exceed them. They provide an opportunity to identify what has changed and whether those improvements can be replicated elsewhere.



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Sri Lanka desperately needs stronger State revenue without endlessly reaching into the pockets of the same compliant taxpayers.

Collecting taxes and duties already legally due is one of the least controversial ways of doing it.

For once, therefore, this is a government revenue story in which the numbers appear to be moving in the right direction.

Be that as it may, eight consecutive months above target is no longer a lucky month. If Customs has genuinely found ways of collecting more of what the State is already owed, the interesting question is whether the rest of the revenue machinery can learn how.

1.5 MILLION TOURISTS - NOW FIND ANOTHER 1.18 MILLION

Sri Lanka has welcomed more than 1.5 million tourists so far this year. That sounds impressive, and it is. But reaching the Government's 2.7 million target means attracting almost 1.2 million more visitors in just four months.

NEWSLINE BUSINESS

Sri Lanka has crossed another important tourism milestone with more than 1.5 million foreign visitors arriving in the country during the first eight months of 2026.

By August 27, tourist arrivals had reached approximately 1.52 million, providing further evidence of the industry's recovery from the succession of crises that battered one of Sri Lanka's most important foreign-exchange earners. Hotels are busier, airlines have restored and expanded connections and Sri Lanka is firmly back on the international tourism map.

There is good reason to welcome that.

But there is also some rather stubborn arithmetic.

The Government's revised target for 2026 is 2.7 million tourist arrivals. Reaching it would require Sri Lanka to attract approximately another 1.18 million visitors during September, October, November and December.

That works out at close to 295,000 tourists every month for the remainder of the year.

The challenge becomes clearer when set against the performance so far. Average monthly arrivals during the first eight months have been below the monthly rate now required to reach the year-end target.

August itself also showed signs of losing some momentum during the latter part of the month, while cumulative arrivals remain slightly below the corresponding period last year.

None of that suggests Sri Lankan tourism is in trouble. Quite the opposite. More than 1.5 million visitors by the end of August represents a substantial flow of people into an island of 22 million.

The question is whether the headline target has moved ahead of the underlying numbers.

Targets matter because they influence government policy, investment decisions and expectations within an industry employing hundreds of thousands of Sri Lankans. There is little value in setting ambitious numbers unless there is a credible route towards achieving them.

The final months of the year should help.

Sri Lanka's main winter tourism season brings increased arrivals from Europe, while India continues to provide a large and geographically convenient market. Better air connectivity and stronger promotion could also lift the numbers substantially.

But simply counting arrivals tells only part of the tourism story.

A visitor staying three weeks and spending heavily in hotels, restaurants, shops and excursions contributes considerably more to the economy than a visitor staying three nights on a heavily discounted package.



The more useful measurements therefore include tourism earnings, average spending per visitor, length of stay and how widely that money moves beyond the largest hotels and established destinations.

Sri Lanka does not merely need more tourists. It needs tourism that leaves more money in Sri Lanka.

That means encouraging higher-spending visitors while ensuring that smaller hotels, restaurants, guides, transport providers and businesses outside the traditional tourism centres participate in the recovery.

The country has an extraordinary product to sell. Beaches, wildlife, ancient cities, mountains, food and culture are compressed into an island small enough for a visitor to experience several of them during a single holiday.

The difficulty has rarely been the product.

It has been consistency in selling it.

Tourism authorities now have four months to demonstrate whether the 2.7 million target was an ambitious but achievable objective or simply an attractive number placed at the end of a government forecast.

Crossing 1.5 million is nevertheless worth celebrating. After everything Sri Lanka's tourism industry has endured during the past several years, its recovery should not be understated.

The champagne, however, might sensibly remain on ice for another four months.

Be that as it may, 1.5 million tourists is an achievement. Finding another 1.18 million before New Year's Eve is the rather more interesting part of the story.

ATLAS ANGEL II: WHEN DISASTER RELIEF MEETS GEOPOLITICS

American military personnel are in Sri Lanka for a joint disaster-response exercise involving the two countries' armed forces. The stated purpose is humanitarian preparedness, but in the Indian Ocean even disaster relief inevitably carries a strategic dimension.

NEWSLINE INTERNATIONAL

Sri Lankan and United States military personnel have begun a joint disaster-response exercise aimed at improving the ability of the two countries to work together when floods, landslides and other emergencies strike.

Exercise Atlas Angel II, which began yesterday and continues until September 4, brings together Sri Lankan personnel, the Montana National Guard and the United States Pacific Air Forces.

The programme includes training involving C-130 transport aircraft, urban search and rescue, engineering, landslide response and preparedness for chemical, biological, radiological and nuclear emergencies.

Observers from the United Kingdom and Bangladesh are also participating.

On its face, the purpose is straightforward. Sri Lanka has experienced enough natural disasters to know that the ability to move personnel, equipment, medical supplies and rescue teams quickly can mean the difference between life and death.

Floods and landslides regularly affect large areas of the country, while the 2004 tsunami remains a brutal reminder of how rapidly a humanitarian catastrophe can overwhelm domestic resources.

International cooperation in disaster response is therefore neither unusual nor inherently controversial. But Atlas Angel II also takes place against a much larger strategic background.

Sri Lanka sits beside some of the busiest and most important sea lanes in the world. Ships carrying energy, manufactured goods and raw materials between Asia, the Middle East, Africa and Europe pass close to the island every day.

That geography has made Sri Lanka increasingly important to the strategic calculations of major powers. China has invested heavily in Sri Lankan infrastructure, including Hambantota Port and Colombo Port City. India regards developments in Sri Lanka as directly relevant to its own security.



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ATLAS ANGEL...

The United States has steadily expanded defence and security engagement across the Indo-Pacific.

Sri Lanka therefore has to perform a careful balancing act.

Cooperation with one country need not amount to hostility towards another. Training Sri Lankan personnel to respond to disasters alongside American forces does not make Sri Lanka an American military outpost any more than Chinese investment automatically turns the island into a Chinese one.

The sensible test is transparency.

Sri Lankans are entitled to know what agreements their Government enters into with foreign military powers, what those agreements permit, how long they operate and whether they create obligations extending beyond their publicly stated purpose.

Atlas Angel II follows a memorandum of understanding signed between Sri Lanka and the United States in November 2025 covering cooperation in areas including disaster response, aviation and maritime security.

Those are legitimate areas for cooperation, particularly for an island situated at the centre of the Indian Ocean. They are also areas where humanitarian, economic and strategic interests increasingly overlap.

A C-130 carrying emergency supplies after a landslide is engaged in humanitarian work. The same aircraft, the same logistics systems and many of the same operational skills also have obvious military applications.

That does not make disaster-response training sinister. It simply makes transparency important.

Sri Lanka's foreign policy has traditionally rested on maintaining relationships with competing powers rather than becoming an appendage of any one of them. Geography makes that pragmatism particularly valuable today.

Washington will pursue American interests. Delhi will pursue Indian interests. Beijing will pursue Chinese interests.

Colombo's job is to pursue Sri Lankan interests.

If cooperation with the United States improves Sri Lanka's ability to rescue people after the next flood, landslide or major disaster, there is an obvious public benefit. The same principle should apply to useful cooperation offered by India, China, Japan or any other partner.

The danger begins only when strategic commitments are made without adequate public knowledge or when Sri Lanka's territory becomes part of somebody else's contest for regional influence.

There is presently no reason to characterise Atlas Angel II as anything other than the disaster-response exercise it has been publicly presented as.

But there is every reason to understand the strategic environment in which it is taking place.

Be that as it may, Sri Lanka cannot change its address. We live in the middle of an increasingly contested Indian Ocean, and the clever part is learning to work with everyone without becoming anybody's piece on the chessboard.

THE COURT IS ON TRIAL TOO

The Supreme Court is being asked to decide whether Parliament may extend the retirement age of judges already in office. Whatever the answer, something even larger is being tested alongside the Constitution: public confidence in the independence of the Court itself.

NEWSLINE EDITORIAL

There are cases in which a court decides what the law means. Then there are cases in which the manner in which the court decides becomes almost as important as the decision itself.

The challenge to the 22nd Amendment belongs firmly in the second category.

Five judges of the Supreme Court begin considering whether the proposed extension of judicial retirement ages complies with Sri Lanka's Constitution. The proposed change would increase the retirement age of Supreme Court judges from 65 to 67 and that of Court of Appeal judges from 63 to 65.

There is nothing inherently outrageous about either age.

Judges serve considerably longer in several established democracies. Parliament is perfectly entitled to consider whether experienced judges should remain on the bench longer, particularly when Sri Lanka's courts face formidable case backlogs.

The difficulty lies elsewhere.

The proposed constitutional change is capable of benefiting judges who are already in office.

That transforms what might otherwise have been a fairly ordinary policy debate about retirement ages into a serious constitutional question about judicial independence.

It also places the Supreme Court in an extraordinarily uncomfortable position.

The Court must decide whether legislation capable of extending the tenure of members of the judiciary can be enacted without approval at a referendum. Yet the institution making that determination is the very institution whose members may potentially benefit from the legislation.

That does not mean the judges cannot decide the matter impartially.

It does mean that public confidence in their impartiality becomes particularly important.

Justice has never been concerned exclusively with whether the correct result is eventually reached.

The appearance of independence matters because courts possess neither armies nor electoral mandates. Their authority ultimately rests upon public acceptance that decisions are made according to law and without fear, favour or personal interest.

Sri Lanka should therefore resist two equally dangerous temptations.

The first is to suggest that judges supporting one constitutional interpretation must somehow be acting in their own interests. That would be unfair, irresponsible and destructive of the institution.

The second is to pretend that the unusual circumstances surrounding this amendment simply do not matter. They plainly do.

The Bar Association of Sri Lanka sought consideration of the petitions by the full Supreme Court. That did not happen. A five-member bench will hear them.

The Court is entitled to constitute its benches according to law and established practice. But in a case involving the tenure of the judiciary itself, transparency becomes particularly valuable because every procedural decision will inevitably be examined more closely than usual.

There is another reason for caution.

Sri Lanka's constitutional history contains enough examples of political power colliding with judicial independence to make complacency impossible.

Governments have quarrelled with Chief Justices. Judges have been elevated amid controversy. A sitting Chief Justice was impeached and removed, only to be restored briefly years later before retiring. Successive administrations have discovered that constitutional arrangements can become remarkably flexible when political necessity demands it.

The judiciary has frequently been left to absorb the consequences.

That history should make both Parliament and the courts especially protective of the distance between them.

Judicial independence is not preserved merely by preventing politicians from telephoning judges and telling them how to decide cases. It is also protected by ensuring that judges do not have reason to believe that their tenure, advancement or continuation in office depends upon political favour.

This is why changing retirement rules for future judges presents considerably fewer difficulties.

Tell a lawyer appointed to the Supreme Court tomorrow that retirement comes at 67 and there is no unexpected benefit. The conditions of office were known before appointment.

Changing the finishing line after the race has begun is different.

Perhaps the Supreme Court will determine that Parliament possesses the constitutional authority to do precisely that. If so, its reasoning should be clear enough to demonstrate why judicial independence and the sovereignty of the People are not adversely affected.

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THE COURT...

Perhaps it will determine that applying the extension to incumbent judges engages entrenched constitutional protections and therefore requires approval by the People at a referendum.

That reasoning should be equally clear.

What Sri Lanka needs from this case is not a particular outcome demanded by government, opposition, lawyers, trade unions or newspapers.

It needs a determination whose reasoning is sufficiently compelling that citizens can understand how the Court arrived there.

That is especially important because constitutional determinations of this nature reach far beyond the immediate controversy.

Today's Government will not govern forever. Today's judges will not remain judges forever. But the constitutional principle established now may be available to another government and another Parliament in circumstances nobody presently anticipates.

That is the danger of constitutional convenience.

A rule created because it produces a desirable result today may become a weapon when placed in less responsible hands tomorrow.

The Government should therefore ask itself a simple question. If extending the retirement age is genuinely necessary for the administration of justice, why create unnecessary controversy by applying it to those already holding office?

Make the change prospective.

Allow every future judge to accept appointment knowing that the retirement age is 67 for the Supreme Court and 65 for the Court of Appeal.

The reform survives. The Government achieves its stated objective. Experienced future judges remain longer. And much of the present argument about incumbent judges receiving an additional benefit disappears.

That may lack the excitement of another constitutional confrontation, but constitutional government occasionally benefits from being boring.

The Supreme Court now has the harder task.

Its judges must interpret the Constitution while knowing that the country will scrutinise not merely what they decide, but why they decide it.

There should be nothing threatening about that scrutiny. Courts hold governments accountable. A democracy is equally entitled to expect its courts to withstand examination of their reasoning.

The strength of a Supreme Court is not demonstrated by being beyond question. It is demonstrated by being capable of answering difficult questions through the authority of its judgments.

Be that as it may, five judges may formally be hearing the 22A petitions, but another institution sits silently beside them in the courtroom: public confidence. Whatever the determination, that must leave the Court stronger than when the hearing began.

EDITORIAL

THE COURT IS ON TRIAL TOO



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The Supreme Court is being asked to decide whether Parliament may extend the retirement age of judges already in office.

Whatever the answer, something even larger is being tested alongside the Constitution:
**public confidence in the independence
of the Court itself.**

