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Daily by Faraz



**“Questioning
The Answers”**



SUPREME COURT MAY ALREADY HAVE SPOKEN

Earlier ruling suggests changing retirement age of incumbent superior court judges would require a referendum



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Any Constitutional amendment to the retirement age or the period of office impacting on incumbent judges, whether directly or indirectly, would impinge upon the independence of the judiciary and violate Article 3 of the Constitution, thereby requiring approval by the People at a referendum.

(S.C.S.D. Nos. 64–71/2022)



THE ISSUE AT THE HEART OF THE DEBATE

Does extending the retirement age of incumbent superior court judges strengthen judicial independence by retaining experience and ensuring continuity — or does it amount to a constitutional amendment affecting the tenure of sitting judges, requiring the approval of the People at a referendum?



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SUPREME COURT MAY ALREADY HAVE SPOKEN

Earlier ruling suggests changing retirement age of incumbent superior court judges would require a referendum

By Faraz Shauketaly

COLOMBO, Tuesday - As the Government prepares to proceed with legislation extending the retirement age of judges of the Supreme Court and Court of Appeal, attention is increasingly turning to a Supreme Court determination delivered in 2022 which appears to address the constitutional issue now at the centre of the national debate.

The decision arose not from a challenge to judicial retirement ages but during the Supreme Court's consideration of the Inland Revenue (Amendment) Bill, when several judges' associations argued that imposing income tax upon judges would undermine judicial independence.

The Court rejected that argument, holding that judges were not exempt from paying taxes that applied generally to all citizens. It ruled that a non-discriminatory tax did not amount to an attack upon judicial independence and that judges, like all other citizens, were required to contribute to the public finances of the State.

However, before concluding its determination, the Court addressed a separate argument advanced on behalf of the petitioners- one which has assumed fresh significance in light of the Government's present proposal.

Counsel had argued that if Parliament could indirectly affect judges through legislation of general application, the same reasoning might one day be used to reduce the tenure of judges by lowering the retirement age or otherwise limiting their period of office.

The Supreme Court rejected that comparison.

Drawing a clear constitutional distinction, the Court observed that the retirement ages of judges of the Supreme Court and Court of Appeal are themselves expressly provided for in the Constitution, unlike many other public offices.

It then made what may prove to be the most significant observation in the entire judgment.

The Court stated that **any constitutional amendment affecting the retirement age or period of office of incumbent judges, whether directly or indirectly, would impinge upon the independence of the judiciary and violate Article 3 of the Constitution, thereby requiring approval by the People at a referendum.**

That passage is now attracting renewed attention because it appears directly relevant to the Government's current proposal to extend the retirement age of superior court judges.

Supporters of the proposed amendment argue that increasing the retirement age strengthens rather than weakens judicial independence by retaining experienced judges and promoting continuity within the courts.

They also contend that extending tenure differs fundamentally from reducing it, since judges are not being deprived of office but permitted to serve for a longer period.

Others, however, argue that the Supreme Court's reasoning is not confined to reductions in tenure.



The judgment expressly refers to **“any Constitutional amendment to the retirement age or the period of office impacting on incumbent judges, whether directly or indirectly.”** That wording, they contend, encompasses both increases and decreases in retirement age where the amendment affects judges already holding office.

Whether that passage forms part of the binding ratio decidendi of the case or should instead be regarded as persuasive judicial observation is itself likely to become the subject of legal debate. Constitutional lawyers may differ on the weight that should properly be attached to those remarks, particularly as the principal issue before the Court concerned taxation rather than judicial tenure.

Nevertheless, the determination provides what is perhaps the clearest indication yet of how the Supreme Court views the constitutional relationship between judicial independence, security of tenure and the sovereignty of the People.

As Parliament prepares to debate the proposed amendment, the 2022 determination is therefore likely to feature prominently in the legal arguments that follow. Whether it ultimately proves decisive may depend on whether the present proposal is viewed as materially different from the constitutional principle articulated by the Supreme Court- or as falling squarely within it.

SANGHA STEPS IN

Chief Prelates urge President to reconsider plan to extend judges' retirement age

COLOMBO, Tuesday - Sri Lanka's debate over the proposed extension of the retirement age of judges of the Supreme Court and Court of Appeal has entered a significant new phase after the country's Chief Prelates formally intervened, writing to President Anura Kumara Dissanayake expressing their concerns over the Government's proposed constitutional amendment.

Until now, the discussion had largely been confined to lawyers, constitutional experts and political leaders. The intervention by the Mahanayake Theras elevates the matter beyond a purely legal question,

placing it squarely within the broader national conversation about constitutional governance, public confidence and the independence of the judiciary.

The Government has maintained that extending the retirement age would preserve valuable judicial experience, reduce disruptions caused by frequent retirements and allow the courts to retain judges whose expertise has been developed over many years. Similar increases in retirement ages have been introduced in several jurisdictions as life expectancy has increased and professional careers have lengthened.

Critics, however, argue that Sri Lanka's circumstances differ because the retirement ages of judges of the Supreme Court and Court of Appeal are themselves embedded in the Constitution rather than being prescribed through ordinary legislation.

Their concern is not simply about whether judges should retire at 65 or 67. Rather, they contend that altering the tenure of judges who are already serving could affect perceptions of judicial independence, particularly where a constitutional amendment changes the composition of the superior courts during the tenure of an incumbent government.

Those supporting the amendment reject that interpretation. They argue that increasing the retirement age does not diminish judicial independence but instead strengthens institutional continuity by retaining experienced judges for a longer period. They note that judges would continue to enjoy the same constitutional protections regarding appointment, remuneration and removal from office.



At the heart of the disagreement lies a constitutional question that may ultimately require judicial interpretation.

Opponents contend that because judicial independence forms part of the sovereignty of the People protected under Article 3 of the Constitution, any amendment affecting the tenure of sitting superior court judges would require approval at a national referendum under Article 83.

Supporters disagree. They argue that not every constitutional amendment touching the judiciary necessarily affects the sovereignty of the People and that Parliament, acting with the required two-thirds majority, may legitimately amend retirement provisions where judicial independence itself remains intact.

The intervention by the Chief Prelates therefore comes at a particularly sensitive moment. Whether one agrees with their position or not, their decision to communicate directly with the Head of State underscores the wider constitutional significance now being attached to the issue.

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SANGHA STEPS IN...

Sri Lanka has witnessed vigorous debates over constitutional reform throughout its post-independence history. Few, however, have brought together the country's senior Buddhist clergy, constitutional lawyers, the legal profession and the Executive in quite this manner.

As Parliament prepares to consider the proposed amendment, the debate is likely to extend well beyond the question of retirement ages. Increasingly, it is becoming a discussion about constitutional principle, public confidence and the delicate balance that underpins the separation of powers in a democratic society.

WILL THE MINISTER NOW GO TO KANDY?

Justice Minister says Chief Prelates received incorrect information- but does constitutional convention call for a personal explanation?

COLOMBO, Tuesday - Justice Minister Harshana Nanayakkara has responded to concerns expressed by Sri Lanka's Chief Prelates over the proposed extension of the retirement age of superior court judges by suggesting that the Mahanayake Theras had been provided with incorrect information.

The Minister's remarks have shifted the focus of the debate from the substance of the proposed constitutional amendment to a broader question concerning the relationship between the Executive and one of the country's most respected national institutions.

If the Government genuinely believes that the country's most senior Buddhist clergy have misunderstood its intentions, does constitutional convention and political courtesy now require the Minister responsible for justice to travel to Kandy and personally explain the Government's position?

That question is neither partisan nor confrontational. It goes to the heart of democratic engagement between institutions whose respective roles command public confidence.

Governments frequently clarify legislation before Parliament, answer questions in the House and address the media. Far less common is the situation in which the Head of the Justice Ministry publicly suggests that the Mahanayake Theras have acted on inaccurate information.

If that assessment is correct, some constitutional observers argue that the logical next step is dialogue rather than public disagreement.

A personal meeting would not require the Government to alter its position. Nor would it imply acceptance of the concerns raised by the Chief Prelates.

Instead, it would provide an opportunity to explain the constitutional rationale behind the proposal, answer questions directly and ensure that any remaining differences are based on principle rather than misunderstanding.

Such engagement would also reflect Sri Lanka's long tradition of consultation between successive governments and the senior Buddhist clergy on matters regarded as having national significance.

Equally, others argue that constitutional reform must remain the responsibility of elected representatives and Parliament, and that governments should not be expected to negotiate legislative proposals outside the democratic institutions established by the Constitution.

That is a legitimate constitutional position. Parliament alone possesses legislative authority, and ministers remain accountable to Parliament for the policies they advance.



Yet constitutional democracy is not sustained solely by legal powers. It also depends upon public confidence, mutual respect between institutions and a willingness to engage where genuine concerns have been expressed.

Whether the Minister ultimately travels to Kandy is, of course, a matter for the Government.

The more enduring question may be whether moments such as these present an opportunity to reinforce public confidence- not through constitutional argument alone, but through dialogue conducted with openness, courtesy and respect.

Whatever Parliament ultimately decides regarding the proposed amendment, the manner in which this conversation unfolds may prove almost as important as the legislation itself. After all, constitutional institutions derive their strength not only from the powers they exercise, but also from the confidence they inspire among the people they serve.

UNITY OR UNINTENDED CONSEQUENCES?

Tamil-speaking parties move towards common platform, but could the strategy ultimately reduce minority influence?

By Faraz Shauketaly

COLOMBO, Tuesday - The announcement by several Tamil-speaking political parties that they intend to work together under a common political platform ahead of future elections has been welcomed by supporters as a significant step towards presenting a stronger and more unified voice on issues affecting the Tamil community.

The initiative follows years of political fragmentation within Tamil politics, with leaders frequently divided over strategy, electoral alliances and constitutional priorities. Proponents argue that a united front will strengthen

bargaining power both in Parliament and in future discussions on devolution, reconciliation and constitutional reform.

However, some political analysts caution that the move may also have unintended consequences.

Sri Lanka's political history has repeatedly demonstrated that minority communities have often exercised influence not simply through numbers, but through participation within larger national political parties.

Several prominent Tamil politicians have held senior Cabinet positions and exercised considerable influence while representing mainstream governments rather than exclusively ethnic political formations. Others have negotiated successfully with successive administrations from positions of strategic cooperation.

That experience raises an important question.

Could the consolidation of Tamil-speaking parties around a single ethnic political platform encourage Sinhala-majority parties to respond in a similar manner? If so, Sri Lanka could witness a political landscape in which electoral competition becomes increasingly defined by ethnicity rather than policy.

Such an outcome may ultimately diminish opportunities for cross-community political cooperation that has, at various stages of the country's post-independence history, enabled minority representatives to exercise influence far beyond their numerical strength.

There is also an electoral consideration.

Sri Lanka's proportional representation system has often rewarded candidates capable of attracting support across community lines.

Candidates contesting through major national parties have frequently secured ministerial office and access to decision-making that may not always be available to smaller opposition blocs.

Supporters of the proposed alliance reject such concerns. They argue that decades of fragmented representation have failed to produce meaningful progress on many longstanding issues affecting the Tamil community. In their view, unity is essential if minority concerns are to receive the attention they deserve within Parliament.

Whether the initiative strengthens or weakens minority influence may ultimately depend less on the alliance itself than on how it positions its message.

If it evolves into a platform capable of engaging constructively with all communities, it may broaden its appeal.

If, however, it is perceived primarily through an ethnic lens, it could inadvertently encourage a similar political response elsewhere- further entrenching divisions that successive governments have struggled to overcome.

As Sri Lanka prepares for another electoral cycle, the question is no longer whether Tamil parties should work together.

It is whether that unity will help build a more inclusive national politics- or deepen the political fault lines the country has spent decades trying to bridge.



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EDITORIAL

DEMOCRACY IS STRONGEST WHEN IT LISTENS

There are moments in the life of a democracy when disagreement should not be viewed as a crisis but as evidence that constitutional institutions are performing the roles assigned to them.

The current debate over extending the retirement age of judges is one such moment.

The Government has advanced a proposal which it believes will strengthen the administration of justice by retaining experience within the superior courts. The legal profession has questioned whether the proposal raises constitutional concerns regarding judicial independence. The country's Chief Mahanayake Theras have expressed their reservations directly to the President. Parliament will, in due course, debate the measure, while the Supreme Court may ultimately be asked to determine its constitutional validity.

That is not institutional failure.

It is constitutional democracy in motion.

A mature democracy does not require every institution to reach the same conclusion. Indeed, differing perspectives often strengthen the final outcome by ensuring that important legislation is subjected to rigorous examination before it becomes law.

What matters is the manner in which those differences are expressed.

Respectful dialogue must always take precedence over public confrontation. Constitutional reasoning should outweigh political rhetoric. Institutions should seek to persuade rather than diminish one another.

The present controversy also offers an opportunity.

If the Government believes concerns have arisen because of misunderstanding, it should welcome further engagement. If critics believe the proposal carries constitutional risks, those arguments deserve careful consideration. Neither position weakens democracy. Both recognise that constitutional change requires public confidence as much as parliamentary numbers.

Ultimately, constitutions derive their legitimacy not merely from the words written within them, but from the confidence citizens place in the institutions entrusted to interpret, defend and uphold them.

Sri Lanka has experienced many constitutional disagreements throughout its history. Some have divided the nation. Others have strengthened it by encouraging greater transparency, wider public participation and more thoughtful law-making. One hopes the present debate belongs in the latter category.

The outcome will matter.

But equally important will be how the country arrives at that outcome.

Be that as it may.

WEATHER MISERY CONTINUES

Death toll rises to eight as thousands remain affected; authorities warn the danger is far from over

COLOMBO, Tuesday - Sri Lanka's spell of severe weather continued to exact a heavy toll on Tuesday, with the Disaster Management Centre confirming that eight people have now lost their lives while more than 11,800 others have been affected by heavy rains, flooding and landslides across several districts.

Rescue and relief operations remained underway as officials warned that saturated ground conditions continue to pose a significant landslide risk in vulnerable areas, particularly in the central highlands.



One of the worst tragedies occurred in Ginigathena, where a landslide engulfed a house, claiming the lives of four members of the same family. Rescue teams worked for hours under hazardous conditions before recovering the victims from the debris.

The National Building Research Organisation has maintained landslide warnings for several districts, urging residents living on unstable slopes or in identified danger zones to remain vigilant and comply immediately with evacuation notices where issued.

Meanwhile, heavy rainfall has inundated low-lying areas in several parts of the country, disrupting transport, damaging homes and affecting schools and public services.

Emergency shelters have been established for displaced families while district administrations, together with the armed forces, police and disaster response agencies, continue distributing dry rations and other essential supplies.

Meteorological officials have warned that further showers and thundershowers are expected in many parts of the island over the coming days, with isolated areas likely to experience intense rainfall.

Authorities have appealed to the public to avoid travelling through flood-prone roads where possible and to exercise particular caution near rivers, reservoirs and unstable embankments.

The latest emergency has once again highlighted Sri Lanka's continuing vulnerability to extreme weather events.

While improvements in forecasting and early warning systems have enabled authorities to respond more quickly than in previous years, recurring floods and landslides continue to expose weaknesses in drainage infrastructure, hillside development and long-term disaster mitigation planning.

For families who have lost loved ones or seen their homes destroyed, however, those wider policy questions remain secondary.

Their immediate concern is rebuilding lives interrupted once again by the destructive force of nature, even as forecasters warn that the weather system affecting the island has yet to fully pass.

WHEN THE WATERS RECEDE

Sri Lanka's latest disaster exposes a familiar question: Are we rebuilding the same vulnerabilities year after year?

COLOMBO, Tuesday - As emergency crews continue clearing debris and assisting families affected by this week's severe weather, attention is beginning to turn from rescue operations to a more difficult question confronting successive governments: why does Sri Lanka continue to suffer the same destruction each time heavy rains arrive?

According to the Disaster Management Centre, eight people have lost their lives while more than 11,800 others have been affected by floods, landslides and related incidents across several districts. Hundreds have been displaced from their homes, while damage has been reported to roads, bridges, public infrastructure and agricultural land.

Among the most tragic incidents was the landslide at Ginigathena, where four members of the same family died after a hillside collapsed onto their home. The incident once again highlighted the dangers faced by families living in areas already identified as vulnerable to landslides during prolonged periods of heavy rainfall.

Successive governments have invested significantly in disaster preparedness over the past two decades. Early warning systems have improved considerably, the Meteorology Department now provides more timely forecasts, while the National Building Research Organisation and the Disaster Management Centre have strengthened coordination with district administrations and emergency services.

Yet the recurring nature of the damage raises broader policy questions. Flood-prone urban areas continue to experience severe inundation after intense rainfall, while illegal construction, blocked drainage systems and settlement in environmentally sensitive areas remain longstanding concerns identified in numerous official reports.

Climate specialists have repeatedly warned that Sri Lanka should expect more frequent episodes of extreme weather as global weather patterns become increasingly unpredictable. If that assessment proves correct, the challenge facing policymakers extends beyond emergency response to long-term adaptation.

That may require difficult decisions.

Improving urban drainage, relocating families from high-risk areas, strengthening building regulations and protecting natural catchment areas all carry significant financial and political costs.

For those directly affected, however, such policy debates offer little immediate comfort. Their priority is restoring homes, reopening businesses, returning children to school and rebuilding lives interrupted by yet another natural disaster.

As the floodwaters gradually recede, Sri Lanka will once again begin counting the financial cost of the latest emergency. Whether equal attention is now given to addressing the underlying vulnerabilities before the next monsoon arrives may determine whether the country continues responding to disasters - or begins preventing some of them.

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