

**NEWSLINE***Daily by Faraz***"Questioning
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WHEN THE LAW GROWS.... AND WHEN IT MUST WAIT

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They could not rewrite legislation simply because they considered a different policy preferable. In a constitutional democracy, that remained the responsibility of Parliament.

LORD DENNING*Master of the Rolls*

1914–1999





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Lord Denning's philosophy offers a useful framework for Sri Lanka's debate over extending judges' retirement ages

Few judges have influenced the development of the common law more profoundly than Lord Denning, Master of the Rolls. Revered by generations of lawyers throughout the Commonwealth, Denning rejected the notion that the law should become trapped in the circumstances of a bygone age. Society changes, he believed, and the law must evolve with it if justice is to remain meaningful.

Yet Denning drew an equally important distinction.

However creative judges might be in developing the common law, they were not legislators. Courts could interpret statutes, fill gaps in the law and adapt legal principles to changing social conditions. They could not rewrite legislation simply because they considered a different policy preferable. In a constitutional democracy, that remained the responsibility of Parliament.

Those two principles provide an illuminating framework for the debate now unfolding in Sri Lanka over the Government's proposal to extend the retirement age of judges of the Supreme Court and Court of Appeal.

Viewed purely as a matter of public policy, there is a persuasive argument that judicial retirement ages deserve periodic review. Life expectancy has increased significantly over recent decades. Many judges today remain intellectually vigorous and professionally active well beyond the retirement ages fixed when the present constitutional provisions were drafted. Superior court judges acquire experience over decades of practice and judicial service and retaining that experience for a longer period may strengthen consistency in decision-making, reduce the loss of institutional knowledge and assist in addressing increasingly complex constitutional and commercial litigation.

Comparative experience also demonstrates that there is no universal model.

In the United Kingdom, judges generally retire at 75 following recent legislative reform. Australia prescribes retirement ages through its Constitution and State legislation, while India's Constitution fixes the retirement age of Supreme Court judges at 65 and High Court judges at 62. Around the world, retirement ages have been adjusted from time to time in response to demographic change and evolving judicial workloads.

The existence of sound policy reasons, however, does not answer the constitutional question presently confronting Sri Lanka.

Opponents of the Government's proposal do not necessarily argue that judges should always retire at their present ages. Their principal concern lies elsewhere. The retirement age of judges of the Supreme Court and Court of Appeal is expressly provided for in the Constitution. Altering those provisions while serving judges remain in office raises questions concerning judicial independence,

security of tenure and public confidence in the impartiality of the judiciary.

The Bar Association of Sri Lanka has previously argued that because judicial tenure is a constitutional safeguard designed to protect judicial independence, any amendment affecting incumbent judges requires the most careful constitutional scrutiny. Some constitutional lawyers go further, contending that such a change may engage entrenched provisions relating to the sovereignty of the People and therefore require approval not only by Parliament but also, potentially, by the People at a Referendum. Others reject that interpretation, maintaining that Parliament possesses the authority to amend the Constitution through the procedures it already prescribes.

That disagreement is precisely why the issue has become so significant. It is no longer simply a debate about age. It has become a debate about constitutional method.

Lord Denning would almost certainly have recognised the distinction. If society concludes that judges should serve longer because people live longer and remain professionally capable, that is a perfectly legitimate subject for legislative reform. Indeed, Denning himself consistently recognised that the law must adapt to changing realities.

Equally, he may well have insisted that such adaptation occur through the proper constitutional process.

Judges should not legislate from the Bench, and Parliament should not legislate without observing the constitutional safeguards that protect the institutions upon which democracy depends.

Sri Lanka therefore faces two entirely separate questions.

The first is whether extending judicial retirement ages represents sound public policy in the twenty-first century.

The second is whether the constitutional pathway chosen to achieve that objective satisfies the requirements of the Constitution itself.

Those questions should not be confused. A proposal may be wise in principle while remaining contentious in constitutional method.

Equally, a proposal may ultimately be upheld because it has followed every constitutional safeguard available.

That is why the present debate deserves to be conducted with care rather than political passion. Constitutional reform is rarely judged solely by its destination. More often, history asks whether the journey respected the Constitution it sought to amend.

Be that as it may.

(By Faraz Shauketaly & others.
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THE CONSTITUTIONAL BATTLE BEGINS

As the judges' retirement Bill enters the next stage, attention shifts from the Gazette to the Supreme Court and Parliament

COLOMBO, Friday - With the publication of the Government's Bill to extend the retirement age of judges of the Supreme Court and Court of Appeal now complete, the constitutional debate is entering an entirely new phase. What was until recently a policy proposal has become a legislative measure, and attention is expected to shift from political discussion to constitutional interpretation.

Under Sri Lanka's constitutional framework, the gazetting of a Bill does not conclude the process. Rather, it begins a series of constitutional steps that could ultimately determine not only whether the proposed amendment becomes law but also the manner in which it may be enacted. The legislation proposes increasing the retirement age of Supreme Court judges from 65 to 67 years and Court of Appeal judges from 63 to 65 years, together with related amendments affecting the subordinate judiciary.



Once the Bill is placed on the Order Paper of Parliament, any citizen may invoke the jurisdiction of the Supreme Court within the prescribed constitutional period to challenge its consistency with the Constitution. The Court will then be called upon to determine whether any provision of the Bill is inconsistent with the Constitution and, if so, whether it may be enacted by a two-thirds majority in Parliament alone or whether approval at a referendum is also required.

That constitutional determination is likely to become the next major battleground. The Government has consistently maintained that the proposal is intended to retain experienced judges, strengthen continuity within the superior courts and improve the administration of justice. Ministers have rejected suggestions that the amendment is designed to benefit any individual office-holder.

Those opposed to the proposal, however, argue that the issue extends beyond retirement ages. They contend that the Constitution presently guarantees the tenure of superior court judges and that altering the period of service of sitting judges raises wider questions concerning judicial independence, public confidence and the sovereignty of the People. It is those competing constitutional arguments that may ultimately come before the Supreme Court.

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CONSTITUTIONAL BATTLE...

Legal observers note that the Court's determination will not be concerned with whether extending judicial careers is good public policy. Rather, it will examine whether the constitutional procedure adopted by Parliament complies with the safeguards established by the Constitution itself. In that sense, the coming proceedings are likely to focus as much on constitutional process as on judicial tenure.

Whatever the outcome, the debate promises to become one of the most significant constitutional discussions in recent years. Beyond the immediate question of retirement ages, the Bill has revived wider issues concerning the relationship between Parliament and the judiciary, the protection of judicial independence and the limits of constitutional amendment.

For now, the publication of the Bill marks the end of one chapter and the beginning of another. The next decisive stage is likely to unfold not in Cabinet or the political arena, but before the Supreme Court, where the constitutional boundaries of Parliament's proposal may ultimately be tested.

INDIA'S MESSAGE WAS ABOUT MORE THAN DIPLOMACY

*Vikram Misri's visit signals New Delhi's
emphasis on implementation as bilateral ties
continue to deepen*

By Faraz Shauketaly

COLOMBO, Friday - Indian Foreign Secretary Vikram Misri's official visit to Colombo this week was marked by cordial diplomacy and reaffirmations of friendship. Yet beneath the customary statements of goodwill lay a more significant message: India now appears increasingly focused on implementation rather than the announcement of new initiatives.

Meetings between the Foreign Secretary and senior Sri Lankan leaders reviewed progress on a broad range of bilateral projects spanning energy, infrastructure, connectivity, trade, digital cooperation and maritime security. Many of those initiatives have been under discussion for several years, and the emphasis during the visit appeared to be on accelerating delivery rather than expanding the agenda.

Particular attention was paid to infrastructure and connectivity projects intended to strengthen economic links between the two countries. Officials also discussed updating the existing India-Sri Lanka Free Trade Agreement, advancing work on a proposed Social Security Agreement and expanding cooperation in areas including renewable energy and digital public infrastructure.

The visit also underscored the increasingly strategic nature of the bilateral relationship. Sri Lanka occupies a pivotal position in the Indian Ocean, while India has emerged as one of the island's most significant development partners following the economic crisis. Financial assistance, investment and technical

cooperation have all become important pillars of the relationship, reflecting interests that extend well beyond traditional diplomacy.

Observers also noted subtle differences in emphasis between the public statements issued by New Delhi and Colombo following the discussions. While both highlighted the strength of bilateral ties and the importance of continued cooperation, India's official communication placed particular emphasis on the implementation of existing commitments, suggesting that measurable progress is now the priority.



For Sri Lanka, that approach carries practical implications. Major infrastructure projects, energy cooperation and trade reforms can influence economic growth only if they move beyond memoranda and political announcements into timely execution. Investors, development partners and businesses increasingly judge bilateral relationships by outcomes rather than declarations.

The visit therefore serves as a reminder that relations between Colombo and New Delhi are entering a more mature phase. The success of the partnership will depend less on the number of agreements signed than on the ability of both governments to translate commitments into projects that deliver tangible benefits to their respective peoples.

132 KILOMETRES THAT COULD CHANGE THE MAP

*Government plans next phase of expressway
expansion as attention turns to economic
returns rather than road length*

COLOMBO, Friday - The Government's announcement that Sri Lanka's expressway network is set to expand by a further 132 kilometres over the coming years has renewed discussion over the role of modern transport infrastructure in driving economic growth. While the construction of new highways has often been measured by the number of kilometres completed, economists argue that the more important question is whether those roads generate measurable returns for the national economy.

Successive administrations have invested heavily in expressway construction, linking Colombo with the Southern Province, the airport, the Central Province and parts of the North-Western region. Those projects have dramatically reduced travel times and improved road safety, but they have also required substantial public investment financed through a combination of domestic and foreign borrowing.

The proposed expansion seeks to strengthen links between key commercial centres while improving access to emerging industrial zones, tourism destinations and regional markets. Government planners believe that improved connectivity will reduce logistics costs, encourage private investment and improve the competitiveness of Sri Lankan exports.

Business leaders have long argued that transport costs remain one of the hidden burdens affecting the competitiveness of local industry. Delays in moving goods between factories, ports and airports increase production costs and reduce efficiency. Modern highway infrastructure, they contend, can improve productivity in much the same way as reliable electricity or efficient telecommunications.

Tourism is also expected to benefit from improved road connectivity. Shorter travel times between Colombo, the hill country, the cultural triangle and the southern coastline allow visitors to experience more destinations during a single visit, increasing tourism spending across a wider geographical area.

Infrastructure specialists caution, however, that expressways alone cannot transform an economy. The greatest returns are achieved when road development is accompanied by industrial investment, logistics hubs, commercial centres and urban planning designed to maximise economic activity along the new transport corridors.



The challenge facing policymakers is therefore broader than building roads. It is about ensuring that every kilometre of expressway generates employment, investment and productivity gains that justify the substantial public resources committed to their construction. If that objective is achieved, the next 132 kilometres may be remembered not merely as another engineering project but as an investment in Sri Lanka's long-term economic competitiveness.

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MORE THAN A CEREMONIAL OFFICE

The appointment of a new Central Province Governor highlights the continuing constitutional importance of an often-misunderstood office

By Faraz Shaukataly

COLOMBO, Friday - The appointment of Consultant Physician Dr Harsha Fernando as Governor of the Central Province has once again drawn attention to one of the least understood institutions within Sri Lanka's constitutional framework. While Governors are often viewed as largely ceremonial representatives of the President, the office carries significant constitutional and administrative responsibilities that become especially important in the absence of functioning Provincial Councils.

Created under the Thirteenth Amendment to the Constitution, Provincial Governors are appointed by the President and serve as the Head of the Provincial Executive. Their responsibilities include appointing the Chief Minister where Provincial Councils exist, summoning and proroguing Provincial Councils, assenting to Provincial Statutes and exercising a range of executive functions assigned by the Constitution.



In recent years, however, the prolonged absence of Provincial Council elections has altered the practical significance of the office. Without elected Provincial Councils functioning across the country, Governors have assumed an increasingly prominent administrative role, working with provincial officials to oversee education, health, agriculture, rural infrastructure and other devolved functions.

The appointment of Dr Fernando also reflects a growing tendency to select individuals with professional rather than purely political backgrounds for senior public office.

A respected consultant physician, he assumes responsibility for a Province that includes the historic city of Kandy, major plantation districts and some of Sri Lanka's most important cultural and tourism assets.

Constitutional scholars have long debated the appropriate balance between devolved provincial administration and central government oversight. The Governor occupies the point at which those two constitutional principles intersect, representing both the authority of the President and the functioning of the provincial administration.

As discussions continue regarding the future of Provincial Councils and possible elections, the office of Governor is

likely to remain central to the administration of the provinces. For that reason, appointments to these positions carry importance extending well beyond the individual concerned.

Dr Fernando now assumes office at a time when the Central Province faces significant challenges ranging from disaster preparedness and infrastructure development to healthcare delivery and economic recovery. His tenure is therefore likely to be judged not simply by constitutional formality but by the effectiveness with which provincial administration responds to those practical concerns.

HORMUZ REOPENS: BUT HAS THE DANGER REALLY PASSED?

Improved shipping through the Gulf offers cautious optimism, but Sri Lanka still faces the challenge of higher freight costs and geopolitical uncertainty

COLOMBO, Friday - Signs of improving stability in the Strait of Hormuz have been cautiously welcomed by the international shipping industry, following reports that Iran and Oman have reached an understanding intended to facilitate the continued movement of commercial vessels through one of the world's busiest maritime corridors. While the immediate threat to shipping appears to have eased, analysts warn that the underlying geopolitical risks remain far from resolved.

For Sri Lanka, developments in the Gulf are not remote diplomatic events. More than eighty per cent of the island's international trade is carried by sea, while virtually all imported fuel reaches local ports through shipping routes directly or indirectly affected by conditions in the Middle East. Even temporary uncertainty in the Strait of Hormuz has the potential to influence freight charges, insurance premiums and ultimately the prices paid by Sri Lankan consumers.

The recent period of tension saw shipping companies adopt a more cautious approach, with some vessels delaying voyages and insurers reviewing war-risk premiums for ships transiting the region. Although the latest understanding has reduced immediate concerns, shipping executives point out that insurance costs and freight rates rarely return to previous levels overnight.

Sri Lanka's position as a major transshipment hub adds another dimension to the issue. Colombo Port handles a substantial volume of regional cargo, and disruptions to international shipping schedules can affect everything from container availability to turnaround times. Any improvement in maritime stability therefore has implications not only for imports but also for export competitiveness and port operations.

Economists also note that lower shipping costs, if sustained, could help moderate inflationary pressures over time. Fuel, food, industrial raw materials and consumer goods all depend upon efficient international logistics. Reduced uncertainty in global shipping markets therefore offers potential benefits across the wider economy.

Nevertheless, experts caution against assuming that the crisis has ended.

The Strait of Hormuz remains one of the world's most strategically sensitive waterways, and any renewed escalation in regional tensions could once again place international trade under pressure.

For Sri Lanka, the lesson remains unchanged. An island nation whose prosperity depends heavily upon maritime commerce has a direct stake in freedom of navigation and stability in international shipping lanes. The latest developments provide welcome relief, but not yet certainty.

EDITORIAL

REFORMS MUST BE BUILT TO LAST

Every government inherits the responsibility of improving the institutions it administers. Some reforms concern the economy, others infrastructure, education or public administration. From time to time, constitutional reform also becomes necessary as institutions adapt to changing national needs and circumstances.

Yet experience teaches that the durability of reform depends not merely upon what is changed, but upon how those changes are introduced. Constitutional amendments, particularly those affecting the judiciary or other key democratic institutions, carry a significance that extends well beyond the immediate issue before Parliament. They shape public confidence in the integrity of the State itself.

That is why process matters. Consultation matters. Transparency matters. Even where a proposal may possess genuine merit, confidence is strengthened when governments demonstrate that alternative views have been heard, constitutional safeguards respected and institutional independence preserved. The legitimacy of reform is measured not simply by parliamentary numbers but by the confidence it commands among the wider public.

The same principle applies to development projects, international agreements and public administration. Roads are not built merely to connect places; they are intended to connect opportunities. Diplomatic agreements are not signed simply to produce headlines; they must deliver practical benefits. Institutions are not strengthened by legislation alone; they are strengthened by consistent, fair and accountable administration.

Sri Lanka stands at an important moment in its constitutional and economic development. Decisions taken today will influence public confidence for many years to come. That is why every reform should be judged against a simple test: will it leave the country's institutions stronger, more trusted and more resilient than they were before?

Governments inevitably change. Laws are amended. Policies evolve. But institutions endure. Their strength ultimately depends upon the confidence citizens place in them. That confidence is earned through openness, consistency and respect for the constitutional principles that bind the Republic together.

Be that as it may.

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