IN THE SUPREME COURT OF THE DEMOCRATIC REPUBLIC OF SRI LANKA

SC/ Prod/ 21/05/2026

In the matter of an application under and in terms of Article 121(1) of the Constitution read with Article 120 and Rule 63(1) of the Supreme Court Rules of 1978, against the Bill titled "ANTI-CORRUPTION (AMENDMENT)"

SC (SD) 49/2026

Petitioner : Sunil Jayasundera
Treasurer,
Vinivida Foundation,
99, Sukkarama Road,
Nugegoda.

Appeared in Person

SC (SD) 55/2026

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

Counsel : M U M Ali Sabry, PC with Ruwantha Cooray, Shamith Fernando, Shehani Alwis, Naamik Nafath, Akila Aluthwatta, Joshua Moraes, Deshan Aluwihare, Vimukthi Karunarathne, Yoosuf Alfayed, Navod Nethma, Thenuda Imbulagoda, Akash Rafeek and instructed by N & S Associates

SC (SD) 60/2026

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

Colombo 06.

Counsel : Dr Romesh De Silva, PC with Niran Ankitell, Hafeel Faris, Pasindu Bandara, Ashan De Alwis and instructed by Shayamali Athukorala

SC (SD) 90/2026

Petitioners : 1. Transparency International Sri Lanka
No. 366, Nawala Road,
Nawala, Rajagiriya.

2. Maheshi Herat
No. 366, Nawala Road,
Nawala, Rajagiriya.

Counsel : Pulasthi Hewamanna with Fadhila Fairoze, Dharini Fernando and instructed by Thushari Jayawardena

SC (SD) 97/2026

Petitioner : Bodiyabaduge Dilana Priyanjan Ansel Perera
34/6E, Wijeyaba Mawatha,
Nugegoda.

Counsel : Sanjay Rajaratnam, PC with Edward Jayasinghe and Sumendra Fernando and instructed by Punsara Rathnayaka

SC (SD) 110/2026

Petitioner : Dinidu Virantha Kumara de Alwis
433, Molawatta Road,
Ihala Mahawewa,

Mahawewa.

Counsel : Pulasthi Hewamanna with Linuri Munasinghe and instructed by Niluka Dissanayake

SC (SD) 111/2026

Petitioner : Rohana Nishantha Hettiarachchi
No. 240/4, Vidyala Mawatha,
Homagama.

Counsel : Asthika Devendra with Aruna Madushanka and instructed by Praveen Premathilake

SC (SD) 112/2026

Petitioners : 1. Centre for Policy Alternatives (Guarantee) Limited
No. 6/5 Layards Road,
Colombo 00500.

2. Dr. Paikiasothy Saravanamuttu
No. 3 Ascot Avenue,
Colombo 00500.

Counsel : Viran Corea, PC with Luwie Ganeshathasan, Khyati Wikramanayake, Tharushi Jayarathne, Shabnam Mohamed and instructed by R N S Livera

SC (SD) 113/2026

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

Counsel : Tharaka Nanayakkara with Lihini Fernando, Harshana M. De Silva, Thiwanka Artigalle, Dileepa Fernando, Amrith Karunathilake and instructed by Sanduni Rathnayake

SC (SD) 114/2026

Petitioners: 1. Galkissage Kethaka Prasad Galkissa
88/8, Maanana Road,
Poruwadanda.

2. Mahadura Gimahantha Siri Sisirindasiri
Ikiliyadeniyawaththa,
Wijemanna Mawatha,
Wilegoda, Kalutara North.

Counsel : Nisali Pieris and instructed by Yohan Pieris

SC (SD) 115/2026

Petitioner : Prabath Sudarshana Wickremesinghe Gunawardana
No 22/12, Regent City,
Demanhandiya,
11270.

Counsel : Eraj De Silva, PC with Daminda Wijerathna, Janagan Sundramorrthy, Naveed Ahamed, Sanjana Mapatuna, Parami Gunawardana, Madushanka Dissanayaka, Amasha Pathirana and instructed by Shazeena Mashoor and RM Sanduni Rathnayaka

SC (SD) 116/2026	Petitioner :	1. Rivihara Sachith Pinnaduwa Attorney-at-law Young Lawyers Association, 383/1, Kalapaluwawa, Rajagiriya. 2. Dinusha Lakali Thiranagamage Attorney-at-Law Young Lawyers Association, 383/1, Kalapaluwawa, Rajagiriya.
	Counsel :	Sarinda Jayawardena and Jagadeesha Ranasinghe with Thilini Rankoth and instructed by Dinusha Randeniya
SC (SD) 117/2026	Petitioner :	K.P.P. Indika No. 11/17, 2nd lane, Samagi Mawatha, Depanama, Pannipitiya, Appeared in Person
SC (SD) 118/2026	Petitioner :	Media Law Forum (Guarantee) Limited 170, 1st floor, Hulfsdrop Street, Colombo 12.

Counsel : Lakshan Dias with Yashodara Illangasinghe and instructed by Dayani Panditharathne

SC (SD) 119/2026 Petitioner : Chula Adhikari
283/1/1, Veda Mawatha,
Horakagas Junction,
Vaavita,
Bandaragama.

Counsel : Absent and unrepresented

Vs.

Hon. Attorney General
Attorney General's Department,
Colombo 12.
Respondent in all cases

Bimal Rathnayake
Leader of the House,
Parliament of Sri Lanka,
Sri Jayewardenepura, Kotte,
Sri Lanka.
1st respondent in SC (SD) 49/2026 and SC (SD) 119/2026

Counsel for the state: Nerin Pulle, ASG, PC with Avanthi Perera, DSG, SC Sajith Bandara and SC Rushmi Wickramagamage

Before	:	**Hon. A.L. Shiran Gooneratne, J**
		Hon. Mahinda Samayawardhena, J
		Hon. M. Sampath K.B. Wijeratne, J

The Court assembled for hearing at 10.00 a.m. on 3rd September 2026 and 4th September 2026.

The Bill titled **"Anti-Corruption (Amendment), a Bill to amend the Anti-Corruption Act, No. 9 of 2023"**, was published as a Supplement to Part II of the Gazette on 27th July 2026 and placed on the Order Paper of Parliament on 19th August 2026, in accordance with Article 78(1) of the Constitution.

Fifteen applications, numbered as above, were filed with the Registry of the Supreme Court, invoking this Court's jurisdiction under Article 121 to determine whether the Bill, in its entirety or in any of its provisions, is inconsistent with the Constitution. Following the filing of these Petitions, notices were duly served on the Petitioners and the Hon. Attorney General in accordance with Article 134(1) of the Constitution.

The Court heard all the Petitioners, except the Petitioner in SC (SD) 119/2026, who was absent and unrepresented, and the Hon. Attorney General.

The Petitioners argued that the Bill contravenes Article 83 of the Constitution, read together with Articles 10, 11, 12, 13, 14(1)(a) and 14A, as well as Articles 3 and 4. Consequently, it was asserted that the Bill cannot be enacted unless the procedure outlined in Article 82(5) is followed, which requires a two-thirds majority of all Members of Parliament, including those absent, and approval by the People at a Referendum where article 83 is engaged. The Respondent contested this position.

Upon the conclusion of the hearing, the Court directed the parties to file their respective written submissions by 7th September 2026. The parties were informed that the determination would be communicated to His Excellency the President and the Hon. Speaker of Parliament.

The Bill comprises 19 clauses and seeks to introduce amendments to the Anti-Corruption Act, No. 9 of 2023, as set out in Cabinet Paper No. 26/0243/801/004 and the Memorandum dated 25th January 2026, titled **"Making Essential Amendments to the Anti-Corruption Act No. 9 of 2023"**, due to several legal and interpretative ambiguities in the provisions of the Anti-Corruption Act, No. 9 of 2023, as well as inconsistencies between the Sinhala and English texts thereof, which have resulted in considerable legal, interpretative and technical difficulties in conducting investigations, instituting legal proceedings, and performing judicial and administrative functions under the law. The Petitioners challenge these changes.

At the outset, the learned Additional Solicitor General informed Court that amendments would be made by way of Committee Stage amendments to sections 88 and 149 of the principal enactment.

Unquestionably, a robust legal framework, administered by an independent body entrusted with the task of combating bribery and corruption, is essential to the maintenance of the rule of law and the promotion of a just and fair society. At the same time, while recognizing that the provisions of the principal enactment must be read as a whole to ascertain their full legal effect, regard must also be given to the legislative purpose expressed in its preamble. The preamble, inter alia, provides for the empowerment of the Commission to direct investigations and institute proceedings in respect of offences of bribery and corruption, offences relating to the Declaration of Assets and Liabilities, and offences associated therewith.

Clause 3 - Amendment to Section 67

Clause 3 of the Bill seeks to amend section 67 of the principal enactment.

Section 67 of the Principal Act reads as follows;

> "*(1) If at any time before the judgement is given by the High Court against a person who has been indicted for having committed one or more offences under this Act, the Director-General may with the sanction of the Commission, having due regard to the facts specified in subsection (2) and subject to one or more conditions referred to in subsection (3), with the permission of the High Court, withdraw the indictment against such accused.*
>
> *(2) When the Director-General withdraws the indictment under subsection (1), he shall have due regard to-*
>
> > *(i) the national interest and public interest;*
> >
> > *(ii) views of the victims of the offence; and*
> >
> > *(iii) representations that may be made by the accused person or on his behalf by his Attorney-at-Law.*
>
> *(3) The Director-General may when withdrawing an indictment under subsection (1), impose on the accused one or more of the following conditions to be fulfilled within a stipulated period:-*
>
> > *(i) to publicly express remorse and apology before the High Court, using a text issued by the Commission;*

(ii) to provide reparation to victims of the offence, as specified by the Commission;

(iii) to publicly undertake that he refrains from committing an offence under this Act; or

(iv) to permanently refrain from holding public office, both elected and appointed.

(4) If such person fulfills the conditions imposed under subsection (3), during the period stipulated for fulfilling such conditions, the Director-General shall not present a fresh indictment against the accused thereafter on the same charges specified in the original indictment.

(5) If the accused fails without reasonable cause to comply with the said conditions, the Director-General shall file a fresh indictment against the accused on the same charges specified in the original indictment and proceed to prosecute the accused after the lapse of the period given for the accused to fulfil such conditions."

By Clause 3, section 67 is proposed to be amended in the following manner:

"

(1) in subsection (1) thereof, by the substitution for the words "the High Court against a person who has been indicted for", of the words "the High Court or the Magistrate's Court against a person who has been indicted or charged for" and by the substitution for the words "with the permission of the High Court, withdraw the indictment against such accused.", of the words "with the permission of the High Court or the Magistrate's Court, withdraw the indictment or the charge sheet against such accused.";

(2) in subsection (2) thereof, by the substitution for the words "the indictment", of the words "the indictment or the charge sheet";

(3) in subsection (3) thereof, by the substitution for the words "an indictment", of the words "an indictment or a charge sheet" and in paragraph (i) thereof, by the substitution for the words "before the High Court", of the words "before the High Court or the Magistrate's Court";

(4) in subsection (4) thereof, by the substitution for the words "a fresh indictment", of the words "a fresh indictment or a fresh charge sheet" and by the substitution for the words "the original indictment", of the words "the original indictment or the original charge sheet";

(5) in subsection (5) thereof, by the substitution for the words "a fresh indictment", of the words "a fresh indictment or a fresh charge sheet" and by the substitution for the words "original indictment", of the words "original indictment or the original charge sheet"; and

(6) by the repeal of the marginal note thereof and the substitution therefor of the following marginal note:"

Petitioners challenge clause 3, which amends section 67 of the principal enactment, that deals with withdrawal of a charge sheet on the basis that it is inconsistent with the Constitution, as the said provision allows for non-prosecution where sufficient grounds exist for prosecution.

The learned Additional Solicitor General seeks to justify the proposed amendment on the ground that clause 3 does not introduce any substantive amendment and merely extends the power already conferred on the Director General where an indictment has been filed before the High Court to a situation where a charge sheet has been filed before the Magistrate's Court. The learned Additional Solicitor General further contends that this amendment has been brought solely to rectify the inconsistency in the principal Act.

The proposed changes under clause 3 extend the scope of section 67 by introducing references to 'Magistrate's Court' in addition to the High Court. Further, the amendments introduce "indictment or charge sheet," to the existing references to "indictment", expanding procedural language to include both courts. The amendment further provides for the withdrawal of both indictments and charge sheets with the permission of either court, in contrast to the previous wording, which referred only to indictments.

Under the principal enactment, the Director-General, with the sanction of the Commission and permission of the High Court, could withdraw an indictment against an accused person. The amendment simply broadens this procedural mechanism to cover cases initiated in the Magistrate's Court. This change is consistent with the structure of the Act itself. Section 65 already empowers the Director-General to institute proceedings in the Magistrate's Court through charge sheets, bypassing Section 136 of the Criminal Procedure Code. Extending Section 67 to include the Magistrate's Court ensures coherence between the prosecutorial powers granted under Section 65 and the withdrawal mechanism under Section 67.

The amendment rather serves to harmonies the Act by aligning the Director-General's authority to withdraw charges with his existing authority to institute proceedings, whether in the High Court or the Magistrate's Court.

The amendment does not alter the substantive safeguards built into the provision. The Director-General may only withdraw charges with the sanction of the Commission, having regard to facts specified in subsection (2), and subject to conditions in subsection (3). Crucially, withdrawal still requires the permission of the relevant court.

Judicial oversight therefore remains intact, ensuring that the amendment does not undermine constitutional principles of separation of powers or judicial control over criminal proceedings. The amendment is not inconsistent with Articles 3, 4(c), or 12. Judicial power continues to be exercised by the courts, as the Director-General cannot withdraw charges unilaterally but must obtain court permission. The amendment is not in conflict with the Criminal Procedure Code, as it merely adapts the withdrawal mechanism to the procedural reality that bribery cases may be prosecuted either by indictment or by charge sheet.

Accordingly, we are of the opinion that the proposed amendments are within the legislative powers of the Parliament and do not violate any of the provisions of the Constitution. Therefore, the proposed amendment can be passed by a simple majority.

Clause 4 - Amendment to section 70(1)

Clause 4 proposes two amendments to section 70(1) of the Anti-Corruption Act. It removes the words "with bribery", with the result that the provision would apply to all offences under Part III of the Act and substitutes the words "the Director-General" for the words "any Magistrate named therein". The Commission would therefore be empowered to authorize the Director-General not to charge or prosecute an accomplice, subject to the condition that such person makes a full and true disclosure of the circumstances within his knowledge relating to the offence.

Section 70 of the principal enactment provides:

"70. (1) During any stage of the investigation or at any time before the conclusion of the trial of a person charged with bribery under the provisions of Part III of this Act, the Commission may, with the view of obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence by writing under its hand authorize any

Magistrate named therein *not to charge or prosecute such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or as abettor in the commission thereof.*

(2) The Magistrate shall record, in the manner specified in the Code of Criminal Procedure Act, No. 15 of 1979, the evidence on oath of every person referred to in subsection (1) and transmit the record to the Commission.

(3) Every person referred to in subsection (1) shall be examined as a witness in the case.

(4) Such person if not on bail, shall be detained in custody until the termination of the trial.

(5) Where a person referred to in subsection (1) has willfully concealed anything essential or has given false evidence, he may be tried for the offence in respect of which he was charged with or for any other offence of which he appears to have been guilty in connection with the same matter.

(6) The statement made by a person referred to in subsection (1) may be given in evidence against him when he is tried as stated in subsection (5)." (emphasis is mine)

Several Petitioners who challenged Clause 4 contended that the existing section 70(1) places the Magistrate between the Commission and the accomplice before the benefit of non-prosecution is granted. According to them, the involvement of the Magistrate provides an independent judicial check on the decision to exempt an accomplice from prosecution in return for his evidence. They relied in this regard on sections 256 and 257 of the Code of Criminal Procedure Act and submitted that the criminal law has traditionally retained a judicial element in the procedure relating to the pardon of an accomplice.

It was further submitted that the protection afforded under section 70(1) is conditional upon the accomplice making a "full and true disclosure". The Petitioners argued that, under the existing provision, the Magistrate provides an independent safeguard in that process. In their view, the proposed amendment would leave the question of non-prosecution, including the operation of that condition, within the Commission and the Director-General without the same external judicial involvement.

The Petitioners also referred to the fact that section 70(2) is not amended. The Magistrate would therefore continue to record on oath the evidence of the person protected under subsection (1) and transmit that evidence to the Commission. It was submitted that the continued involvement of the Magistrate under subsection (2) supports their position that the existing section 70 was intended to preserve judicial supervision over the procedure. Petitioners further questioned how the amended provision would operate where proceedings have already commenced, since section 70(1) may be invoked at any time before the conclusion of the trial.

The learned Additional Solicitor General, appearing for the Attorney-General, took a different position. He submitted that the decision whether to charge or prosecute a person, or to refrain from doing so, is an exercise of prosecutorial discretion and not judicial power. According to the Attorney-General, the existing section 70(1) does not confer upon the Magistrate an independent power to decide whether an accomplice should be prosecuted. The decision is made by the Commission, while the Magistrate acts upon the authority given by the Commission.

It was therefore submitted that Clause 4 does not remove from the Magistrate a power which the Magistrate presently exercises. The Attorney-General relied on the wording of section 70(1), under which it is the Commission that authorises the non-prosecution, and on section 70(2), which separately requires the Magistrate to record the accomplice's evidence. On this basis, the Attorney-General submitted that the Magistrate's sanction is not a prerequisite to the Commission's decision under subsection (1).

The Attorney-General also relied on the scheme of section 65 of the Act. Under that provision, where the material obtained in an investigation discloses an offence, the Commission directs the Director-General to institute criminal proceedings, and proceedings in the Magistrate's Court are instituted by a charge sheet signed by the Director-General. The submission was therefore that the power to institute proceedings already lies with the Director-General and not with the Magistrate. Clause 4 was described as bringing section 70 into conformity with that prosecutorial structure.

The Attorney-General further submitted that the safeguards contained in the remaining provisions of section 70 are unaffected. The accomplice's evidence would continue to be recorded on oath before a Magistrate, and the consequences provided for where the accomplice conceals material facts or gives false evidence would remain in force. Where proceedings have already been instituted and an indictment or charge sheet is to be withdrawn, the permission of the relevant Court would continue to be required under section 67.

Observation of this Court

The principal question which arises is whether the substitution of the Director-General for the Magistrate in section 70(1) removes a judicial power presently exercised by the Magistrate and transfers that power to a non-judicial officer.

In considering this question, it is useful first to examine the procedure applicable to accomplices under the Code of Criminal Procedure Act.

Section 256 provides:

"256. (1) In the case of any offence triable exclusively by the High Court the Magistrate inquiring into the offence may, after having obtained the Attorney-General's authority so to do, or the Attorney-General himself may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence and to every other person concerned whether as principal or abettor in the commission thereof.

(2) -

(3) -"

Section 257 provides:

"257. The Attorney-General at any stage after commitment but before judgment is pronounced may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in or privy to any such offence, tender or authorize the Magistrate to tender a pardon on the same condition to such person."

Under section 256, the Magistrate conducting the inquiry may tender the pardon after obtaining the authority of the Attorney-General. The Attorney-General may also tender the pardon himself. Under section 257, the Attorney-General may either tender the pardon or authorize the Magistrate to do so. The statutory act performed by the Magistrate under these provisions is therefore clearly identified.

Section 70(1) of the Anti-Corruption Act is framed differently. It does not confer upon the Magistrate a power to tender a pardon. Instead, it provides that the Commission may authorize a named Magistrate *"not to charge or prosecute"* the accomplice on condition that he makes a full and true disclosure. Section 70 does not require the Magistrate to determine whether such person should receive the benefit of non-prosecution. Nor does it prescribe any matter upon which the Magistrate must be satisfied before the Commission's decision may be acted upon.

The words *"on condition of his making a full and true disclosure"* do not, in our view, confer such a power upon the Magistrate. They prescribe the condition attached to the benefit afforded to the accomplice. The consequences of a failure to comply with that condition are dealt with separately in subsection (5), which permits the person to be tried where he has willfully concealed anything essential or given false evidence.

The position must then be considered in light of the manner in which criminal proceedings are instituted under the Anti-Corruption Act.

Section 18(a), which sets out the powers and functions of the Director-General, provides that the Director-General shall:

"institute criminal proceeding on an indictment or a charge sheet on the direction of the Commission."

Section 65(1) further provides:

"Where the material received by the Commission in the course of an investigation conducted by it under this Act, discloses the commission of an offence under the provisions of this Act by any person, the Commission shall direct the Director-General to institute criminal proceedings against such person in the appropriate court."

Section 65(2) expressly provides that the Director-General shall have power to institute proceedings in the Magistrate's Court through a charge sheet signed by the Director-General, and excludes the operation of section 136 of the Code of Criminal Procedure Act for that purpose.

The statutory scheme is that the decision whether criminal proceedings are to be instituted is taken by the Commission. The institution of those proceedings is entrusted to the Director-General. In proceedings before the Magistrate's Court, it is the Director-General who signs the charge sheet. The Anti-Corruption Act does not confer upon the Magistrate a corresponding power to initiate the charge or prosecution.

Once proceedings have been instituted, the Magistrate performs the judicial functions set out in section 65(4), which include causing the accused to appear before Court, explaining the charge, recording the plea and conducting the trial.

It is against this statutory arrangement that section 70(1) must be read. The existing provision authorizes a Magistrate "not to charge or prosecute" an accomplice, although the power to institute the charge or prosecution under the same Act is already entrusted to the Director-General. Clause 4 substitutes the Director-General for the Magistrate in that provision. The person authorized by the Commission not to charge or prosecute would therefore be the same officer who, under sections 18 and 65, would otherwise institute those proceedings.

In ***Attorney General v Sandresh Ravindra Karunanayake and Others,*** **SC Appeal No. 104/2024,** Supreme Court Minutes dated 03.06.2025, this Court considered the concept of prosecutorial discretion and referred with approval to ***Krieger v Law Society of Alberta,*** **2002 SCC 65, [2002] 3 SCR 372,** where the Supreme Court of Canada observed:

"Significantly, what is common to the various elements of prosecutorial discretion is that they involve the ultimate decisions as to whether a prosecution should be brought, continued or ceased, and what the prosecution ought to be for."

In the present statutory scheme, the ultimate decision whether a person is to be prosecuted rests with the Commission. That decision was not vested in the Magistrate under the principal enactment. Accordingly, the proposed amendment does not alter the nature of the power exercised or transfer a judicial power previously vested in the Magistrate to the Director-General.

Seen in this context, Clause 4 does not confer upon the Director-General a judicial power which is transferred to the Director-General previously held by the Magistrate. The amendment brings the mechanism in section 70(1) into line with the structure established elsewhere in the Act.

The ultimate decision as to whether an action is to be brought, continued or ceased is vested with the Commission in the current regulation scheme and therefore, as mentioned, there is no change in this scheme with the proposed amendments. There is no change in the judicial power, as argued, the power was never with the Magistrate to begin with.

A comparison with section 71 is also useful. Section 71 deals with Deferred Prosecution Agreements. Where the Commission agrees to suspend or defer criminal proceedings, subsection (3) requires the Commission to make an application to the High Court to obtain its sanction. Under subsection (4), the High Court must consider the application and be satisfied that the agreement is in the interest of justice and that its terms are fair, reasonable and proportionate. The agreement comes into effect only upon the approval of the High Court.

Section 71 therefore expressly provides for a judicial determination. The Commission makes the initial decision, but that decision is subject to the sanction of the High Court upon criteria stated by Parliament.

No corresponding procedure appears in section 70(1). The Commission is not required to apply to the Magistrate for approval of its decision. The Magistrate is not required to be satisfied of any specified matter before the accomplice may be protected from prosecution. The judicial function expressly assigned to the Magistrate appears in subsection (2), where the

Magistrate is required to record the evidence of the accomplice on oath and transmit that record to the Commission.

This function remains unaffected by Clause 4. The Magistrate continues to record the accomplice's evidence on oath. The accomplice must thereafter be examined as a witness, and the consequences provided for wilful concealment or false evidence remain unchanged.

As further support for this conclusion, we note that the previous draft of the Anti-Corruption Bill used a different language. It allowed the Commission either to tender a pardon itself or to authorize a Magistrate to tender one. That formulation was much similar to sections 256 and 257 of the Code of Criminal Procedure Act.

When the Bill was later presented to Parliament, that language had changed. Clause 70(1) no longer referred to the tender of a pardon. Instead, it provided that the Commission may authorize a named Magistrate "not to charge or prosecute" the accomplice, which is the wording that was ultimately enacted.

We do not treat the earlier draft as decisive. It does, however, support the distinction already apparent from the enacted provisions. The Code speaks expressly of tendering a pardon, whereas section 70 of the Anti-Corruption Act is concerned with whether the accomplice is to be charged or prosecuted.

In these circumstances, we are unable to identify a judicial power under the existing section 70(1) that is transferred to the Director-General by Clause 4. The power to institute proceedings was already vested in the Director-General, while the decision contemplated by section 70(1) remains that of the Commission. The Magistrate's expressly stated judicial role in recording the evidence under subsection (2) remains unchanged.

Several Petitioners also contended that the amendment would concentrate investigative and prosecutorial authority in the Commission and the

Director-General without sufficient statutory guidance, which may create a risk of arbitrary decision-making contrary to Article 12(1) of the Constitution. It was further submitted that removing the Magistrate from subsection (1), particularly where the decision not to prosecute depends upon the accomplice making a "full and true disclosure", may encourage false or fabricated evidence and affect the fairness of the criminal process. On that basis, it was argued that Clause 4 is inconsistent with Articles 12 and 13 of the Constitution.

We are unable to accept the submission that the amendment gives the Director-General an unfettered discretion. As already noted, the decision whether an accomplice should be charged or prosecuted is made by the Commission. The Director-General acts pursuant to the authorization of the Commission. Further, the exercise of prosecutorial discretion is not beyond judicial scrutiny. The learned Additional Solicitor General submitted that where such discretion is exercised unlawfully, it may still be challenged under Articles 126 or 140 of the Constitution.

Clause 4 also does not remove the safeguards that remain elsewhere in section 70. Subsection (2) continues to require the Magistrate to record the evidence of the accomplice on oath and to transmit that record to the Commission. Subsection (5) likewise remains in force and permits the prosecution of an accomplice who has wilfully concealed anything essential or given false evidence. Those safeguards are therefore unaffected by the amendment to subsection (1).

There is an additional safeguard where criminal proceedings have already been instituted. If a decision not to prosecute requires the withdrawal of an indictment or charge sheet that is already before Court, that withdrawal remains subject to the permission of the relevant Court under section 67 of the principal enactment. Clause 4 therefore does not permit the Commission or the Director-General, acting on their own, to bring pending court proceedings to an end outside the statutory procedure for withdrawal.

We have also considered the effect of removing the words "with bribery", which would extend section 70(1) to offences under Part III of the principal enactment generally. In our view, that change does not alter the nature of the power exercised under section 70(1). The decision whether an accomplice should be charged or prosecuted remains one for the Commission. It also remains dependent upon the accomplice making a full and true disclosure and continues to operate subject to the safeguards found in the other provisions of section 70. The fact that the provision will apply to other offences under Part III does not, by itself, make Clause 4 inconsistent with the Constitution.

Having regard to the statutory scheme governing the institution and withdrawal of criminal proceedings under the principal enactment, the continued role of the Magistrate under section 70(2), and the availability of judicial scrutiny over the exercise of prosecutorial discretion, we are not persuaded that Clause 4 transfers judicial power presently vested in the Magistrate to the Director-General or confers an unguided or unfettered discretion capable of arbitrary exercise. We accordingly hold that Clause 4 is not inconsistent with the Constitution and may be passed with a Simple Majority in Parliament.

Clause 6 (4) - Amendment to Section 80 (1)(v)

Section 80 (1) (v) of the Principal Act reads as follows;

> *"Executives of trade unions registered under the Trade Unions Ordinance (Chapter 138)"*

Under the existing provision, all executives of trade unions registered under the Trade Union Ordinance (Chapter 138) are required to make a declaration of assets and liabilities. The proposed amendment seeks to limit this requirement to the executives of trade unions having more than 1,000 registered members.

The Petitioners argue that the threshold introduced in the Act is not rational, narrowing of this category is inconsistent with the purpose of the Act. On behalf of the Attorney General, it was argued that this amendment has been introduced in view of the reality that there are more than 2000 registered trade unions and as a matter of practicality requiring disclosure of executives of all such trade unions does not further the objectives of the Act. It was further argued that this being a policy decision, the question as to why such decision was taken is solely a matter of desirability and cannot be challenged.

Observation of this Court

Section 9 of the Trade Union Ordinance provides that an application for the registration of a trade union may be made to the Registrar upon being signed by at least seven members of the union. The fact that a trade union may be registered with as few as seven members does not, in our view, render the threshold of 1,000 members unreasonable or constitutionally objectionable. The threshold introduced by the proposed amendment serves a specific regulatory purpose under the Anti-Corruption Act, namely, to focus the declaration requirement on trade unions of a substantial organisational scale and potential economic and social influence.

We are of the view that the distinction drawn by the proposed amendment between trade unions having more than 1,000 registered members and those having 1,000 or fewer members bears a rational relationship to the regulatory purpose sought to be achieved. It also enables the Commission to deploy its limited resources in a manner that facilitates the effective administration and enforcement of the Anti-Corruption Act, without imposing the same regulatory burden on smaller trade unions.

It is further significant that the threshold of 1,000 registered members operates only for the purposes of the Anti-Corruption Act. It does not affect the legal status, rights or obligations of trade unions under the Trade Union Ordinance or any other law.

In the circumstances, we are of the opinion that the classification introduced by the proposed amendment is not inconsistent with any provision of the Constitution. Thus, it can be passed by a simple majority.

Clause 6 (5) - Amendment to Section 80(1)(x)

Section 80(1)(x) of the principal enactment reads as follows;

"Chairmen, Directors and staff officers of Companies registered under the provisions of the Companies Act, No. 07 of 2007, in which not less than twenty five per centum of shares are held by the State or by a public corporation"

The Petitioners argue that the proposed amendment draws an arbitrary distinction based solely upon the percentage of shares held by the State or a public corporation, without regard to the actual value of the public investment concerned. The Petitioners further contend that increasing the existing threshold from twenty-five per centum to fifty per centum compounds this arbitrariness by materially narrowing the class of persons accountable under the principal enactment without any discernible nexus to the value of public funds involved or the objects of the anti-corruption regime.

It was submitted on behalf of the Attorney General that assets and liabilities declaration framework established under the Anti-Corruption Act is a statutory construct, not a constitutional requirement. It was also emphasized that Article 14A of the Constitution does not impose any obligation on the categories of persons listed in original section 80(1)(x) to disclose personal financial information. Rather, the duty arises exclusively from the Anti-Corruption Act, and consequently, Parliament retains full legislative competence to amend its provisions.

It was further submitted that directors and officers of companies in which the State holds a controlling share bear heightened responsibilities towards the public and, in contrast, in companies dominated by private shareholders, it would be irrational to prioritize State interests over those of the majority private stakeholders. The amendment, therefore, merely excludes such private-sector directors from obligations designed for public officials. The learned Additional Solicitor General noted that, given the privacy concerns inherent in the disclosure of personal financial information, the exclusion is both reasonable and rational.

Observation of this Court

In our view, the proposed amendment is a reasonable and appropriate measure to provide greater clarity and consistency in determining whether an entity should be regarded as a State Corporation for the purposes of the Anti-Corruption Act. Where the Government holds 50 per cent or more of the shares of a company, it has a substantially greater ownership interest and a greater measure of influence over the affairs of that company than where it holds only a minority shareholding of 25 per cent. The proposed threshold therefore focuses the statutory definition on entities in which the State has a substantial ownership interest, rather than extending it to companies in which the State is merely a minority shareholder.

A minority shareholding, by itself, may not be sufficient to characterise a privately operated and controlled company as a State Corporation for the purposes of the Anti-Corruption Act. The imposition of statutory obligations under the Act should bear a reasonable relationship to the extent of State ownership and control. The proposed 50 per cent threshold accordingly ensures that such obligations are primarily directed towards entities in which the State has a substantial ownership interest, while avoiding the unnecessary extension of public-sector regulatory requirements to entities which remain predominantly privately owned and controlled.

It is also relevant that Sri Lankan legislation has adopted majority ownership as a basis for identifying State-owned companies. For instance, the Second Schedule to the Inland Revenue Act, No. 24 of 2017, as amended, defines a "state owned company" as a company in which 50 per centum or more of the shares are held by the Government, subject to the further provision contained in that definition. The proposed amendment is therefore also consistent with the approach adopted in existing legislation.

The anti-corruption framework should be sufficiently broad to address corruption involving public resources and entities substantially owned or controlled by the State, while at the same time being sufficiently precise so as not to impose public-sector regulatory obligations indiscriminately upon privately owned and controlled entities. The proposed amendment, in our view, achieves an appropriate balance between these considerations.

This amendment is further consistent with the corresponding amendments proposed to section 162 of the Act in relation to the definitions of "Public Official" and "scheduled institution", whereby the existing 25 per cent threshold is replaced with a threshold of 50 per cent.

In the circumstances, we are of the opinion that the proposed amendment is not inconsistent with any provision of the Constitution. Thus, it can be passed by a simple majority.

Clause 6 (7) - Amendment to Section 80(1)(cc)

The amendment proposes to repeal paragraph 80(1)(cc), which presently reads:

"proprietors, editors and members of the editorial staff of media companies licensed under section 17 of the Sri Lanka Telecommunications Act, No. 25 of 1991"

and to substitute the following:

"proprietors, chairman and directors of media companies registered under the Ministry of Mass Media and licensed under section 22 of the Sri Lanka Telecommunications Act, No. 25 of 1991".

The Petitioners argue that the proposed amendment creates an arbitrary classification amongst persons engaged in media and the dissemination of information. It was submitted that Clause 6 (7) makes the disclosure obligation dependent upon the particular registration and licensing status of the media company, without reference to the functions performed, control over assets, relationship with public funds, or any identifiable corruption risk.

The Petitioners argue that the provision thereby subjects one class of media actors to an onerous statutory disclosure regime whilst functionally comparable actors remain outside its ambit and that such differential treatment lacks a rational nexus to the objects of the anti-corruption regime and is inconsistent with Article 12(1). It was also submitted that freedom of speech and expression, including publication, guaranteed by Article 14(1)(a) of the Constitution would also be affected by the proposed amendment. The learned Additional Solicitor General, in response, submits that the rationale for the proposed amendment is to focus on the key personnel of the industry.

Observation of this Court

We observe that this amendment alters the scope of persons required to declare assets and liabilities by shifting from editorial staff and editors to proprietors, chairmen, and directors. This change excludes those directly responsible for editorial content, thereby weakening accountability in relation to freedom of expression guaranteed under Article 14(1)(a) of the Constitution. The amendment brings within the scope of the Act persons exercising financial and managerial oversight, while excluding persons who exercise direct and substantial influence over editorial decisions. This means that one class of media actors is subjected to onerous disclosure obligations while functionally comparable actors remain exempt, a distinction that lacks a rational nexus to the objectives of the anti-corruption regime and is inconsistent with Article 12(1) equality before the law.

The Constitution protects the freedom of speech and publication under Article 14(1)(a), and by removing editors and editorial staff from the ambit of asset declaration, the amendment undermines transparency in the very group most influential in shaping public discourse. The press serves as a watchdog against corruption and abuse of power, and narrowing accountability to only proprietors and directors diminish scrutiny over those who exercise editorial influence.

Since the ability to communicate, publish, and access information enables individuals to discover truth, participate in decision-making, and balance stability with social change. Any statutory regime that arbitrarily limits disclosure obligations to a subset of media actors undermines this embedded right, distorts the flow of information, and risks weakening transparency and accountability that are essential to combating corruption and promoting good governance.

Accordingly, the proposed amendment is inconsistent with fundamental constitutional principles of checks and balances and the rule of law. By excluding editorial staff, it weakens the press's role as a guardian of public accountability and violates both Article 12(1) on equality and Article 14(1)(a) on freedom of expression, which embeds not only the right to speak but also the right to receive correct information necessary for citizens to make accurate and informed decisions.

It must be emphasized that the requirement that individuals engaged in the media and journalism disclose their assets and liabilities does not amount to an interference with the freedom of speech and expression. Rather, it serves as an inducement to honest and transparent reporting, reinforcing public trust in the press.

Hence, we are of the opinion that though a referendum is not required, the proposed amendment needs to be passed with a special majority.

Clause 7 – Repeal Of Section 81(e)

Clause 7 of the Bill seeks to amend section 81 of the principal enactment.

Section 81 reads as follows:

> *81. Every person to whom this Part applies shall, make a declaration, in accordance with the provisions of section 82, (hereinafter in this Part referred to as a "declaration of assets and liabilities"), of all—*
>
> *(a) his assets and liabilities;*
>
> *(b) the assets and liabilities of his spouse;*
>
> *(c) the assets and liabilities of each of his dependant children irrespective of their age;*
>
> *(d) assets and liabilities of any other person's dependant on him irrespective of their age; and*

(e) the assets and liabilities of any other person who cohabits and shares the common household with the person to whom this Part applies for at least six months prior to the date of declaration except where such person does not share mutual rights and obligations with person to whom this Part applies.

By Clause 7 of the Bill, paragraph (e) of section 81 is sought to be repealed altogether.

In the Statement of Legal Effect of the Bill, under Clause 7, it is stated that *"the legal effect of the section as amended is to remove persons who are total strangers to the declarant in order to safeguard the privacy of such person."*

The premise upon which this explanation proceeds is fundamentally flawed. There can be no dispute that the privacy of persons who are "total strangers to the declarant" deserves protection. However, a person falling within section 81(e) cannot be characterised as a "total stranger" to the declarant.

Section 81(e) does not extend the obligation of disclosure to every person who merely resides with the declarant. Its application is subject to several cumulative requirements. The person shall cohabit with the declarant, share a common household with the declarant, and have done so for at least six months prior to the date of declaration. Even where those requirements are satisfied, the paragraph expressly excludes a person who does not share mutual rights and obligations with the declarant.

The expression "mutual rights and obligations", read in the context of cohabitation and the sharing of a common household, signifies reciprocal responsibilities and entitlements arising from the relationship between the declarant and the cohabiting partner. It imports a degree of domestic and financial interdependence.

These requirements distinguish the person contemplated by paragraph (e) from one who merely resides in the same household, such as a tenant, boarder, employee or temporary guest. Such persons may be strangers to the declarant, but they do not fall within paragraph (e) merely because they reside under the same roof. The paragraph contemplates a close, continuing and interdependent domestic relationship, not that of a stranger.

Learned Additional Solicitor General seeks to justify the repeal of section 81(e) on the basis that the existing provision requires the declaration of the assets of a cohabiting partner even where the declarant has no interest in those assets. It is submitted that the proposed amendment would safeguard the privacy of a cohabiting partner who is financially independent of the declarant, while a partner who is not financially independent would, in any event, fall within section 81(d).

We are unable to accept this reasoning. A spouse may equally be financially independent of the declarant and may own substantial assets, acquired before or during the marriage, in which the declarant has neither a legal nor a beneficial interest. Yet such assets and liabilities remain subject to declaration under section 81(b). While a spouse and a cohabiting partner need not be treated alike, no rational basis has been demonstrated for distinguishing between them on the particular ground relied upon in support of the proposed amendment, namely, financial independence and the protection of privacy.

Nor are we persuaded by the submission that a cohabiting partner who is not financially independent would, in any event, fall within section 81(d). Paragraph (d) concerns a person who is dependent on the declarant. Dependency is conceptually different from the relationship contemplated by paragraph (e). Two persons may cohabit, share a common household and share mutual rights and obligations while remaining financially independent of each other. Indeed, mutuality denotes reciprocity rather than unilateral dependence. Paragraph (d) therefore does not fill the gap that would be created by the repeal of paragraph (e).

Learned Additional Solicitor General also relies on section 92 in support of the proposed repeal, contending, in substance, that assets beneficially owned by the declarant are already required to be disclosed notwithstanding that they may stand in the name of another person.

Section 92 reads as follows:

> *92. In this Part unless the context otherwise requires "assets and liabilities" means assets, liabilities, income, expenditure and interests directly or beneficially owned in or outside Sri Lanka, the details of which shall be prescribed by regulations.*

Section 92 and section 81 perform distinct functions. Section 92 determines what constitutes "assets and liabilities", whereas section 81 determines whose assets and liabilities shall be declared. By including assets and interests "directly or beneficially owned", section 92 ensures that an asset beneficially owned by the declarant is not excluded merely because legal title stands in another name. Section 81 goes further by requiring the declaration of the assets and liabilities belonging to the persons identified in paragraphs (b) to (e), even where the declarant has no beneficial interest in those assets. Section 92 therefore neither renders paragraph (e) redundant nor provides a justification for its repeal.

We are therefore unable to accept either the premise in the Statement of Legal Effect that section 81(e) concerns "total strangers" to the declarant or the justification advanced on the basis of privacy and financial independence. Clause 7, by retaining the disclosure requirement in respect of a spouse under section 81(b) while removing it altogether in respect of a person who satisfies the requirements of section 81(e), creates a distinction for which no rational basis has been demonstrated and which lacks a rational nexus to the objects sought to be achieved as set out in section 2 of the principal enactment. We accordingly hold that Clause 7 is inconsistent with Article 12(1) of the Constitution.

We are of the view that the proposed repeal of section 81(e) should therefore be withdrawn.

If, however, it is intended to proceed with Clause 7 in its present form, it shall be passed by the special majority prescribed by Article 84(2), read with Article 82(5), of the Constitution.

Clause 11(1) - Proposed Section 88(1)(f)

Clause 11 seeks to amend section 88 of the principal enactment.

Section 88(1) presently requires the centralized electronic system to automatically generate, within one month of submission, a redacted version of every declaration of assets and liabilities accessible to the general public through the official website of the Commission. The subsection specifies the information which shall be excluded from the redacted version, namely—

(a) the address of the residence of the declarant or of any other person, whose assets are declared by the declarant;

(b) full address/es of declared real estate except information pertaining to the ward and district in which the real estate is situated;

(c) date of birth, National Identity Card Number, Passport Number or any other number recognized by the relevant authorities for the purpose of identification of individuals mentioned in the declaration;

(d) bank account numbers; or

(e) any other deposit details.

Clause 11(1) proposes, *inter alia,* to add the following paragraph immediately after paragraph (e):

"(f) any other information that the Central Authority may consider to violate an individual's privacy as may be prescribed"

Several petitioners challenge this provision as being inconsistent with Articles 12(1) and 14A(1) of the Constitution.

Article 12(1) provides that all persons are equal before the law and are entitled to the equal protection of the law. It is well established that Article 12(1) protects against arbitrariness. A provision which is so vague or uncertain as to confer unguided or unfettered discretion may result in arbitrary or unequal application and thereby offend Article 12(1).

Article 14A(1) guarantees to every citizen the right of access to information, as provided for by law, being information required for the exercise or protection of a citizen's right, held by the State and the other institutions and persons specified therein.

Consistently with that constitutional guarantee, section 3(1) of the Right to Information Act, No. 12 of 2016 provides:

"Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority."

The right of access to information is, however, not absolute. Of particular significance is Article 14A(2) of the Constitution, which expressly recognises privacy as a legitimate ground upon which that right may be restricted. It provides, in the relevant part:

"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 ... the reputation or the rights of others, privacy ..."

Thus, the Constitution itself requires a balance to be maintained between the citizen's right of access to information and the protection of the privacy of individuals. A restriction imposed for the protection of privacy is therefore not, by reason of that object alone, inconsistent with Article 14A(1). The further question is whether the restriction is prescribed by law and is necessary in a democratic society.

Although privacy has not been expressly declared as a separate fundamental right under the Constitution, its importance cannot be understated. Privacy protects the sphere of personal autonomy within which an individual is entitled to conduct his or her private life free from unjustified intrusion. It is closely connected with individual dignity, autonomy and the freedom to make personal choices without unnecessary exposure to public scrutiny. The protection assumes particular significance in an age in which personal information may be electronically collected, aggregated, reproduced and disseminated on an unprecedented scale. At the same time, where the individual concerned holds public office or exercises public power, the legitimate claim to privacy shall be balanced against the public interest in transparency, accountability and the prevention of corruption.

That balance is also reflected in the Right to Information Act. Section 5(1)(a) provides that a request for information shall be refused where:

"the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger

public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure."

The statutory formulation is significant. It does not treat privacy as an absolute ground for withholding information. It requires consideration of the nature and degree of the interference with privacy and expressly preserves the larger public interest in disclosure.

It is against this constitutional and statutory background that the proposed section 88(1)(f) shall be considered.

Parliament cannot reasonably be expected to foresee every factual situation or changing circumstance that may arise in the administration of an enactment. It may lay down the governing legislative policy while leaving matters of detail, implementation and adaptation to subordinate legislation, provided that the delegation is sufficiently circumscribed and does not amount to an abdication of essential legislative power. The mere fact that Parliament specifies certain matters in the principal enactment and permits additional matters within the same field to be prescribed by regulation does not, by itself, render the delegation constitutionally objectionable.

Indeed, section 88(1)(a)–(e) itself identifies particular categories of information which Parliament has determined should not be disclosed to the general public. They relate, broadly, to information of a personal or identifying character: residential addresses, detailed locations of real property, personal identification particulars, bank account numbers and deposit details. Proposed paragraph (f) follows those specifically enumerated categories and begins with the words "any other information". Applying the principle of *ejusdem generis*, those words are not to be read in isolation or as conferring an unlimited authority to exclude information of any description. They take their colour from the preceding paragraphs and are further confined by the express statutory purpose of protecting "an individual's privacy". The paragraph therefore operates as a residual provision directed towards information engaging privacy interests of the kind underlying paragraphs (a)–(e).

There is also a practical justification for such a residual provision. The kinds of information capable of intruding upon an individual's privacy are not static. They may develop with changes in technology, methods of collecting and combining data, social conditions and evolving forms of identification. It may therefore be impracticable for Parliament to exhaustively specify in the principal enactment every category of information that may legitimately require redaction.

The use of subordinate legislation for matters of this nature is not unfamiliar to the principal enactment. Section 82(1), for example, enacts that "Every person to whom this Part applies shall, in the form as may be prescribed by regulations make declarations of assets and liabilities". Regulations have in fact been made governing declarations of assets and liabilities pursuant to the powers conferred by the Act.

Similar provisions are found in other statutes as well. Section 6 of the Registration of Persons Act, No. 32 of 1971, as amended, provides for the information to be recorded in respect of each person in the Register. After expressly specifying such particulars as the name, date of birth, place of birth, gender, address and family details, Parliament adds in paragraph (g), "any other information as may be prescribed".

Another example is found in the Online Safety Act, No. 9 of 2024. Section 23(3)(a), while specifying the details to be contained in a complaint relating to the communication of a prohibited statement, also provides for "such other details as may be prescribed".

A more recent example is found in the Rescue, Rehabilitation and Insolvency (Corporate and Personal) Act, No. 12 of 2026. Section 157(1) sets out in considerable detail the information to be contained in the Personal Insolvency Register, including the name and address of the insolvent person, the type and date of the insolvency order, the court and case number, and particulars of the administrator or trustee. The subsection also provides that the Register shall contain "any other information required to be entered in the Personal Insolvency Register under this Act or regulations made thereunder."

Nor does the expression "as may be prescribed" leave the identification of additional categories of information solely to the discretion of the Central Authority.

Under section 156, where the Act requires a matter to be prescribed, the power to make regulations is vested in the Minister, to be exercised in consultation with the Commission. Such regulations are required to be published in the Gazette and thereafter brought before Parliament for approval in accordance with that section.

The proposed paragraph (f) therefore contains two distinct requirements. First, the information must be of such a nature that the Central Authority considers its disclosure to violate an individual's privacy. Secondly, information of that description must be prescribed by regulation made under section 156. The Central Authority cannot, merely because it considers particular information to engage an individual's privacy, withhold it from the redacted version made accessible to the general public unless that category of information has also been prescribed in accordance with the Act.

Subordinate legislation made pursuant to the Act also remains subject to judicial scrutiny. A regulation which travels beyond the authority conferred by the enabling provision, or is otherwise unlawful, may be challenged in the exercise of the fundamental rights jurisdiction of the Supreme Court or the writ jurisdiction of the Court of Appeal.

We are therefore unable to accept the broader submission that Parliament cannot, consistently with Article 14A, provide for additional categories of privacy-sensitive information to be identified by regulation. Article 14A(2) itself recognises privacy as a legitimate basis for restricting access to information, and the legislative technique adopted in paragraph (f), read with section 156, does not by itself constitute an impermissible delegation of legislative power.

In these circumstances, proposed paragraph (f), when read together with the preceding paragraphs of section 88(1) and section 156, does not confer an unguided or unfettered discretion capable of arbitrary application. Nor does it impose a restriction on access to information beyond that permitted by Article 14A(2). We accordingly hold that Clause 11(1) is not inconsistent with Articles 12(1) or 14A (1) of the Constitution.

Clause 11(2) - Proposed Section 88(1A)

Let us now consider Clause 11(2), by which, immediately after section 88(1), the following new subsection is proposed to be introduced as subsection (1A):

"(1A)(a) A person who has obtained a redacted version of a declaration of assets and liabilities of any other person shall not use such declaration for any other purpose than submitting such declaration to any officer or any institution under section 86.

(b) A person who uses a redacted version of a declaration of assets and liabilities of any other person in violation of such other person's privacy, commits an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding one hundred thousand rupees or

to a term of imprisonment not exceeding one year or to both such fine and imprisonment."

Several petitioners challenge Clause 11(2) on the ground that it is inconsistent with Articles 10, 12(1), 14(1)(a) and 14A of the Constitution.

Article 10 guarantees to every person freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice. Article 14(1)(a) guarantees to every citizen the freedom of speech and expression, including publication. Article 14A guarantees the right of access to information, subject to the qualifications contained therein.

At the hearing, the learned Additional Solicitor General stated that the following paragraph would be introduced as paragraph (c) of proposed subsection (1A) at the Committee Stage:

"(c) Provided that subsections 88(1A)(a) and (b) shall not apply to a redacted version of a declaration of assets and liabilities made by a person falling within any of the categories specified in paragraphs (a), (b), (c), (u), (w) of subsection 80(1), by members of Provincial Councils and by elected members of local authorities."

The effect of the proposed Committee Stage amendment is significant. Paragraphs (a), (b), (c), (u) and (w) of section 80(1) refer respectively to:

(a) the President;

(b) the Prime Minister;

(c) Members of Parliament;

(u) office-bearers of recognized political parties for the purposes of elections under the Presidential Elections Act, No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981, the Provincial Councils Elections Act, No. 2 of

1988, Local Authorities Elections Ordinance (Chapter 262) or the Trade Unions Ordinance (Chapter 138); and

(w) candidates nominated for election at elections to be held under the Presidential Elections Act, No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981, the Provincial Councils Elections Act, No. 2 of 1988 or the Local Authorities Elections Ordinance (Chapter 262).

Members of Provincial Councils and elected members of local authorities are separately included in the proposed paragraph (c).

The restrictions in proposed subsection (1A) will therefore not apply to the redacted declarations of those elected representatives, candidates and specified political office-bearers.

The amendment will, however, apply to the other categories of persons to whom Part II applies, including the several categories of public officers and other persons specified in section 80(1).

The learned Additional Solicitor General submitted that the purpose of proposed subsection (1A) is to prevent the misuse or abuse of information contained in declarations of assets and liabilities in a manner which violates the privacy of the persons concerned. The justification advanced for the restriction therefore requires consideration in the context of the constitutional protection accorded both to freedom of expression and access to information and to the countervailing interests of privacy and the rights of others.

Article 15(2), which applies specifically to the freedom of speech and expression guaranteed by Article 14(1)(a), permits restrictions prescribed by law in the interests of racial and religious harmony, parliamentary privilege, contempt of court, defamation and incitement to an offence. Privacy is not expressly mentioned in Article 15(2), although defamation, which may in certain circumstances overlap with an invasion of privacy, is expressly recognised as a ground of restriction.

Article 15(7) permits restrictions upon the exercise and operation of the fundamental rights declared and recognised by, *inter alia,* Article 14, prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. The protection of the privacy of another person is capable of falling within the recognition and protection of the rights of others contemplated by Article 15(7).

More directly, Article 14A(2) expressly recognises privacy as a legitimate ground upon which the right of access to information may be restricted. It provides, *inter alia,* that restrictions prescribed by law may be imposed where necessary in a democratic society for the protection of "the reputation or the rights of others" and "privacy". Privacy is therefore not an interest foreign to the constitutional scheme governing access to information. It is expressly recognised by the Constitution as an interest which may, in an appropriate case, justify a restriction upon that right.

The same balance is reflected in the Right to Information Act, No. 12 of 2016. Section 5(1)(a), in substance, permits access to personal information to be refused where its disclosure bears no relationship to a public activity or interest, or would result in an unwarranted invasion of the privacy of the individual, subject to the larger public interest justifying disclosure or the consent of the person concerned. The statutory scheme therefore recognises both the importance of access to information and the necessity of protecting personal information against unwarranted invasions of privacy.

A declaration of assets and liabilities is, by its very nature, composed substantially of personal financial information. The fact that the law requires such information to be declared in the public interest does not deprive the declarant of every legitimate interest in his privacy. Nor does public service, without more, place every aspect of a person's private financial affairs outside the sphere of privacy.

Where the State compels a person to disclose information concerning his assets and liabilities for the legitimate purpose of preventing and detecting bribery, corruption, illicit enrichment and conflicts of interest, it is equally legitimate for the State to provide safeguards against the misuse of the information so compulsorily disclosed. The compulsory character of the disclosure is therefore a relevant consideration in determining the balance to be struck between public scrutiny and individual privacy.

Section 88(1) already seeks to strike such a balance. It does not make the declaration in its entirety available to the public. It requires the centralized electronic system to generate a redacted version and specifically excludes residential addresses, full addresses of immovable property, dates of birth and identification numbers, bank account numbers and other deposit details. The identity of a person obtaining the redacted version is also required to be ascertained and recorded. The legislature has therefore proceeded on the basis that public scrutiny is legitimate, but that it shall coexist with protection of information of a particularly private character.

The protection sought to be introduced by proposed subsection (1A) is also not without precedent in our law. Under the former Declaration of Assets and Liabilities Law, No. 1 of 1975, section 7 permitted a person to bring to the attention of an appropriate authority, acquisitions of wealth, financial or business dealings or expenditure which appeared not to be commensurate with the known sources of wealth and income of a person to whom that Law applied. At the same time, section 7(4) prohibited certain public statements concerning such allegations and investigations, while section 8 imposed duties of secrecy in relation to information obtained in the performance of duties under that Law. The legislative concern that information relating to compulsory declarations of private financial affairs should not become an instrument for unregulated public accusation is therefore not novel.

There is a further consideration. The Anti-Corruption Act itself provides a structured means by which information obtained from a declaration may lead to official scrutiny. Section 84(2)(c) expressly requires the Central Authority to conduct verification of a declaration upon receipt of a complaint from any person concerning illicit enrichment or a conflict of interest relating to a person to whom Part II applies. Where illicit enrichment is detected through that verification, section 84(3) requires an investigation under section 42. Section 43 further permits a complaint or information concerning an offence referred to in section 41 to be provided to the Commission orally, in writing or by electronic communication.

Section 86, to which proposed subsection (1A)(a) refers, identifies the Attorney-General, the Commission, the Commissioner-General of Inland Revenue, the Head of the Department of Exchange Control, the Inspector General of Police, designated officers of special police units, the Director-General of Customs and designated officers of the Financial Intelligence Unit as authorities entitled, with the sanction of the Central Authority, to call for and refer to declarations of assets and liabilities.

Thus, a person who examines a redacted declaration and considers that it discloses unexplained wealth, illicit enrichment, a conflict of interest or other conduct warranting investigation is not left without a remedy. The statutory scheme enables that information to be placed before the Commission and the other competent authorities so that it may be verified and investigated through processes in which the person concerned is afforded the protections of law.

There is an important distinction between bringing apparently suspicious financial information to the attention of the competent authority for verification and investigation, on the one hand, and publicly presenting an allegation of corruption or illicit enrichment as an established fact before such verification has taken place, on the other. Once disseminated through the press, social media or other public platforms, an allegation based upon an incomplete or mistaken interpretation of a declaration may cause serious injury to reputation and privacy which cannot always be adequately repaired by a subsequent explanation, acquittal or award of damages. The Constitution does not require the legislature to remain indifferent to that possibility.

We are therefore unable to accept the proposition that the protection of the privacy of persons whose financial affairs are compulsorily disclosed under the Act is not a legitimate legislative objective. The protection of privacy is expressly recognised in Article 14A(2), while the protection of the rights of others is recognised in Articles 14A(2) and 15(7). The objective sought to be achieved by Clause 11(2) is therefore a legitimate one.

The petitioners nevertheless submit that proposed paragraph (b), by employing the expression "in violation of such other person's privacy", creates a criminal offence in terms which are vague and uncertain.

We are unable to accept that the mere use of the word "privacy" renders the provision constitutionally uncertain. Privacy is a concept expressly employed by the Constitution itself in Article 14A(2) and by section 5(1)(a) of the Right to Information Act. Like many expressions necessarily employed in legislation, its application depends upon context. The provision does not criminalise every use of a redacted declaration. Paragraph (b) is attracted only where the use of the declaration violates the privacy of the person concerned. Whether particular conduct amounts to such a violation is a matter to be determined objectively by the Court having regard to the nature of the information, the manner and purpose of its use, the extent to which the information relates to the discharge of public functions, the existence of a legitimate public interest and all other relevant circumstances.

It is important in this regard that paragraphs (a) and (b) are not conflated. Paragraph (a) restricts the purpose for which a redacted declaration may be used, whereas paragraph (b), which creates the criminal offence, expressly requires that the use be "in violation of such other person's privacy".

The Committee Stage amendment assumes particular significance in this regard. The proposed restrictions will not apply to the President, the Prime Minister, Members of Parliament, members of Provincial Councils, elected members of local authorities, the specified office-bearers of recognised political parties and candidates nominated for election. The legislature has thus drawn a distinction between persons who hold or seek elected political office, whose declarations are subject to a higher degree of public scrutiny, and the remaining categories of persons who are required by law to disclose their private financial affairs by reason of the offices or functions they perform.

That distinction cannot be regarded as irrational. The degree of legitimate public scrutiny attaching to the financial affairs of an elected representative or a person seeking elected office may differ from that attaching to an ordinary public officer who is brought within the statutory declaration regime because of the nature of his duties. The Constitution does not require the same balance between transparency and privacy to be struck identically in respect of every person to whom the declaration regime applies.

At the same time, the public accessibility of the redacted declarations under section 88(1) is not without purpose. Section 79(e) expressly identifies as one of the objects of Part II the prevention of illicit enrichment and conflicts of interest arising in the discharge of public functions or official activities "through public scrutiny". Proposed subsection (1A) shall therefore be understood in harmony with, and not in a manner which defeats, that statutory object. Public scrutiny enables a citizen to examine the information disclosed, compare it with information legitimately available to him, and, where circumstances warrant, invoke the mechanisms established by the Act for verification and investigation. What the proposed provision seeks to prevent is the use of compulsorily disclosed personal financial information in a manner which unlawfully invades the privacy of the person concerned.

The contention that existing remedies relating to defamation, harassment or other unlawful conduct are by themselves sufficient does not render the proposed provision unconstitutional. Parliament is entitled, subject to constitutional limitations, to provide specific protection against misuse of information which the State itself compels an individual to disclose. The fact that some forms of misuse may also attract liability under another law does not preclude Parliament from addressing the particular risk arising from the statutory asset-declaration regime.

In reaching this conclusion, we are mindful that freedom of speech and expression and the right of access to information perform an indispensable function in exposing corruption and securing accountability in public administration. Equally, the Constitution itself recognises that those freedoms coexist with the rights of others and with privacy. Neither interest can be considered in isolation from the other.

Having regard particularly to the redacted nature of the information made publicly available, the statutory avenues for complaints, verification and investigation, the requirement in proposed paragraph (b) that the impugned use must violate the privacy of the person concerned, and the proposed Committee Stage amendment excluding elected representatives, candidates and the specified political office-bearers from the operation of subsection (1A), we are not persuaded that Clause 11(2), as proposed to be amended at the Committee Stage, is inconsistent with Articles 10, 12(1), 14(1)(a) or 14A of the Constitution.

Clause 17 - Amendment to Section 149

Learned Counsel for the Petitioners challenged Clause 17 on the basis that it materially alters the scheme governing bail under section 149 of the Anti-Corruption Act, No. 9 of 2023. It was submitted that, under the existing provision, the Bail Act, No. 30 of 1997 applies as the general rule, while the proviso creates a limited exception in respect of a person detected of having committed an offence involving the soliciting, accepting or offering of a gratification. Even where that proviso is engaged, the Magistrate before whom the person is produced retains jurisdiction to release such person on bail in exceptional circumstances and for reasons to be recorded.

The Petitioners submitted that Clause 17 removes the jurisdiction of the Magistrate in relation to the category identified in the proposed proviso and requires any application for bail to be made directly to the High Court. They argued that, in practical terms, this means that a person brought before the Magistrate would have no opportunity to seek release from the court in which he is first produced, and would instead have to remain in custody until an application can be placed before the High Court and determined.

The Petitioners emphasized that this is not merely a change in forum. Obtaining the relevant case record, preparing and filing an application in the High Court, allowing time for objections, and awaiting a hearing and order may all take time. During that period, the person concerned remains deprived of his liberty. The Petitioners therefore contended that the proposed amendment introduces an additional procedural and temporal barrier to the prompt consideration of bail, with the consequence that a person may spend a longer period in custody before a court is able to consider whether his continued detention is justified.

The Petitioners also contended that Clause 17 broadens the range of offences to which the special bail regime would apply. At present, the proviso is limited to offences involving the soliciting, accepting or offering of a gratification. Clause 17, however, would extend this restriction to cases where the alleged act of corruption is said to have caused a prescribed loss to the Government or resulted in a prescribed benefit, favor or advantage. The Petitioners further argued that, in practice, the Director-General's certificate would determine whether the Magistrate has jurisdiction to consider bail. Yet, the proposed provision does not appear to provide any mechanism by which an accused person may challenge that certificate at the stage when bail is sought.

The Petitioners also relied on section 48 of the principal enactment, which requires that a person arrested without a warrant be brought before the nearest Magistrate without unnecessary delay and within the period prescribed by law. Sanjay Rajaratnam P.C., in particular, submitted that Clause 17 would create an unusual and potentially unfair situation: although an arrested person must be brought before a Magistrate under section 48, that Magistrate would be prevented from considering bail if the person falls within the category specified in the proviso. The accused would instead be required to make a separate application to the High Court, despite already having been produced before a court with ordinary authority to deal with questions of bail.

The Petitioners also relied on the overall scheme of the Bail Act. They submitted that the Act proceeds on the basis that the grant of bail is the rule and its refusal the exception. Sections 14 and 15 identify the circumstances in which bail may be refused and require the Court to record reasons for doing so. Against that framework, the Petitioners argued that Clause 17 introduces a different and more restrictive standard for persons falling within the proviso, by requiring the existence of "exceptional circumstances" before bail may be granted. In their submission, this effectively reverses the ordinary approach to bail by placing on the suspect or accused the burden of showing why he or she should be released.

The Petitioners further relied on the presumption of innocence guaranteed by Article 13(5) of the Constitution. They submitted that, however serious an allegation may be, a person remains presumed innocent until proven guilty. The gravity of the alleged offence, they argued, cannot by itself justify placing the burden on an unconvicted person to establish exceptional circumstances in the High Court in order to regain his or her liberty. According to the Petitioners, Clause 17 does precisely that by requiring the suspect or accused to justify release before guilt has been established.

Petitioners also placed a significant reliance on this Court's previous Special Determination in relation to the Anti-Corruption Bill of 2023. The original Clause 149 of that Bill required a Magistrate to remand a suspect or accused until the conclusion of the trial, unless exceptional circumstances justified release. This Court held that such a provision effectively made remand the rule rather than the exception, and was irrational and inconsistent with Article 12(1) of the Constitution. Following that determination, the learned Additional Solicitor General proposed an amendment, which was subsequently enacted as section 149 of the principal enactment.

In that context, the Petitioners submitted that Clause 17 would, revive a restriction on bail of the kind that had already been considered and addressed by this Court when the principal enactment was examined.

The learned Additional Solicitor General, appearing for the Attorney-General, submitted that Clause 17 does not make the existing law more restrictive, but instead relaxes it. Under the present proviso to section 149(1), once the Director-General issues a certificate confirming detection, the Magistrate is required to remand the suspect until the conclusion of the trial, unless exceptional circumstances justify the grant of bail. Under the proposed amendment, however, the Director-General would no longer certify that a person has been "detected." His role would be limited to certifying whether the prescribed monetary threshold in relation to the alleged bribe, loss, benefit, favour or advantage has been reached. The learned Additional Solicitor General therefore submitted that the amendment reduces, rather than expands, the role of the Director-General.

The learned Additional Solicitor General also disputed the Petitioners' contention that the expression "detected" reflects a higher threshold than being "suspected or accused." It was submitted that "detected" is rendered in the Sinhala text as "අනාවරණය" and that, by virtue of section 164 of the principal enactment, the Sinhala text prevails. According to the learned Additional Solicitor General, the Sinhala expression conveys a lower threshold, a position which, he submitted, had also been accepted by the Petitioners. He further submitted that any suspicion contemplated by Clause 17 would, in any event, have to amount to reasonable suspicion in accordance with the jurisprudence of this Court.

The learned Additional Solicitor General further drew attention to the difference in the persons to whom the respective provisions apply. While the existing proviso refers broadly to "any person detected," Clause 17 is confined to a person who is "suspected or accused." On that basis, it was submitted that the proposed amendment narrows the category of persons who would be subject to the special bail regime.

It was also emphasized that the Director-General is given no discretion to determine whether bail should be granted or refused. His function is limited to certifying whether the prescribed monetary threshold has been met. The learned Additional Solicitor General submitted that such a certificate merely establishes an objective fact upon which the statutory classification operates. It does not determine the question of bail and therefore does not amount to an exercise of judicial power.

The learned Additional Solicitor General submitted that the monetary thresholds provide an objective basis for distinguishing more serious cases of bribery and corruption from other offences under the Act. In support of this position, it was argued that the principle of equality does not require persons or situations that are materially different to be treated in the same way. Since the impugned proviso applies only where the prescribed monetary threshold is met, the learned Additional Solicitor General contended that it represents a proportionate means of treating more serious offences differently according to their gravity.

In relation to the transfer of bail jurisdiction from the Magistrate's Court to the High Court, the learned Additional Solicitor General maintained that the amendment does no more than change the court before which an application for bail must be made. Reliance was placed on Article 105(2) of the Constitution, which permits Parliament to alter the powers, duties, jurisdiction and procedure of courts created or established by law. It was therefore submitted that the amendment does not transfer any judicial power to the Executive and does not infringe Article 4(c), read with Article 3 of the Constitution.

The learned Additional Solicitor General also referred to several enactments containing special provisions governing bail, including the Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, the Poisons, Opium and Dangerous Drugs Ordinance, the ICCPR Act, the Offences Against Public Property Act and the Prevention of Terrorism Act. It was submitted that these provisions demonstrate that Parliament may prescribe special bail regimes in respect of particular categories of offences and, in appropriate cases, vest bail jurisdiction in a higher court. Attention was also drawn to section 13 of the Bail Act, under which bail in respect of offences punishable with death or life imprisonment falls within the jurisdiction of the High Court.

It was further submitted that the existence of a special bail procedure under the Anti-Corruption Act is not inconsistent with the Bail Act. Section 3(1) of the Bail Act expressly recognizes that its provisions do not apply where another written law contains specific provisions relating to bail. Accordingly, the learned Additional Solicitor General argued that the creation of a separate bail regime for certain offences under the Anti-Corruption Act cannot, by itself, be regarded as constitutionally objectionable.

Turning to the requirement of exceptional circumstances, the learned Additional Solicitor General submitted that this is not a new restriction introduced by the proposed amendment. The same requirement already appears in the existing section 149(1). It was also emphasized that, when considering the Anti-Corruption Bill in 2023, the Court had accepted a provision under which a Magistrate could release a person falling within the relevant proviso only where exceptional circumstances were shown. On that basis, the learned Additional Solicitor General argued that the requirement of exceptional circumstances cannot now, in itself, be treated as unconstitutional.

The learned Additional Solicitor General also rejected the Petitioners' argument that requiring a person to apply to the High Court would necessarily result in unconstitutional delay. It was submitted that a person who falls within the proviso is entitled to make an application for bail to the High Court immediately. Any suggestion as to how long the High Court might take to determine such an application was said to be speculative and not a proper basis on which to assess the constitutionality of the provision.

Finally, the learned Additional Solicitor General submitted that the Court's earlier Special Determination on the Anti-Corruption Bill remains binding in relation to matters that were already considered and approved. Accordingly, it was argued that provisions which are substantially the same as those previously accepted by the Court should not now be reopened indirectly in the present proceedings.

Against these competing submissions, it is necessary to set out the existing section 149(1) of the principal enactment. It provides:

"149. (1) All offences under this Act shall be cognizable and non-bailable and where any person suspected or accused of, being concerned in committing or having committed an offence under this Act, appears, is brought before or produces or surrenders before a Magistrate shall grant bail as per the provisions of the Bail Act, No. 30 of 1997:

Provided that any person detected of having committed an offence under this Act consisting of soliciting, accepting or offering a gratification is brought before or produced or surrenders before any Magistrate with a certificate of the Director-General confirming such detection, the Magistrate shall remand such person until the conclusion of the trail [sic]:

Provided however, that the Magistrate may, in exceptional circumstances and for reasons to be recorded release such person on bail at any time prior to the conclusion of the trial."

Clause 17 seeks to repeal subsection (1) of section 149 and substitute the following:

"(1) All offences under this Act shall be congnizable [sic] and non-bailable as per the provisions of the Bail Act, No. 30 of 1997:

Provided that, where a person is suspected or accused of soliciting, accepting or offering a bribe of not less than one hundred thousand rupees or where by committing the offence of corruption, has caused to the Government a loss of not less than five hundred thousand rupees or has gained a benefit, favour or an advantage of not less than five hundred thousand rupees to himself or to any other person, the value of which has been confirmed by the Director-General by issuing a certificate, such suspect or accused shall not be granted bail except in exceptional circumstances by a High Court."

At the hearing, the learned Additional Solicitor General informed Court that a Committee Stage amendment would be moved to increase the monetary threshold relating to the loss, benefit, favour or advantage arising from corruption from Rs. 500,000 to Rs. 2,500,000.

Analysis.

We have carefully considered the competing submissions. In considering Clause 17, it is useful first to recall how section 149 of the principal enactment came to take its present form.

When this Court considered the Anti-Corruption Bill of 2023, Clause 149 provided that a person suspected or accused of an offence under the proposed Act, once produced before a Magistrate, was to be remanded until the conclusion of the trial. The only exception was where the Magistrate considered that exceptional circumstances justified granting bail.

In considering Clause 149, this Court's attention was directed to the Special Determination relating to the Prevention of Terrorism (Temporary Provisions) (Amendment) Bill, where provisions conferring jurisdiction on the High Court to release a suspect on bail in exceptional circumstances and on the Court of Appeal to grant bail pending appeal had not been found inconsistent with the Constitution. Having considered that submission, this Court nevertheless observed:

"Our attention was drawn to the determination in Prevention of Terrorism (Temporary Provisions) (Amendment) Bill [supra] where this Court was invited to determine the constitutionality of Clauses 10 and 11 of that bill which dealt with the court's jurisdiction to grant bail. Clause 10 of that bill amending Section 15B of the principal enactment provided jurisdiction for the High Court to release a suspect on bail provided that there are exceptional circumstances. Clause 11 of that bill amending Section 19 of the principal enactment provided Court of Appeal with the jurisdiction to grant bail pending appeal in exceptional circumstances. It was contended that Court did not make any findings of inconsistency in that instance with the Constitution.

We observe that the Bill deals with different offences in areas of bribery, corruption and the declaration of assets and liabilities. Nevertheless, this clause makes it a rule to remand a suspect or accused when produced before the Magistrate which is irrational. Accordingly, we determine that Clause 149 is inconsistent with Article 12(1) of the Constitution and can only be passed with the special majority required under paragraph (2) of Article 84."

Following that determination, an amendment was proposed to make the Bail Act, No. 30 of 1997 generally applicable to offences under the Act. The provision enacted as section 149 retained a more limited exception. That exception applies where a person is detected of having committed an offence involving the soliciting, accepting or offering of a gratification, and such detection is confirmed by a certificate of the Director-General. Even in such a case, however, the Magistrate retains the power to release the person on bail in exceptional circumstances, for reasons to be recorded.

The present form of section 149 emerged due to the concern of this Court that a general rule requiring remand would be constitutionally invalid. Therefore, Section 149 proceeds on the basis that the Bail Act applies as the general rule, while a more restrictive regime is confined to a particular category of offences. Even within that category, the Magistrate retains the power to consider whether the circumstances justify release on bail.

Clause 17 proposes to make a significant change to that arrangement. It repeals section 149(1) and substitutes a new provision under which the special restriction would apply where a person is suspected or accused of soliciting, accepting or offering a bribe of the prescribed amount. It would also apply where an act of corruption is alleged to have caused a prescribed loss to the Government or resulted in a prescribed benefit, favor or advantage, with the relevant value being confirmed by a certificate of the Director-General. Once the provision applies, bail may be granted only by the High Court and only in exceptional circumstances.

Therefore, the proposed amendment does more than introduce monetary thresholds. It removes the power presently available to the Magistrate to consider bail in cases falling within the proviso and places that jurisdiction exclusively in the High Court. The practical consequence is that a person brought before a Magistrate following arrest would, once the proviso is engaged, be unable to seek release from the Court before which he or she is produced. That person would instead have to make a separate application to the High Court.

Clause 17 also extends the special bail regime beyond the category presently confined to bribery offences. It brings within that regime offences of corruption where the prescribed monetary threshold is met. The certificate of the Director-General therefore is important under the proposed provision, because it determines whether the ordinary bail regime continues to apply or whether the person becomes subject to the more restrictive procedure under which bail may be sought only from the High Court.

At the hearing, the learned Additional Solicitor General informed Court that a Committee Stage amendment would be moved to increase the monetary threshold relating to the loss, benefit, favour or advantage arising from corruption from Rs. 500,000 to Rs. 2,500,000. That amendment would reduce the number of cases falling within the proviso. It does not, however, alter the essential structure of Clause 17. Once the prescribed threshold is met, the Magistrate would no longer have jurisdiction to grant bail, and the person concerned would have to seek such relief from the High Court.

The question before this Court is whether Clause 17, as submitted by the learned Additional Solicitor General, concerns only the forum in which a bail application may be made, or whether the clause affects the exercise of judicial power over the liberty of a person brought before Court.

The power to determine whether a person should be released on bail has long been recognised by this Court as a judicial function. In the Special Determination relating to the ***Poisons, Opium and Dangerous Drugs (Amendment) Bill,*** **S.D. No. 1 of 1984,** the proposed provision stated that a Magistrate or a Judge of the High Court could release a person on bail only with the sanction of the Attorney-General. In considering that provision, this Court held:

"We are of opinion that the provisions of Clause 13 of the Bill amending Section 83(1) of the Act are inconsistent with the provisions of Article 3 read with Article 4(c) of the Constitution in that it provides that bail cannot be granted 'except with the sanction of the Attorney-General'. This is a fetter on, and in effect a power of control over, Judicial Power of the Court. The granting of bail is an exercise of judicial power which can only be controlled or reviewed by a higher court. Such power cannot be given to the Attorney-General or a non-judicial body."

The Court accordingly held that the provision required a two-thirds majority and approval by the People at a Referendum, unless the impugned restriction was deleted.

The importance of that Determination lies in the Court's identification of the nature of the power involved. A decision as to whether a person should remain in custody pending trial or be released on bail is a matter involving the exercise of judicial power.

This principle was considered more fully in the Special Determination relating to the ***Prohibition of Ragging and Other Forms of Violence in Educational Institutions Bill,*** **S.C. S.D. Nos. 6/98 and 7/98.** Section 10 of that Bill bears a close resemblance to Clause 17 now before this Court. It removed the power of the Magistrate to grant bail and provided that a person suspected or accused of an offence falling within the section could be released only by the High Court in exceptional circumstances. The Court observed that the provision deprived the Magistrate of the discretion to release such a person on bail and also restricted the discretion ordinarily exercised by Judges of the High Court and Superior Courts.

In considering Article 13(2), the Court examined the meaning of an order of a Judge "made in accordance with procedure established by law". The Court explained that such an order requires the Judge to consider the material placed before Court and to exercise judicial discretion in reaching a decision. Where the law itself determines the outcome and leaves the Judge with no actual choice, the resulting order does not involve that same exercise of judicial judgment.

The Court recognized that Parliament may prescribe the procedure governing the exercise of judicial power. It may also identify the matters that a Court is required to consider when deciding whether to grant bail. However, the ultimate decision must remain the Court's, reached through the exercise of judicial discretion.

The Court then stated:

"What Parliament cannot do directly, it cannot do indirectly. Section 10 is inconsistent with Article 13(2) because it compels a Magistrate to refuse release on bail, even in cases in which he would have allowed bail if the matter had been left to his discretion."

The Court proceeded to rely upon the earlier Poisons, Opium and Dangerous Drugs Determination and stated:

"If a fetter cannot be placed on the judicial power to release on bail, it follows that the power itself cannot be taken away altogether — unless the Constitution allows it."

The Court held section 10 was inconsistent with Articles 4(c), 12(1), 13(2) and 13(4), and stated that the inconsistency would cease if:

"the discretion whether to remand a person suspected or accused of an offence, or to release him on bail, is vested in a judicial officer, such discretion being subject to reasonable restrictions permitted by Article 15(7)."

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 the conditions subject to which bail may be granted. Even within those limits, however, the judicial officer must retain the ability to make a judicial decision on the matter placed before the Court. The question before us is whether the restrictions imposed by Clause 17 leave sufficient judicial control over a person's continued detention. Where the law leaves the Magistrate with no authority to release the person, continued custody follows from the statutory command itself rather than from any judicial assessment of the circumstances of the case.

Under the proposed provision, once the conditions in the proviso are satisfied, the Magistrate before whom the person is produced has no power to grant bail. The person must remain in remand unless the High Court, on a separate application, grants bail based on exceptional circumstances.

The need for a genuine exercise of judicial judgment was recognized by this Court in the ***Anti-Terrorism Bill Determination of 2024***. When considering the role assigned to a Magistrate in relation to detention orders, the Court referred to ***Weerawansa v Attorney-General [2000]* 1 Sri LR 387**. Fernando J. observed that an order cannot properly be regarded as judicial where the officer has failed to exercise the discretion vested in him, has abdicated that authority, or has acted mechanically by merely accepting the proposal placed before him. Consistently with that principle, the Court in 2024 stressed that the Magistrate was required to consider the validity of the detention order judicially and "not mechanically".

The relevant scheme was upheld because the Magistrate continued to perform an evaluative role. The Magistrate could consider whether the detention order had been properly issued and whether the statutory requirements had been met. Although the scope of discretion was restricted, there remained a judicial question for the Magistrate to decide.

Under clause 17, once the proviso applies, the Magistrate has no discretion in relation to bail. The Magistrate cannot consider whether the circumstances of the particular person justify release. Nor can the Magistrate grant bail subject to conditions. The legal consequence has already been fixed by the provision: the person must remain in custody unless bail is granted at a later stage by the High Court.

That Magistrate is the judicial officer before whom the arrested person is first produced. In our view, the protection afforded by Article 13(2) requires more than the person's physical production before a judicial officer. Where the Magistrate has no legal authority to consider release, the resulting position of being remanded cannot meaningfully be said to reflect an independent judicial determination on that question.

In the decision of the Court of Appeal in ***Thilanga Sumathipala v Inspector-General of Police and Others*** **[2004] 1 Sri LR 210** Sripavan J., referring expressly to Articles 13(2) and 13(5), considered the consequence of construing the relevant statutory provision to leave the accused without an effective remedy until the conclusion of the case and asked:

"Does it mean that the State imposes a punishment on the petitioner indirectly by keeping him in remand custody for an uncertain period?"

His Lordship proceeded to observe that an interpretation affecting bail must respect the liberty of the person and the fundamental rights guaranteed by the Constitution. Of particular relevance to the present matter is the observation that:

"Practical considerations rather than formal logic must be the governing principle in the interpretation of the Constitution."

This is also relevant to the submission of the learned Additional Solicitor General that Clause 17 merely transfers the power to grant bail from the Magistrate to the High Court, and that an application to the High Court may be made immediately. The power to grant bail indeed remains with a court. The issue, however, is what occurs when the arrested person is first produced before the Magistrate. At that stage, the Magistrate has no power to consider release, and the person must remain in custody until the jurisdiction of the High Court is invoked.

It is unnecessary to determine how many days that process may take in any particular case. What matters is that a further application to another court is required before release can even be considered. During that period, continued custody does not result from a judicial assessment by the Magistrate that remand is justified in the circumstances of the individual case. It instead results from the restriction imposed by Clause 17, which leaves the Magistrate without authority to grant bail.

In ***Thilanga Sumathipala v Inspector-General of Police and Others* [2004] 1 Sri LR 210** (Supra) Abeyratne J. observed that the constitutional safeguards concerning liberty become engaged where a person is deprived of liberty without an effective remedy. He also cautioned against an interpretation which would leave a person deprived of liberty without an appropriate forum capable of giving immediate consideration to that grievance.

Clause 17 does preserve the possibility of seeking bail from the High Court. That fact must be taken into account. Yet the existence of a remedy at a later stage does not answer the whole question. It remains necessary to consider whether there is effective judicial control over the person's continued custody at the point at which he is first brought before a court.

The importance of judicial control over custody was also considered in the ***Anti-Terrorism Bill Determination of 2024.*** In examining Clause 72 of that Bill, this Court referred to an earlier determination concerning a provision which permitted a Ministerial order to replace an existing High Court order of remand with executive custody. The Court regarded such interference with an order concerning custody made by a court as inconsistent with Article 4(c) read with Article 3, and held that the provision required approval by a two-thirds majority in Parliament and by the People at a Referendum.

The Court accordingly required the provision to be amended so that detention could be ordered only by the High Court. The Executive was required to make an application to that Court, after which the Court would hear the application and any objections before deciding whether detention should be authorized.

The effect of Clause 17 must also be considered in light of Article 13 of the Constitution. Article 13(2) provides that a person deprived of personal liberty must be brought before the Judge of the nearest competent court and may thereafter be held in custody only upon and in terms of an order of that Judge made in accordance with procedure established by law. Article 13(5) provides:

"Every person shall be presumed innocent until he is proved guilty:

Provided that the burden of proving particular facts may, by law, be placed on an accused person."

The presumption of innocence is therefore expressly recognised as a fundamental right.

Clause 17 operates before guilt has been established. Once the prescribed monetary threshold is certified, the person remains in custody unless exceptional circumstances are later established before the High Court. During that period, however, that person remains presumed innocent.

Article 15(7) permits restrictions on the right guaranteed by Article 13(2) for the purposes specified in that provision. In the Prohibition of Ragging Determination, however, this Court held that the restriction then imposed went "far beyond what is reasonably necessary", because it applied to the entire category of persons falling within the provision without regard to the circumstances of the individual case. The Court held that the inconsistency would cease if the discretion to remand or release remained with a judicial officer, subject to reasonable restrictions permitted by Article 15(7).

Article 15(1) provides that the right recognized by Article 13(5) may be restricted only by law in the interests of national security. The learned Additional Solicitor General submitted that bribery and corruption at the level contemplated by Clause 17 may affect national security because of their consequences for the economic strength of the State. However, even where the object relied upon falls within a ground of restriction recognized by the Constitution, there must still be a sufficient connection between that object and the restriction which has been imposed and restrictions under Article 15 must remain proportionate to the purpose sought to be achieved.

Section 149 already subjects certain bribery offences to a stricter bail regime. Bail may be granted only in exceptional circumstances, but the Magistrate before whom the person is produced retains the power to make that decision. The Offences Against Public Property Act similarly imposes a special bail regime based on monetary value and certification, while leaving the question of release with the judicial officer concerned.

We are mindful of the serious nature of bribery and corruption and of the consequences which such offences may have for the State and the public. In the Special Determination relating to the Anti-Corruption Bill of 2023, this

Court recognized the economic and social consequences of corruption and observed that the sovereignty referred to in Article 3 encompasses the right of the People to a Government free from bribery and corruption. The issue before us is therefore not whether Parliament may impose stringent conditions on the grant of bail in respect of such offences. Parliament may do so, subject to the Constitution.

It is nevertheless useful to consider how the law deals with other serious offences involving public property and substantial loss to the State. The Offences Against Public Property Act, No. 12 of 1982 applies, among other matters, to theft, dishonest misappropriation, criminal breach of trust and cheating committed in relation to public property. The penalties prescribed under that Act include terms of imprisonment extending up to twenty years, together with fines calculated by reference to the value of the property or the loss or damage caused.

By comparison, Section 111 of the principal enactment deals with the offence of corruption, which includes conduct causing wrongful or unlawful loss to the Government or conferring a wrongful or unlawful benefit, favour or advantage. That offence is punishable with rigorous imprisonment for a term not exceeding ten years or with a fine not exceeding one million rupees, or with both. Several of the principal bribery offences under the Act are punishable with imprisonment for a term not exceeding seven years together with the prescribed fine.

Section 8 of the Offences Against Public Property Act itself contains a special regime governing bail. Where the prescribed monetary value is exceeded and the required certificate is issued, the person concerned remains on remand unless exceptional circumstances justify release. They do not, however, remove the jurisdiction of the Magistrate and require the person to make a separate application for bail to another court.

It is useful at this stage to consider the relationship between Articles 3 and 4(c) of the Constitution. Article 3 declares that sovereignty is in the People, is inalienable, and expressly includes the powers of Government within that sovereignty. Article 4 provides the manner in which those powers are to be exercised.

In ***In re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill***, this Court explained that Article 4 identifies the agencies or instruments through which the sovereignty recognized by Article 3 is exercised. Although Article 4 is not itself one of the provisions entrenched by Article 83, the Court recognized that a principle contained in Article 4 may nevertheless attract the protection of Article 83 where it is a *"necessary corollary or concomitant of Article 3"*. In such a case, the interference is not confined to Article 4. It affects the sovereignty of the People protected by Article 3.

The same nexus was considered more recently in the Special Determination relating to the Industrial Disputes (Special Provisions) Bill SC. (S. D.) No: 30/2022. The Court observed that Article 3 vests sovereignty in the People, while Article 4 provides for the exercise of the People's legislative, executive, and judicial powers through the respective organs of Government. In relation to Article 4(c), the Court considered the People's judicial power together with the independence of the judiciary, which forms part of the sovereignty secured by Article 3. Therefore, interference with the constitutionally protected exercise of judicial power was treated as an infringement of Articles 3 and 4(c), thereby attracting the requirements of Articles 84(2) and 83.

These authorities reflect a consistent concern where personal liberty is involved. Judicial supervision must involve a real exercise of judgment. Bail is a matter involving the exercise of judicial power, and a court responsible for determining whether a person should remain in custody must be able to consider that question for itself, subject to the limits lawfully imposed by Parliament.

In these circumstances, we are of the view that Clause 17 interferes with the exercise of the judicial power of the People and is inconsistent with Article 4(c) read with Article 3 of the Constitution. Article 13(2) lends further support to that conclusion, since the continued deprivation of a person's liberty must remain subject to effective judicial control in accordance with law.

Accordingly, Clause 17, in its present form, can become law only if it is passed by the special majority required under Article 84(2) and approved by the People at a Referendum in terms of Article 83.

Summary of the Determination

Accordingly, this Court determines that,

Clause 3 of the Bill is not inconsistent with the Constitution and may be passed with a Simple Majority in Parliament.

Clause 4 of the Bill is not inconsistent with the Constitution and may be passed with a Simple Majority in Parliament.

Clause 6(4) of the Bill is not inconsistent with the Constitution and may be passed with a Simple Majority in Parliament.

Clause 6(5) of the Bill is not inconsistent with the Constitution and may be passed with a Simple Majority in Parliament.

Clause 6(7) of the Bill is inconsistent with Article 12(1) and Article 14(1)(a) of the Constitution and may be validly passed only with the Special Majority provided for in Article 84(2) of the Constitution.

Clause 7 of the Bill is inconsistent with Article 12(1) of the Constitution. The proposed repeal of section 81(e) should therefore be withdrawn. If Clause 7 is proceeded with in its present form, it may be validly passed only with the Special Majority prescribed by Article 84(2), read with Article 82(5), of the Constitution.

Clause 11(1) of the Bill, which proposes section 88(1)(f), is not inconsistent with Article 12(1) or Article 14A (1) of the Constitution and may be passed with a Simple Majority in Parliament.

Clause 11(2) of the Bill, as proposed to be amended at the Committee Stage, is not inconsistent with Articles 10, 12(1), 14(1)(a) or 14A of the Constitution and may be passed with a Simple Majority in Parliament.

Clause 17 of the Bill is inconsistent with Article 4(c), read with Article 3, of the Constitution. Article 13(2) further supports that conclusion. Accordingly, Clause 17, in its present form, may become law only if it is passed with the Special Majority required under Article 84(2) and approved by the People at a Referendum in terms of Article 83 of the Constitution.

Hon. A.L. Shiran Gooneratne
(Judge of the Supreme Court)

Hon. Mahinda Samayawardhena
(Judge of the Supreme Court)

Hon. M. Sampath K.B. Wijeratne
(Judge of the Supreme Court)