**IN THE SUPREME COURT OF THE**

**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

 In the matter of an Application under

 Article 126 of the Constitution

 Elmore M. Perera,

 144, Vipulasena Mawatha.

 Colombo 10 **Petitioner**

**S.C. Application Vs.**

**No. 692/2012 (FR)**

1. Her Ladyship, Hon. Dr. (Ms.) Shirani Anshumala Bandaranayake, Chief Justice of the Supreme Court

of the Democratic Socialist Republic of Sri Lanka, Supreme Court Complex, Hultsdorp, Colombo 12.

1. Hon. Chamal Rajapaksa, M.P., Speaker,

Speaker’s Residence, Rajamalwatta Mawatha,

Sri Jayawardenepura, Battaramulla.

1. Hon Anura Priyadarshana Yapa, M.P.

Eriyagolla, Yakawita.

1. Hon. Nimal Siripala de Silva, M.P.,

93/20, Elvitigala Mawatha,

Colombo 08.

1. Hon. A.D.Susil Premajayantha, M.P.,

123/1, Station Road,

Nugegoda.

1. Hon. Dr. Rajitha Senaratne, M.P.,

85, Gregory’s Road,

Colombo 07.

1. Hon. Wimal Weerawansa, M.P.,

18, Rodney Place, Cotta Road,

Colombo 08.

1. Hon. Dilan Perera, M.P.,

30, Bandaranayake Mawatha,

Badulla.

1. Hon. Neomal Perera, M.P.,

3/3, Rockwood Place,

Colombo 07.

1. Hon. Lakshman Kiriella, M.P.

121/1, Pahalawela Road,

Palawatta, Battaramulla.

1. Hon. John Amaratunga, M.P.,

88, Negombo Road,

Kandana.

1. Hon. Rajavarothiam Sampanthan, M.P.,

2D, Summit Flats,

Keppetipola Road, Colombo 05.

1. Hon. Vijitha Herath, M.P.,

44/3, Medawaththa Road,

Mudungoda, Miriswaththa,

Gampaha.

1. Mr. Lalith Weeratunga,
Secretary to the President,

Presidential Secretariat,

Colombo 01.

1. Mr. Gotabhaya Rajapaksa,
Secretary, Ministry of Defence,

Defence Ministry,

Colombo 01.

1. Mr. N.K. Illangakoon, I.G.P.,

Police Headquarters,

Colombo 01.

1. Hon. Attorney General,

Attorney General’s Department,

Hultsdorp, Colombo 12.

**Respondents**

**TO: HER LADYSHIP THE CHIEF JUSTICE AND THE OTHER HONOURABLE**

 **JUSTICES OF THE SUPREME COURT OF SRI LANKA**

On this 11th day of December, 2012.

The Petition of the Petitioner above-named appearing in person states as follows:

1. The Petitioner is a citizen of Sri Lanka, 79 years of age. Burdened by a deep sense of gratitude for the extensive Education and Training afforded to him by the Sri Lankan State, he is committed to seeking strict observance of the Rule of Law and the Independence of the Judiciary in Sri Lanka, and therefore tenders this Petition in the Public Interest.
2. The 1st Respondent is the Hon Chief Justice of the Supreme Court, the 2nd Respondent is the Hon. Speaker of Parliament, the 3rd to 13th Respondents are the Chairman and Members of the Select Committee appointed by the 2nd Respondent in terms of Standing Order 78A of Parliament to inquire into allegations of misconduct of the 1st Respondent, the 14th Respondent is the Secretary to the President, the 15th Respondent is the Secretary, Ministry of Defence who exercises control over the Armed Services, the 16th Respondent is the Inspector General of Police whose primary Responsibility is the maintenance of Law and Order in the Country and the 17th Respondent is the Hon. Attorney General.
3. The Petitioner has served as an Independent Public Servant from February 1957, in various capacities in the Survey Department, as Additional Director Sri Lanka Institute of Development Administration (SLIDA), and as Surveyor General until his retirement in October 1991. He was enrolled as an Attorney-at-Law of the Supreme Court on 19th November 1992 and served in that capacity until he was suspended from practising as such on 20th November 2006. He founded the Citizen’s Movement for Good Governance in April 2002 and served as President of the Organisation of Professional Associations in 2007/2008.
4. Deeply concerned with the startling erosion of respect for the Rule of Law in Sri Lanka, in the Public Interest the Petitioner humbly invokes the Special Jurisdiction of the Supreme Court of Sri Lanka in an attempt to avert the impending destruction of all civilised behavior and civilization itself, in this our blessed homeland.

05. The Petitioner states that:

 (i) in the United Kingdom, after armed rebellion by his Barons in 1215, King John acceded to the Great Charter of Runnymede, the **Magna Carta** which indelibly enshrined that **the Rule of Law shall be upheld with utmost commitment**, with the words “To no one we will sell, to no one deny or delay right or Justice.” In 1688, Judicial Independence in England was at stake. People staged a revolution, ousted King James II from the throne and accepted his successors William and Mary on condition that they shall **“guarantee the tenure of the Judges essential to their true Independence of mind and action.”** In 1701, the People’s goal of ensuring that brutal intimidation of the Judiciary would not occur againin England, was achieved by the enactment of the “Act of Settlement.” **Bertrand Russel** observed that **“Government can easily exist without law but law cannot** exist without Government.”Michael Tamplet stated “We have a **problem when the same people who make the law get to decide whether or not they themselves have broken the law.” Sir Winston Churchill** said “Our aim is not to make our Judges wealthy men or women but to satisfy their needs to maintain a **modest and dignified way of life suited to the gravity, and indeed the majesty of the duties they discharge**. Referring to the Judiciary in the UK recently, Lord Phillips said “The media is not slow to attack the Judiciary, but I am not aware that it has ever accused a judge of political bias and I am not even aware of the politics of my colleagues in the Court.

(ii) In the USA, the 7th President **Andrew Jackson** (1829 -1837) stated that **“**all the rights secured to the Citizens under the Constitution are **worth nothing and a mere bubble unless guaranteed to them by an Independent and Virtuous Judiciary.** Archibald Cox, US Solicitor General and Special Prosecutor in the Watergate case noted three reasons for Judicial Independence.

1. To **guard against abuse of Executive power**.
2. To **halt legislative erosion of fundamental human rights**.
3. To **provide assurance to the public that judges are impartial and fair in their decision making** processes.

(iii)In India, Mahatma Gandhisaid “**There is a higher Court than the Court of Justice** and that is **the Court of Conscience**. It **supersedes all the other Courts**. Whatever any one may say or interpret, I dare say that **“when independence of the Judiciary is lost or endangered, people do not own anything in that country**.”

(iv) In South Africa the Constitution categorically spells out that Judicial authority provides:

1. that **Courts are independent and subject only to the Constitution and Law** which they shall apply impartially and without fear, favour or prejudice.
2. that **No person or organs of the State shall interfere with the functioning of the Court**.
3. that **Organs of the State,** through Legislative and other measures **shall assist in protecting the Court to ensure the independence, impartiality, accessibility and effectiveness of Court**.

In 1995 **President Mandela issued a Proclamation** in an electoral boundary delineation matter. On an application for Judicial Review the **Constitutional Court of South Africa struck down this Presidential Proclamation as being unconstitutional**. On the same day **President Nelson Mandela** appeared in the media and said that he **honestly believed that the Parliament had given the power of proclamation to him. Since the Constitutional Court found otherwise, he said he respects the decision of the Court**. There may have been Legal luminaries who advocated the enactment of legislation to confer retroactively such power to the President who had suffered 26 years of incarceration for the sake of his country. However the Humility and Statesmanship displayed by President Mandela clearly demonstrated that in South Africa even the President is subject to the law.

(v) In Sri Lanka when British imperialism was at its peak in 1937 Abrahams C.J., Maartensz J and Soertsz J, Colonial Judges who sat in our Supreme Court in the Bracegirdle case, **upheld the Rule of Law** in an exemplary manner. They held that the Supreme Court was entitled to inquire whether the conditions necessary for the exercise of the power in His Majesty’s Order-in-Council have been fulfilled, **and** **quashed the order made by the Governor**.

06. The golden thread that runs around the fabric of law is “**adherence to the Rule of Law.”** The **cardinal mandatory requirement to uphold the Rule of Law is the independence of the Judiciary and that of the Judges as well**. Even the slightest departure from this principle would result in a whirlwind sweeping across the whole gamut of governance, thereby causing inevitable destruction and devastation of all those near and dear to us and dashing to smithereens all human values and liberties. **The liberty and guarantees given to the People by the Constitution will remain mere ornaments unless the Judiciary is permitted to perform** (and in fact performs) **its duties and functions in strict impartiality and without any fear or favour**, disregarding any pressure, from whichever quarter it comes. To safeguard the inalienable Sovereignty of the 20 million Sri Lankans**,** all stakeholders of a democratic society viz. **the Executive, the Legislature, the Judiciary and the Media, are duty bound to safeguard the independence of the Judiciary**.

07. The Petitioner reiterates the Constitutional history of this country as traced by the late Mr. H.L.de Silva P.C. and Mr. R.K.W.Gunasekera in their submissions with regard to the Constitutional development of Sri Lanka, particularly in relation to **the exercise of** Sovereignty and Executive power in SC Reference No. 2/2003 and **recorded by a 5-judge bench** of the Supreme Court consisting of Sarath N. Silva C.J., Shirani A. Bandaranayake J, Hector S. Yapa J, J.A.N. de Silva J and Nihal Jayasinghe J, **as being** **free of controversy since the Attorney General agreed with their submissions**, as follows:

1. The Ceylon (Constitution) Order in Council, 1946 (on the basis of which Independence was granted on 4th February 1948) did not contain any statement as to Sovereignty since what was granted was Dominion status where **the Monarch of the United Kingdom was considered as Sovereign**. In terms of Section 29(1) “power to make laws for the peace, order and good Government of the Island”, was vested in a Parliament which consisted of two chambers known respectively as the Senate and the House of Representatives (Section 7),
2. Section 45 provided that “**Executive power** shall continue **vested in Her Majesty and may be exercised by the Governor General** ….”. However, Section 4(2) required the Governor General to exercise his powers in accordance with the Constitutional conventions of the United Kingdom, and Executive power was, in effect, exercised by the Cabinet of Ministers appointed in terms of Section 46, headed by the Prime Minister. Section 46(4) specifically provided that “the Prime Minister shall be in- charge of the Ministry of Defence and External Affairs. Thus the **Governor General would act on the advice of the Prime Minister** in respect of the Defence of the Island”.
3. The **transition from a Dominion Status to a Republican Status** took place on what may be described as the “autochthonous” Constitution adopted by the Constituent Assembly in 1972. Sections 3 and 4 of the Constitution provided that, in the Republic “**Sovereignty is in the People and is inalienable**” and “**Sovereignty shall be exercised through a National State Assembly** of elected Representatives of
the people. The National State Assembly was established as the Supreme instrument of State Power by Section 5 which reads as follows:

“The **National State Assembly is the Supreme instrument of State Power** of the Republic. The National State Assembly exercises –

1. the Legislative power of the People;
2. the Executive power of the People, including the defence of Sri Lanka, through the President and the Cabinet of Ministers; and
3. **the Judicial power of the People through Courts and other institutions created by law except in the case of matters relating to its powers and privileges, wherein the judicial power of the People may be exercised directly by the National State Assembly according to law**.
4. Although Sections 19, 20 and 21 of the 1972 Constitution provided inter alia, that the President shall be the Head of the State, the Head of the Executive, the Commander-in-Chief of the armed forces and declare war and peace, Section 27(1) specifically provided that the President shall act on the advice of the Prime Minister or the Minister to whom the Prime Minister may have assigned such functions. Thus, under the 1972 Constitution the Executive power including the defence of Sri Lanka was effectively reposed in the Prime Minister and the Cabinet of Ministers.

1. The **next stage** in the process of Constitutional reform **was the transition to what may be termed as the Presidential form of Government**. Although it is generally believed that the transition to the Presidential form of Government took place under the 1978 Constitution, Mr. de Silva correctly submitted that **the transition was in fact effected by the second amendment to the 1972 Constitution certified on 20th October, 1977,** shortly after the United National Party was returned with a large majority of seats in Parliament and Mr. J.R.Jayawardena was appointed Prime Minister. **The amendment**, albeit brief in its content, **sliced through the 1972 Constitution** and by virtue of Section 19 and the amendments to Section 20, the President became the Head of the State, the Head of the Executive, Head of the Government, Commander-in-Chief of the Armed forces and was empowered to declare war and peace.Significantly **Section 27(1)** which required the President to act on the advice of the Prime Minister or a Minister assigned by the Prime Minister, **was repealed,** thereby **elevating the President to be the sole and untrammelled repository of Executive Power.** Section 5 beingthe key provision of the Constitution which relates to the exercise of Sovereignty reproduced above, was repealed and replaced by the following Sections:

“The National State Assembly and the President are the supreme instruments of State power of the Republic, and accordingly, the Sovereignty of the People shall be exercised in the following manner:

1. the legislative power of the people shall be exercised by the National State Assembly;
2. the Executive power of the people, including the defence of Sri Lanka, shall be exercised by the President, and
3. **the judicial power of the people shall be exercised by the National State Assembly through Courts and other institutions created by law, except in regard to matters relating to the powers, immunities and privileges of the National State Assembly, and of the Members, wherein the judicial power of the people may be exercised directly by the National State Assembly according to law.”**
4. In relation to the exercise of the executive power the contrast in the two provisions is significant. Whereas the **original provision stated that executive power** including the defence of Sri Lanka **shall be exercised by the National State Assembly through the President and the Cabinet of Ministers,** the **references to the National State Assembly and the Cabinet of Ministers were deleted** and **specific provision was made that Executive power including the defence of Sri Lanka shall be exercised by the President.** Thus, to use the words of that Constitution, **the President became the “Supreme Instrument of State Power of the Republic”** for the exercise of Executive Power and the Defence of Sri Lanka.
5. By virtue of Section 28B of the Second Amendment to the 1972 Constitution, the then Prime Minister **J.R.Jayawardena was** **deemed for all purposes to have been elected the President of Sri Lank**a.

(viii)**The 1978 Constitution has** taken over the wording of the second amendment to the 1972 Constitution with regard to the exercise of sovereignty with the **significant inclusion of the fundamental rights and the franchise as forming part of the sovereignty of the People**.

1. As regards executive power, Article 4(b) reads as follows:

“The **executive power of the People**, including the defence of Sri Lanka, **shall be exercised by the President of the Republic elected by the People;**”

The words “**elected by the People” are the only words added to the original formulation** in Section 4(b) of the Second Amendment in the 1972 Constitution. These words are significant and **add an extra dimension to the executive power** including the defence of Sri Lanka which is reposed in and exercised by the President, viz., the mandate directly received from the People in the exercise of their franchise at the election of the President. This is distinct from the mandate received by the members of Parliament who exercise the legislative power of the People in terms of Article 4(a).

1. “The **removal of the requirement** as contained in the 1946 and 1972 Constitutions **for the Head of State to act on the advice of the Cabinet of Ministers or of any Minister consolidates this power in the hands of the President** as the sole repository of the executive power and the defence of Sri Lanka. **A balance is struck** in relation to the executive power thus vested in the President **in Article 42** which provides as follows:

**“The President shall be responsible to Parliament for the due exercise, performance and discharge of his powers, duties and functions** under the Constitution and any written law, including the law for the time being relating to public security.”

1. Hon. Victor Tennakoon, Chief Justice retired on 9th September 1977. Without appointing Hon. G.T.Samarawickrema who had been the most Senior Judge in the Supreme Court since 9th July 1974, President Jayawardena appointed Hon. N.D.M. Samarakoon, QC, his own personal lawyer, as Chief Justice on 9th September 1977.

1. The Preamble to the 1978 Constitution sets out the Mandate given by the Sovereign People to assure to all peoples FREEDOM, EQUALITY, JUSTICE, FUNDAMENTAL HUMAN RIGHTS and THE INDEPENDENCE OF THE JUDICIARY as **the intangible heritage that guarantees the dignity and well being of succeeding generations** of the Peoples of Sri Lanka. Significantly **“Justice”** and **“the independence of the Judiciary”** are **given particular emphasis**. Article 4(c) has brought about a functional separation of Judicial power from Executive and Legislative powers. The domain of Judicial power (except for the limited area specifically assigned to Parliament) has been **entrusted solely and exclusively to the Judiciary, to be exercised strictly upholding the solemnity and sanctity of the Rule of Law**.

1. On 26th of December 1980, a Bench of the Supreme Court consisting of Samarakoon, C.J. Samarawickrema J, Sharvananda J, Wanasundera J and Weeraratne J reported to the President and the Speaker that the Bill which sought to amend Article 161 of the Constitution to seat two members of Parliament for one constituency (viz. Kalawana), contravened the provisions of Article 161(a) in that the composition of the first Parliament would be increased, thereby affecting the franchise referred to in Article 4 of the Constitution and that therefore the result of the Bill was inconsistent with the law unless the number of votes cast in its favour amounted to not less than two thirds of the Members of Parliament and it was thereafter approved by the people at a referendum and endorsed by the President, in accordance with Article 80. This interpretation by the Supreme Court conclusively indicated that Article 3 and Article 4 are inextricably linked and have to be read together.

1. In SC Reference No. 03/08, under Article 125(1) of the Constitution S.N.Silva CJ, N.G.Amaratunga J and P.A. Ratnayake J held, inter alia, that Article 4(c) of the Constitution has special significance. Article 4 of the Constitution is complementary to Article 3 of the Constitution and these two Articles must be read together – vide SC determinations in SD 5/80, 1/82, 2/83 and 7/87. Consequently the provisions to Article 4 become more significant and it needs to be read with Article 3 of the Constitution which is an entrenched provision in terms of Article 83 of the Constitution.

1. Since 1915, the Attorney General had not engaged in private practice in accordance with a tradition built up over 60 years. This was no doubt based on the English rule which was laid down by a Treasury Minute of June 29, 1894, forbidding the Attorney General to engage in private practice and made at the instance of the then Prime Minister. This was a salutary rule in the interests of the Administration of Justice and Justice itself. However by a Government fiat of 23rd July, 1980, the Attorney General and the legal officers of his Department had been granted permission to engage in private practice. In February/March 1981 Mr. Siva Pasupathi, then Attorney General of Sri Lanka, appeared in the Court of Appeal at the hearing of the Land Reform Commission v Grand Central Ltd. case and marked his appearance as private counsel for the Land Reform Commission and not in his official capacity as Attorney General of the country. Mr. Pasupathi was denied a right of audience by Ranasinghe J and Perera J of the Court of Appeal as that Court was of the opinion that he could only appear in his official capacity and not in his private capacity. Mention had been made to the Court of Appeal by Mr. Pasupathi suggesting that Mr. Pasupathi and his juniors were not appearing at their own volition but were doing so on the direction of the President of the Republic – 1981 (1SLR) 252.
2. On 16th September 1981, Samarakoon C.J. (with Ismail J, Weeraratne J, Sharvananda J and Wanasundera J agreeing) upheld the aforementioned Court of Appeal judgment of Ranasinghe J and Perera J stating “**It is regrettable that** **the State has sought to act counter to tradition, prudence and propriety in granting the Attorney General and his law officers the right of private practice. Justice is the loser thereby.** No man can serve two masters. For either he will hate the one and love the other or he will hold to one and despise the other. **No Attorney General can serve both State and private litigant.** This judgment implicitly served notice on President Jayawardena, that the Chief Justice owed his total allegiance to the Rule of Law and not to the President who had appointed him as Chief Justice – 1981 (1SLR) 261.
3. In the Ceylon Daily News Contempt Case (Rule No. 1 of 1983), all five judges who heard the case were agreed in what **Justice Wanasundera said** in his judgment **in respect of Separation of Powers.** He said inter alia that:
4. **“The submission that since 1972 there has been a radical shift of the legal Sovereignty of the State from the Queen to the People is undoubtedly well founded**. The people in the exercise of their franchise now elect the President (who is the head of the Executive) and also Parliament by direct elections. These two elected representatives of the People therefore exercise the powers of Government by virtue of a mandate periodically given by the People. It therefore follows that the acts and conduct of such representatives must be accountable to the People and this meant that they would be subject to criticism and discussion by the People. In fact, **modern social and political conditions demand a continuous dialogue between the People and their elected representatives who hold a mandate from them**.”
5. “How does the judicature stand in the matter? Even a cursory glance at the Constitution is sufficient to indicate that there are features in the Judicature and the Administration of Justice which distinguish the courts and Judges from other organs of government and other public officers. Mr. Nadesan invited our attention in this connection to the Preamble to the Constitution which is a concise statement of its genesis. This Preamble recites **the Mandate given** by the People to the founding fathers of the Constitution. It **assures to all peoples,** FREEDOM, EQUALITY, **JUSTICE, FUNDAMENTAL HUMAN RIGHTS and the INDEPENDENCE OF THE JUDICIARY** as the intangible heritage that guarantees the dignity and well being of succeeding generations” of the People of Sri Lanka. These principles constitute the basic fundamental rights of the People and were **thought by the People to be so valuable and sacrosanct that they were enshrined in the mandate and repeated in bold type in the Preamble**. It is significant that **both “Justice” and “the independence of the Judiciary” are given particular emphasis** and Mr. Nadesan said that, as far as he is aware, in no other Constitution is the independence of the Judiciary emphasized to this degree or given that importance.”

1. When we next examine the body of the Constitution, we see that **aspirations of the People for an independent judiciary are given precise legal form and effect**. **Article 4(c) states that** – **the judicial power of the People shall be exercised by Parliament through courts, tribunals and institutions created and established or recognized by the Constitution or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, wherein the judicial power of the People may be exercised directly by Parliament according to law**.”

On a plain reading of this provision **it is clear that the judicial power of the People can only be exercised by “judicial officers” as defined in Article 170, except in regard to matters relating to the privileges, immunities and powers of Parliament**. I think no counsel before us disputed that **these provisions indicate an unmistakable vesting of the judicial power of the People in the judiciary established by or under the Constitution and that Parliament acts as a conduit through which the judicial power of the People passes to the judiciary**. Whatever the wording of **Article 4(c)** may suggest, there could be little doubt that at the lowest this provision, read with the other provisions, **has brought about a functional separation of the judicial power from the other powers in our Constitution** and accordingly **the domain of judicial power (except the special area carved out for Parliament), had been entrusted solely and exclusively to the judiciary.**”

“**These provisions manifest an intention to secure in the judiciary a freedom from political, legislative and executive control.** They are wholly appropriate in a Constitution which intends that judicial power shall be vested only in the judicature. They would be inappropriate in a Constitution by which it was intended that judicial power should be shared by the executive or the legislature.” **The constitution’s silence as to the vesting of judicial power is consistent with its remaining where it had lain for more than a century, in the hands of the judicature.** It is not consistent with any intention that henceforth it should pass to or be shared by, the executive or the legislature.”

1. **These constitutional provisions have established and constituted the Judiciary as one of the three principle organs of the State and have also proceeded to ensure the independence of the judiciary as its essential feature.** The peculiar standing and position of judges in our constitution are very much similar to the position of Judges in the U.K. **Sir Winston Churchill,** in a speech made in the House of Commons when the increase of the salaries of judges were being discussed in the House, described with his characteristic eloquence **the unique position the judges occupy in the framework of government. There is nothing like them at all in our Island.** They are appointed for life. **They cannot be dismissed by the executive Government. They cannot be dismissed by the Crown either by the Prerogative or on the advice of Ministers. They have to interpret the law according to their learning and conscience**. **They are distinguishable from the great officers of State and other servants of the Executive, high or low, and from the leaders of commerce and industry**. The principle of the **complete independence of the Judiciary from the Executive is the foundation of many things in our island life.** It has been widely imitated in varying degrees throughout the free world. **It is perhaps one of the deepest gulfs between us and all forms of totalitarian rule.** The **only subordination which a judge knows in his judicial capacity is that which he owes to the existing body of legal doctrine enunciated in years past by his brothren on the bench,** past and present, **and upon the laws passed by Parliament** which have received the Royal assent. **The judge has not only to do justice between man and man. He also – and this is one of his most important functions considered incomprehensible to some large parts of the world – has to do justice between the citizens and the State…. The British Judiciary** with its traditions and record, **is one of the greatest living assets of our race and people** and **the independence of the Judiciary is a part of our message to the ever-growing world which is rising so swiftly around us**. The **proper administration of justice requires judges who are skilled and learned.** It is even **more important that their decisions are honest and impartial and are arrived at without pressures or interference however slight or from whatever quarter**.”

A copy of an Extract from the Judgment of Justice Wanasundera is annexed hereto
marked ‘**A**’.

1. On 8th June 1983, Ratwatte J, Colin-Thome J and Soza J held that Vivienne Gunawardena, a former MP and Junior Minister had been arrested not by the officer-in-charge of the Kollupitiya Police who was the 1st Respondent but by Sub-Inspector Ganeshanantham, that **the arrest constitutes an infringement of a fundamental right in terms of Article 13(1)** and whether the State adopted it or not the action taken by S.I. Ganeshanantham who was not a Respondent, **was an executive action**, and thereby the State was liable for the said infringement, and ordered the State to pay costs – vide 1983 (1SLR) 305. That night the residences of the said Judges were stoned.

1. On 29th July 1983, the President forwarded eight copies of a Bill entitled “Sixth Amendment to the Constitution” to the Chief Justice as being urgent in the National interest. Having considered it on 3rd August the Supreme Court tendered its advice to the President and Speaker. The Bill was passed by Parliament with some amendments (including Section 157A which contained a requirement that the Judges of the Supreme Court and the Court of Appeal should take their oaths in terms of the Seventh Schedule before the President) and was certified by the Speaker on 8th August – vide 1983(1SLR) 209.

1. On 8th September 1983 a judge of the Supreme Court observed the interpolation of the aforementioned provision in Section 157A. The Judges of both Courts considered this and wrote to the President on 9th September inter alia that in their opinion the period of one month ended at midnight that day and that they were prepared to take their oaths before the President that day. The President did not respond to this, but **on Monday the 12th September,** the Courts and the Chambers of all Judges of the Supreme Court and the Court of Appeal had been locked and barred and armed police guards had been placed
on the premises to prevent access to them. The Judges had been effectively locked
out by Executive and Administrative action. The Chief Justice referred to this fact in his conversation with the Minister of Justice on the morning of Monday the 12th. While deprecating it, the Minister assured the Chief Justice that he had not given instructions to
the Police to take such action. On Tuesday the CJ was made aware that the guards had
been withdrawn. When this matter was referred to in the course of the argument, Deputy Solicitor General Shibly Aziz informed the Court that it was the act of a “**blundering enthusiastic bureaucrat”** and apologised on behalf of the official and unofficial Bar. However, on the last day of hearing the Deputy Solicitor General had withdrawn the apology and substituted instead an expression of regret. The identity of the blundering bureaucrat was not disclosed to Court. However his object was clear – that was to prevent the Judges from asserting their rights. On 15th September all Judges of the Court of Appeal and the Supreme Court received fresh letters of appointment commencing 15th September – vide 1983 (1SLR) 210, 211.

1. Arising from the aforementioned incident, in October 1983 **a 9-judge bench** of the Supreme Court **was specially constituted** by Samarakoon CJ to consider **important questions that concerned the jurisdiction, dignity and the independence of the Supreme Court**. In his judgment Samarakoon CJ declared inter alia that **“Sovereignty of the Sri Lankan People under the 1978 Constitution is one and indivisible. It remains with the People. It is only the exercise of certain Legislative, Executive and Judicial powers of the Sovereign People that are delegated to the Parliament, the Executive and the Judiciary under Article 4.** Fundamental Rights and Franchise remain with the People and **the Supreme Court has been constituted the guardian of such rights”.** Sharvananda J. stated **“Rule of Law is the foundation of the Constitution and Independence of the Judiciary and fundamental human rights are basic and essential features of the Constitution.** There can be **no free society without law administered through an Independent Judiciary. The Supremacy of the Constitution is protected by the authority of an Independent Judiciary** to act as **the interpreter of the Constitution. Actions of the Executive are not above the law and can certainly be questioned in a Court of Law. An intention** **to** **make acts of the President nonjusticiable cannot be attributed to the makers of the Constitution….The President cannot be summoned to court to justify his actions.** But **that is a far cry from saying that the President’s acts cannot be examined by a Court of Law.** **A party who invokes the acts of the President in his support will have to bear the burden of demonstrating that such acts of the President are warranted by Law.** **The seal of the President will not be sufficient to discharge that burden”**, and that “**The Judges of the Supreme Court and the Court of Appeal did not cease to hold office on 9th September but continued to hold office without any break**.” – vide 1983 (1 SLR) 222 and 236.

1. The Petitioner states that **when this seemingly diabolical attempt by the President to reconstitute the Supreme Court and Court of Appeal (with Judges who would co-operate with him without question), failed, the President moved to impeach the Chief Justice with the aid of his steamroller 5/6th majority in Parliament.** Article 107 of the 1978 Constitution, stipulates that **the Chief Justice** shall hold office during good behaviour and **shall not be removed except by an order of the President made after an address of Parliament** supported by a majority of the total number of MPs has been presented to the President for such removal **on the ground of proved misbehaviour or incapacity**, provided that the notice of such resolution for the presentation of such address was signed by not less than one third of the total number of MPs and sets out full particulars of the alleged misbehaviour or incapacity (clearly referring to the aforementioned, “proved misbehaviour or incapacity”).
2. On 2nd March 1984, Samarakoon C.J., Sharvananda J, Wanasundera J, Wimalaratne J, Colin Thome J, Ranasinghe J and Rodrigo J affirmed the aforementioned judgment of Ratwatte J, Colin Thome J and Soza J of 8th June 1983, that Sub-Inspector Ganeshanantham had infringed the fundamental rights of Vivienne Goonawardena. Samarakoon C.J. opined that **“It will be a travesty of justice if, having found as a fact that a fundamental right had been infringed or is threatened to be infringed, the Court yet dismisses the petition because it is established that the act was not that of the officer named in the petition but that of another state officer, such as a subordinate of his. This Court has been given power to grant relief as it may deem just and equitable – a power stated in the widest possible terms. It will neither be just nor equitable to deny relief in such a case** – vide 1984 (1SLR) 319.
3. On 14th March 1984, Hon. N.D.M. Samarakoon, Q.C. Chief Justice, as Chief Guest at the Annual Awards Ceremony of the Sinnathuray Commercial Tutory held at the Sea View Hotel Kollupitiya, made an ex tempore speech in which he made passing references to the 1983 July riots, the Job Bank, the galloping cost of living, the hardships faced by public servants and those without jobs, inflation or recession, the extravagant life styles of the rich and the Members of Parliament a reported statement of the President regarding the “pauper’s salary” received by him which caused him to live below the poverty line, and widely prevalent bribery and corruption – views that were, without any doubt, shared at that time by most segments of the Sovereign People.

1. On 3rd April 1984, Prime Minister R. Premadasa moved a Resolution for impeachment of the Chief Justice. It was passed on the same day. However Parliament had not, as required by Article 107(3) of the Constitution, provided by law or Standing Order for any matters relating to the presentation of such a Resolution. In those circumstances a Select Committee of nine members with the Prime Minister as Chairman, was appointed on 4th April, 1984, to investigate and report in terms of existing Standing Orders.
2. At the instance of the Standing Orders Committee of the House, on 4th April, 1984 Parliament amended the Standing Orders by adding Standing Order 78A setting out a procedure for presenting an address to the President for the removal of the Chief Justice and other judges of the Supreme Court and the Court of Appeal. This Standing Order was made because the Chief Justice’s speech was considered critical of some MPs of the Government Party, the Executive and the President. By this Standing Order Parliament has purported to constitute itself as Judges in respect of the allegations made against the Chief Justice by some M.Ps, all of whom belong to the Governing Party. Clearly, MPs had purported to make themselves “Judges in their own cause”, by virtue of this Standing Order. A copy of the said Standing Order is annexed hereto marked **P1**.
3. On 9th August 1984 the Premadasa Committee which had met on 6 occasions submitted a report stating that some of the statements were not befitting a Chief Justice and recommending that appropriate action be taken, and on 5th September 1984, 57 MPs of
the UNP gave notice of a resolution to present an address to the President for removal of
the Chief Justice. In their motion they cited the findings of the Premadasa Committee as being the ‘proved misbehaviour’ required by Article 107. In terms of Standing Order 78A a Select committee of 9 MPs with Lalith Athulathmudali as Chairman was appointed to inquire and report.
4. Having received from the Secretary General of Parliament a copy of the allegations made, the Chief Justice, in a written statement of defence sent on 17th September 1984, stated inter alia that, “**I have to register my protest against the Select Committee proceeding with this inquiry. I consider it my duty as Chief Justice to do so at the very outset of these proceedings as I do not want to be a party to the erosion of the independence of the judiciary of which I am the head. In my view the action taken by the present Select Committee is not in accordance with our Constitution, part of the basic structure of which is the independence of the judiciary**.” He also made reference to an earlier instance of such erosion where Judges of the Supreme Court were requested to appear before a Select Committee appointed by Parliament to consider the circumstances under which certain orders were made by the Supreme Court in respect of a Writ application. Statements of the Judges were recorded and the Select Committee had proceeded to make its observations on the Judicial conduct of the Judges. Apart from interfering with the independence of the Judges, Chief Justice Samarakoon stated that **it** **shook the confidence of the Sovereign People in the Judiciary**. A copy of the said written statement is annexed hereto marked **P2**.
5. At the conclusion of **the inquiry which was clearly not in accordance with the Constitution** Messers Anura Bandaranayake M.P., **Dinesh Gunawardena M.P**. and Sarath Muttetuwegama M.P. in a separate report submitted, referred to an important preliminary objection raised by Mr. S. Nadesan Q.C., Senior Counsel for the Chief Justice that “**to bring Standing Order 78A into the list of Standing Orders** and **in seeking through this Select Committee to act under the provisions of Standing Order 78A, the Constitution of Sri Lanka was in fact being violated**.” **They conceded** that Mr. Nadesan’s contention **that “in the context of a Constitution such as that of our country in which the separation of powers was jealously protected, this Committee in seeking to go on with this inquiry as to whether or not Mr. Samarakoon was guilty of “proved misbehaviour” was violating the provisions of Article 4(c) of the Constitution which stipulates that except in matters concerning parliamentary privileges – the judicial power of the people shall be exercised exclusively through the Courts”** **had considerable cogency**, but that they were not in a position to come to a definite conclusion on this matter. **They urged** **“that H.E. the President could refer this matter to the Supreme Court for an authoritative opinion thereon, under Article 129(1) of the Constitution**”**.** They further said that **they “however feel strongly that** **the procedure that Parliament finally adopts should be drafted along the lines of the Indian provisions where the process of inquiry which preceded the resolution for the removal of a Supreme Court Judge should be conducted by Judges chosen by the Speaker from a panel appointed for this purpose**”, and also therefore **urged the House** **“to amend Standing Order 78A accordingly”.** A copy of the said Report is annexed hereto marked **P3**.

1. After inquiry a majority of members reported that **“The standard of proof required is very high. In all the circumstances of this case we cannot come to the conclusion that the Chief Justice is guilty of proved misbehaviour.” No further action was taken on this resolution** and the Chief Justice retired on 21st October 1984 on reaching the mandatory age of retirement.

1. In 2001 Notice of a Resolution to impeach then Chief Justice, Sarath N. Silva, setting out full particulars of numerous allegations of misbehaviour, was entertained by the Speaker, Hon. Anura Bandaranayake. The Supreme Court issued a direction to the Speaker to refrain from entertaining the Resolution and/or appointing a Select Committee to inquire into this matter, in terms of Standing Order 78A. As advised, the Speaker rejected this direction of the Supreme Court. Without referring the question of the validity of Standing Order No. 78A to the Supreme Court for an authoritative opinion in terms of Article 129(1) as recommended by her brother the Hon. Anura Bandaranayake (then Speaker), Hon. Dinesh Gunawardena M.P. (presently the Chief Government Whip) and the late Hon. MP
Sarath Muttetuwegama. **President Kumaratunga effectively crushed this attempted impeachment by** abusing the Executive power of the People **delegated to her by the Sovereign People,** by immediately proroguing and subsequently dissolving Parliament for reasons best known to her. A subsequent attempt in 2003 to impeach Chief Justice Sarath N. Silva was not pursued to a logical conclusion. The 2nd Respondent Speaker
has failed to prevail on the President (his younger brother) to refer the question of the validity of Standing Order 78A to the Supreme Court for an authoritative opinion as recommended in **P3**.
2. In January 2006 the 1st Respondent and T.B.Weerasuriya J resigned from the 3 member Judicial Service Commission citing matters of conscience without publicising what the real cause was. **In February 2006, President Rajapaksa disregarded the well-known reasons for these resignations and committed the impeachable offence of intentionally violating the Constitution by appointing Nihal Jayasinghe J as Acting Chief Justice (overlooking Bandaranayake J and Weerasuriya J who were senior to him) in patent violation of Art. 41C(1) of the Constitution**.
3. As President of the Organisation of Professional Associations, the Petitioner urged the 2nd Respondent, then a Cabinet Minister, to prevail on his younger sibling Mahinda Rajapaksa to exculpate himself from the “impeachable” offence of intentionally violating the Constitution by activating the Constitutional Council. The Petitioner was invited to Temple Trees for a discussion of unspecified matters at 11.30 a.m. on 11th March 2008. Others present at this discussion included Lalith Weeratunga the 14th Respondent, C.R.de Silva then Attorney General, Ministers Mahinda Samarasinghe and D.E.W.Gunasekera, Ven. Maduluwawe Sobitha Thera, Victor Ivan, Kumar Rupasinghe, Col. Faiz-ur-Rahman, and Mahen Dayananda. Hon. D.E.W.Gunasekera initiated a discussion on the 17th Amendment. When the President specifically sought the Petitioner’s views the Petitioner read out Art 41C (1) which stated unequivocally that “No person shall be appointed by the President as Chief Justice or as a member of the Judicial Service Commission unless such appointment had been approved by the Constitutional Council upon a recommendation made to the Council by the President” and stated that, being a Senior Lawyer himself the President was deemed to have been aware of this and therefore could be considered to have intentionally violated the Constitution in making these appointments and further that, **the only remedy for such offence provided in the Constitution itself under Art 38(2)(a), was** **impeachment**. The Petitioner assured the President that he would never be impeached because none of the 108 Ministers then in his Cabinet were likely to risk losing their portfolios for matters that did not concern them. When asked what, if anything, the Petitioner had done about this, **he replied that the last thing he had done was to institute action challenging the validity of his appointment of Nihal Jayasinghe J as Acting Chief Justice overlooking the 1st Respondent Shirani Bandaranayake J.** Promptly the President responded that **it was** **Shirani, his good friend, who hails from Anuradhapura and** **was doing very good work, that he wanted to appoint**, but **it was Ranil who said that “to be appointed as Chief Justice she must necessarily have served in the Judiciary for 25 years**”. The President immediately **directed the 14th Respondent Lalith Weeratunga to give the Petitioner “the relevant document**”. Having vigorously checked the documents in his files for a full 2 to 3 minutes, the 14th Respondent was unable to locate any such document and the President directed him to “**send it to Mr. Perera, tomorrow**”. The Petitioner states that in spite of several letters requesting same the said document has never been received by him.
4. On reaching retirement age in June 2009, S.N. Silva C.J. was duly retired. The 17th Amendment provisions were still operative. However, **the President intentionally violated the Constitution (an impeachable offence in terms of Article 38(2)(a)(i)) by by-passing the most senior judge, Bandaranayake J and appointing Asoka Silva J, as Chief Justice**. At the same time in June 2009 the **President also appointed the spouse of Bandaranayake J as Chairman, Sri Lanka Insurance Corporation, for reasons best known to the President**. For whatever reason, the **1st Respondent does not appear to have protested at the repeated violation by the President of her fundamental right to appointment as Chief Justice on an acting or substantive basis, which right she enjoyed from 2004 in terms of the 17th Amendmen**t.
5. In terms of the 18th Amendment which had repealed the 17th Amendment, Bandaranayake J was appointed as Chief Justice on 18th May 2010, to succeed Asoka Silva CJ who was simultaneously appointed as Senior Legal Advisor to the President. On 15th May 2010, **the 1st Respondent’s spouse was appointed as Chairman National Savings Bank, by the President, for reasons best known to the President.** Having assumed the office of Chief Justice, **the 1st Respondent purposefully embarked on the long overdue cleansing of the Augean Stables and slowly but surely asserted herself as Chief Justice**. Manjula Thilakaratne who was the 6th in Seniority of those eligible, was appointed as Secretary of the JSC. **The Registrar of the Supreme Court and several other officers whose activities were suspect, were transferred out**. Some kind of order was restored and **the quality of judicial activity clearly improved. Covert and sometimes overt interference with the Judiciary was resisted. The Chief Justice and the Judicial Service Commission had apparently decided that an independent Judiciary was imperative for Sri Lanka, and strenuously worked towards achieving it**.
6. Minister Bathiudeen reportedly threatened the Judge at Mannar to render an order, as desired by him, in a case in that Court. When this ‘unlawful direction’ was not complied with, the Court House was stoned. Pressure was exerted on the Secretary of the Judicial Service Commission to get the said Judge transferred. **The Supreme Court’s Determination in the Divineguma Bill was reportedly interpreted by the Executive as a move to undermine the perceived supremacy of the Legislature,** and the state controlled media launched scathing attacks on the Judiciary. Judge Aravinda Perera was reportedly suspended by the JSC for unacceptable conduct after due inquiry. In these circumstances the JSC was requested to meet the President for undisclosed reasons but this request was politely declined.
7. On the 16th September 2012, as directed by the JSC, the Secretary of the JSC issued an unprecedented statement to keep the Sovereign People informed about covert attempts to destroy the credibility of the JSC and the Judiciary. **It reiterated that the JSC is dedicated to carrying out its responsibility to protect the independence of the Judiciary and to discharge its service without being intimidated by influences, threats or criticism.** On Sunday (7th October 2012) morning the Secretary of the JSC was attacked in Mount Lavinia and the attackers have still not been apprehended.
8. It was widely reported in the print and electronic media that **on 8th October 2012 the
2nd Respondent Speaker Chamal Rajapaksa, with the purported concurrence of the
Party Leaders, took exception to the fact that the Petition and / or the Supreme Court determination in respect of the Divineguma Bill had been delivered to the Secretary General of Parliament and not to the Speaker, contending that this was tantamount to the Secretary General being substituted for the Speaker. He opined that this required a Constitutional amendment**. The Speaker has apparently not stated that the Petition and/or Determination had been addressed to the Secretary General and not to the Speaker. He seems to have only stated that it was delivered to the Secretary General. He has however, at the same time declared specifically that the Supreme Court has been vested with the sole and exclusive jurisdiction to interpret any Constitutional Provisions. The Petitioner respectfully states that the delivery to the Secretary General of Parliament of a copy of the Petition and/or a determination addressed to the Speaker, is in accordance with the widely prevailing practice in Sri Lanka and, at any rate apparently is, in the opinion of the Supreme Court a sufficient compliance with the Provisions of Art. 121 of the Constitution and, that in all probability the President’s copy of the determination is always delivered to the President’s Secretary and not to the President. However, **this ill-considered and hasty assertion by the 2nd Respondent Speaker has wittingly or unwittingly created an impression in the mind of the Sovereign People, of a rift between the Judiciary and the Legislature,** and of a consequential need to impeach the CJ.
9. From the moment that Media Minister Keheliya Rambukwella announced to the media
that the CJ would not be impeached it was rather obvious that that was precisely what
the Government appeared intent on doing. He fooled nobody. Not long thereafter it was widely reported that 117 MPs had signed a notice of a resolution which Minister Pavithra Wanniarachchi reportedly declared, **contained seven (7) charges** including acts allegedly committed in the 1st Respondent’s personal capacity, for the presentation of an address to the President, and had handed it over to the Speaker on 1st November, 2012.
10. The **1st Respondent Chief Justice** is an individual and **cannot, under any circumstances be held guilty for the conduct of her spouse or any other individual, unless of course, it is established by clear evidence that she was the one who caused such conduct. The Evidence Ordinance clearly stipulates that she is not a “compellable witness” to any charge levelled against her spouse. “He who avers must prove,”** and **the charges that have been levelled** against the 1st Respondent **must necessarily be established by her accusers, with evidence admissible according to the Evidence Ordinance. The 1st Respondent must necessarily be deemed innocent until proved guilty, as clearly set out in Article 13(5) of our Constitution**.
11. The Petitioner states that whereas **Article 107(2) of the Constitution clearly states that the address of Parliament can be presented to the President for removal of a Judge, only “on the ground of proved misbehaviour or incapacity**”, and further that **“no resolution** for the presentation of such an address **shall be entertained by the Speaker or placed on the Order Paper of Parliament, unless notice** of such resolution **sets out full particulars of the said misbehaviour or incapacity.”**
12. The Petitioner states that **unlike the British Parliament, the Sri Lanka Parliament is not Sovereign and is subject to the Constitution. There is no such thing as the Supremacy or Sovereignty of Parliament under the present Constitution. The People are Sovereign** and they have delegated their Sovereign Powers in so far as governmental power is concerned to **the Legislature, the Executive and the Judiciary, each of which is Supreme in respect of the limited powers delegated to it by the Sovereign People**.
13. **The independence of the Judiciary** in relation to the Legislature and Executive **is possible only to the extent that the persons to be appointed to the Judiciary are independent of persons holding office in the Legislative and Executive organs of the State**.
14. The Parliament which is a Legislative body has not, upto the present time, enacted any law prescribing limits to the exercise by Judges of their fundamental rights of freedom of speech or prescribing rules of the conduct of judges or validating any convention observed in the UK, US, India, South Africa, Pakistan, or any other Democracy. If ever Parliament seeks to pass any such law it will be tantamount to an attempted interference with the Independence of the Judiciary which is an integral part of the basic structure of our Constitution. Any Bill seeking to do so will need a two-thirds majority in Parliament and also acceptance by the Sovereign People at a Referendum.
15. Under the present Constitution the Parliament is precluded from exercising Judicial Power, save and except in the limited matter of its own privileges. As such, **Parliament is incompetent to adjudicate, not only on the truth or otherwise of any allegations made in the Notice of Resolution presented by MPs, but also to determine the legal question as to whether the facts proved, if any, constitute ‘misbehaviour’ under Article 107 of the Constitution. Under Article 107(3) Parliament is therefore required to make the necessary provision for an appropriate Judicial Tribunal to determine the truth or otherwise of the allegations made by the MPs and whether it amounts to proved misbehaviour contemplated by Article 107. It is if, and only if, such a Tribunal finds that the allegations have been established, and also holds that they are a valid ground for the removal of the Judge, that Parliament can be called on to decide by majority vote whether or not the said Judge should be removed for proved misbehaviour or incapacity**.
16. Article 107(3) of the Constitution states “Parliament shall by law or by Standing Orders provide for all matters relating to the presentation of an address to the President for removal of the Chief Justice, the President of the Court of Appeal and every other judge of the Supreme Court and Court of Appeal, including the procedure for the passing of such resolution, the investigation and proof of the alleged misbehaviour or incapacity and the right of such Judge to appear and to be heard in person or by representative.
17. **Parliament has no power to pass any law which undermines the Independence of the Judiciary which is a part of the basic structure of the Constitution. Nor can Parliament by Standing Orders erode an important provision in the Constitution by arrogating to itself jurisdiction to exercise Judicial power directly and thereby interfere with the Independence of the Judiciary**.
18. **Article 74(1)(ii)** of the Constitution **states** “**Subject to the provisions of the Constitution Parliament may by Resolution or Standing Order provide for the regulation of its business**, the preservation of Order at its sittings **and any other matter for which provision is required or authorized to be so made by the Constitution”. Standing Orders adopted by Parliament do not enjoy the protection granted by Article 124 of the Constitution to Bills in respect of its Constitutionality or due compliance with the legislative process**.
19. The provisions of Standing Order 78A are clearly inconsistent with the provisions in the Constitution, as set out extensively above. **Standing Order 78A, in so far as it empowers Parliament to exercise Judicial power, is ultra vires the Constitution and, in terms of Article 74(1)(ii) is ab initio void or at the very least, voidable.** If and when it is presented as a Bill, **the Supreme Court cannot but hold that it can become lawful only if it is passed by a 2/3rd majority in Parliament and also approved by the Sovereign People, at a Referendum**.
20. It is self-evident that “**the truth of a matter does not depend on how many believe it”. The truth of the 14 allegations certainly cannot be based on how many ‘vote’ for it.** Cognizance must be taken of the fact that several Parliamentarians who publicly professed to oppose the 18th Amendment did however, vote for it for reasons best known to them.
21. A senior government source was reported in the media, to have stated on 08.11.2012 that “the PSC will work out the modalities for the sittings. It will only allow a single counsel to accompany the Chief Justice and would allow witnesses or documents to be called only with the consent of a majority of members,” and also that **“the government had no intention of allowing representatives of the International Bar Association, International Judges’ Association, the Commonwealth Bar Association and even the media to observe the proceedings as that would affect the Sovereignty, the authority and the Independence of the Sri Lankan Parliament if they were allowed to monitor or report or comment on the PSC.”** The purported “findings” arrived at on the basis of a majority of votes may very well be clearly contrary to the weight of evidence available. **The modus operandi seemed to be to shut out any information regarding such evidence until the foul deed of impeachment is expeditiously concluded**.
22. The aforementioned government source, the Speaker, and the PSC appointed by him, all apparently fail to realise that **the only valid interpretation of “Sovereignty” as per the 1978 Constitution, is that given by the 9-judge bench of the Supreme Court headed by Hon. Neville Samarakoon CJ** viz. “**Sovereignty of the Sri Lankan People under the 1978 Constitution is one and indivisible. It remains with the People. It is only the exercise of certain Legislative, Executive and Judicial powers of the Sovereign People that are delegated to the Parliament, the Executive and the Judiciary. Fundamental Rights and Franchise remain with the People and the Supreme Court has been constituted the guardian of such rights.**” There **certainly cannot be any such thing as “Sovereignty” or “Supremacy” of Parliament. The Authority and Independence of Parliament is limited to what is set out in the Constitution and therefore the extent of such authority and independence are subject to the interpretation of the Supreme Court**.
23. The impeachment of a President cannot be proceeded with unless the **Supreme Court, after due inquiry, finds that the President has been guilty of, inter alia, intentional violation
of the Constitution** or of any of the other offences contained **in Article 38(2)(a) of the Constitution**. The Petitioner respectfully submits that **the impeachment of a Chief Justice cannot be based on a finding of a group of Parliamentarians with no judicial authority**. Any such finding is clearly subject to appropriate Judicial Review.
24. The 1st Respondent Chief Justice (as consistently asserted by her) has always acted in keeping with the hallowed traditions of an Independent Judiciary and asserts that she is prepared to face any impeachment motion brought against her. Accordingly she has already presented herself in the proverbial ‘lion’s den’ on 23rd November 2012 and even disarmed many of her detractors with her charming smile. According to some reports appearing in the media, the **3rd to 13th Respondents have summarily rejected the recommendation of Your Ladyship’s Court that “out of mutual respect and trust between the two institutions, the Parliament and the Judiciary, the Supreme Court wishes to recommend to the members of the PSC that they defer the inquiry until the Supreme Court determined the question of law on interpreting Article 107(3) of the Constitution referred to it by the Court of Appeal.”** The 1st Respondent had been given time till November 30th to file objections in her defence.
25. **In a most distressing development**, the print and electronic media have given wide publicity to **a dramatic turn in the crisis between the legislature and the Judiciary, as a result of a ruling by the 2nd Respondent Speaker on 29th November, 2012 and** reported inter alia as follows:
26. **Claiming to act in terms of Article 107** and the ruling of Speaker Anura Bandaranayake on 20th June 2001, (which, according to the 2nd Respondent had upheld “legislative supremacy”) the **2nd Respondent declared that he “deems court notices irrelevant”, and that notices served on him and members of the PSC appointed by him have no effect whatever and are not recognised in any manner**.
27. **The Leader of the House** has declared that **Parliament was supreme and Court cannot challenge the impeachment motion**.
28. **The Leader of the Opposition** is reported to have said that “**No one can issue notices on the Speaker, or the PSC”**, and
29. Speaking **on behalf of the 117 MPs who signed the Petition,** UPFA MP **Thilanga Sumathipala laments that the Petitioners were not allowed to observe PSC proceedings**.
30. In response to several requests for separate meetings from several Judges and Magistrates the Chief Justice had invited all of them for a meting at 3.00 p.m. on Monday 3rd December 2012, as she did not have the time to meet them individually. She is reported to have given an account of the charges against her, **vowed that she was determined, even at the cost of her own life to vindicate her position and then withdrawn from the meeting**.
31. **Notwithstanding the shabby treatment meted out to her on 23rd November, the 1st Respondent presented herself before the PSC on 4th December 2012**. A request for observers from inter alia the Bar Association of Sri Lanka and the Commonwealth were summarily rejected by the PSC. **She was requested to be present again at 2.30 p.m. on 6th November afternoon in response to her request that the documents to be used in support of the charges be made available to her**.

1. The PSC met on 5th December and 6th December morning to scrutinise the documentary evidence pertaining to the charges mentioned in the impeachment motion. However **when the Chief Justice presented herself on 6th November as requested the PSC had not been able to provide her with the necessary documents pertaining to the charges in the impeachment motion. There was also no list of witnesses and she had been continuously subjected to verbal abuse by some of the Government members of the PSC. The PSC had failed to verify the authenticity of the documents provided by the Secretary General of Parliament on the 5th December** and **the request to summon the relevant authorities which had provided those bank account details and asset declarations had been overruled**. The **PSC had refused to even spell out the procedure it intended to follow.** The 3rd Respondent **Chairman PSC had stated that no oral evidence would be led to establish the allegations and consequently no opportunity would be given to cross-examine the witnesses supporting/making the allegations.** It became **evident that the Chief Justice was being expected to refute allegations that had not even been supported by evidence,** a procedure that would undermine the independence of every single judge in Sri Lanka. **All submissions made on behalf of the Chief Justice were overruled by the Government nominees who were in a majority, without any cogent reasons, often without any prior consultation with other members of the PSC. Stating that she therefore had no faith in the PSC and that she would not get a fair trial, she and her team of lawyers walked out of the PSC probe about 5.30 p.m. on 6th December, reiterating her willingness to face any impartial and lawful tribunal – as in other Commonwealth Countries – to vindicate herself, and that she would continue her efforts to safeguard the independence of the Judiciary which was a heritage of the Sovereign People of Sri Lanka**.

1. On **Friday 7th December afternoon at a news conference in the Parliament premises the four opposition members of the Select Committee (the 10th to 13th Respondents) announced that they were withdrawing from the PSC as they believed the inquiry was not fair.** They **submitted a letter signed by all four of them to the Chairman PSC who rejected it. The letter stated** inter alia that:

“ The PSC had turned down their request that the Chief Justice, who had been compelled to leave the investigation following insults and intimidation by government members be invited to return and granted additional time, and they cannot be a party to a process where the principles of natural justice are not upheld. In the course of the deliberations of the Committee, the following matters had been raised by us: the absence of a clear direction regarding the procedure to be followed by the Select Committee; whether documents were to be made available to the Chief Justice and her lawyers; the standard of proof which would be required; the need to arrive at a definition of “misbehaviour” and whether sufficient time would be made available to the Chief Justice and her lawyers to study the documents. We have also requested a direction whether the Chief Justice and her lawyers would be given an opportunity to cross-examine the several complainants who had made the charges against her. It was also our position that if and only if a prima facie case had first been made out against the Chief Justice that she can be asked to respond. None of these matters have been addressed by your Committee. We also find that we are groping in the dark and proceeding on an ad hoc basis. In addition we wish to note that **over 300 documents were received by the Committee and handed over to the Members only on 5th December 2012 and those were handed over to the Chief Justice only at 4.30 p.m. on 6th December 2012**. We understand that **there were several more documents to be produced**. The lawyers appearing for the Chief Justice asked for time to study the documents. This was refused. Apart from the Chief Justice, we the Members of the Select Committee, ourselves will need sufficient time to study these documents. Furthermore, the Chief Justice had not been provided with either a list of documents or a list of witnesses. The sequence of events can be set down as follows:

**When the motion was filed, there were no documents provided with it. The inquiry started on 14th November 2012 without either a list of witnesses or a list of documents.** **After three sittings the Secretary General was instructed to call for the documents from the banks and other institutions. What is obvious here is that when the impeachment motion was filed none of the signatories could have seen any of the documents**. It is regrettable that **the committee is ignoring salient provisions of the law and requirements of natural justice in the conduct of this inquiry**.

\* Article 12(1) of the Constitution which guarantees equality and equal protection of the Law and Article 13(5) the presumption of innocence.

\* Article 7 of the Human Rights Declaration guaranteeing equality before the law.

\* **Item 17 and 20 of the United Nations Basic Principles of the Independence of the Judiciary which guarantees to every judge the right to a fair hearing and an independent review of removal proceedings**.

It is also a matter of note that the Chief Justice has not been afforded the courtesies and privileges due to her office. We have made our position clear regarding these matters. **It is the duty of the Select Committee to maintain the highest standards of fairness in conducting this inquiry**. We also regrettably note that during these proceedings, **the treatment meted out to the Chief Justice was insulting and intimidatory and the remarks made were clearly indicative of preconceived findings of guilt.** We are therefore of the view that the Committee should before proceeding any further lay down the procedure that the Committee intends to follow in this inquiry. Give adequate time to both the Members of the Committee and the Chief Justice and her lawyers to study and review the documents that had been tabled. Afford the Chief Justice privileges necessary to uphold the dignity of the office of the Chief Justice while attending proceedings of the Committee. If these matters are attended to, we feel that the Chief Justice should be invited to continue her participation in these proceedings. However, if the Committee is not agreeable to these proposals of ours we will be compelled to withdraw from the Committee. The request letter addressed to the Chairman of the PSC was signed by all four MPs.”

1. **A letter addressed to the 2nd Respondent Speaker by the 10th to 13th Respondents
on Friday 7th December and released to the media said that they had raised five issues,** viz.
* the absence of a clear direction regarding the procedure to be followed by the PSC.
* whether documents were to be made available to the CJ and her lawyers.
* the standard of proof which would be required.
* the need to arrive at a definition of “misbehaviour”
* whether sufficient time would be made available to the CJ and her lawyers to study the documents.

Other significant matters highlighted, inter alia, were–

* whether an opportunity would be provided to cross-examine the several complainants who made the charges.
* the CJ can be asked to respond if and only if a prima facie case had first been made out against her.
* over 300 documents were received by the PSC and handed over to the Members only on 5th December 2012 and these were handed over to the CJ only at 4.30 p.m. on 6th December 2012. Several more are to be produced.
* the CJ had not been provided with either a list of documents or a list of witnesses.
* when the motion was filed there were no documents provided with it.
* the inquiry started on 14th November 2012 without either a list of witnesses or a list of documents.
* after three sittings the Secretary General of Parliament was instructed to call for the documents from the Banks and other institutions.
* it is obvious that when the impeachment motion was filed none of the signatories could possibly have seen any of the documents.
* it is regrettable that the PSC is ignoring salient provisions of the law and requirements of Natural Justice in the conduct of this inquiry.
* the CJ has not been afforded the courtesies and privileges due to her office.
* it is the duty of the PSC to maintain the highest standards of fairness in conducting this inquiry.
* the treatment meted out to the CJ during these proceedings was insulting and intimidatory and remarks made clearly indicated preconceived findings of guilt.
* before proceeding any further, the PSC must lay down the procedure to be followed, give adequate time to both members of the PSC and the CJ and her lawyers to study and review the documents tabled.
* afford the CJ privileges necessary to uphold the dignity of the office of CJ while attending proceedings of the PSC.
* if these matters are attended to we feel that the CJ should be invited to continue her participation in these proceedings.
* if the PSC is not agreeable to these we will be compelled to withdraw from the PSC.
1. After the 4 opposition members of the PSC withdrew on Friday 7th December afternoon, the 7 Government Members of the PSC continued their sittings till the early hours of Saturday 8th December, the next day, reportedly recording statements of (1) Shirani Thilakawardena J, (2) Lalith Weeratunga (the 14th Respondent), (3) Mr. Mudunkotuwa, the Registrar of the Supreme Court, (4) Amitha Chandrasekera, Registrar Colombo MC, (5) Janaka Ratnayake, CEO Trillium Residencies Co., (6) Aroshi Perera N.P., (7) Russel de Mel, CEO, National Savings Bank, (8) A.N.Cabraal, Governor Central Bank, (9) D.K.Abeygunawardena N.P., Director (Legal) Trillium Residencies Co, (10) Mallika Samarasekera, Commissioner General, Inland Revenue Department, (11) Deepani Herath, Commissioner Tax Policies, Inland Revenue Department, (12) H.M. Hennayake Bandara, GM, National Savings Bank, (13) K.B.Rajapaksa, GM, People’s Bank, (14) M.L.B.Silva AGM, Bank of Ceylon,
(15) D.M.Gunasekera, Acting A.G.M, Bank of Ceylon, (16) W.A.Chulananda Perera, Controller of Immigration and Emigration, (17) Sisira Paranathanthri, Chief Editor, Rivira, and (18) Manjula Thilakaratne, Secretary Judicial Service Commission.
2. The Petitioner states that this exercise could not possibly have been carried out within a few hours unless most, if not all of these witnesses had been previously informed that they should be in readiness to travel to Parliament from their residences or places of work, at very short notice and submit pre-prepared statements in evidence.
3. During the night of Friday the 7th December 2012 the PSC finalised its report and handed it over to the 2nd Respondent Speaker on Saturday 8th December 2012. It is noteworthy that the CJ's Lawyers had written to the 2nd Respondent Speaker to defer any further action until an independent and impartial panel is appointed to inquire into the allegations. It also requested that the CJ be given the opportunity of vindicating herself before an independent and impartial tribunal. The Government Information Department announced that the PSC has called several witnesses to give evidence against the CJ within the course of that day going onto the night.
4. The 3rd Respondent PSC Chairman handed over on 7th December 2012 a 30-page report
to the 2nd Respondent Speaker who announced in Parliament that the 1st Respondent had been found guilty of charges 1, 4 and 5 and that there was not enough evidence re charges 2 and 3. Charge 1 related to having removed another Bench of the Supreme Court which was hearing FR applications against Companies belonging to the Ceylinco Group of Companies and taking them up before a Bench presided over by her. Charge 4 related to non-declaration of details of more than 20 Bank Accounts in her declaration of Assets and Liabilities. Charge 5 related to the indictment of her husband for Bribery and Corruption thereby rendering her unsuitable to hold the post of CJ.
5. It is reported that Mr. S.L.Gunasekera, Attorney-at-Law in a letter dated 28th November 2012 to BASL President Wijedasa Rajapaksa, while pointing out that he was and continues to be a supporter of the present Government has stated unequivocally that the 1st Respondent CJ must have a fair trial and be given a fair opportunity in defending herself, that the BASL should adopt a resolution and/or make a public pronouncement that it requests all its members to refrain from accepting appointment as Chief Justice in the event of the incumbent CJ being impeached and adds that “Even at the risk of sounding presumptuous, I suggest that the Bar Association takes some meaningful steps **to oppose this madness of the incumbent government.**”
6. Former Chief Justice Sarath N. Silva is reported to have stated that the 1st Respondent CJ should not have declined to accept the President’s invitation to meet him and that now she should quietly resign and go away to save the Judiciary, and further that the President has the power to appoint an Acting Chief Justice in view of the impeachment proceedings. Article 109(1) provides that “If the Chief Justice is temporarily unable to exercise, perform and discharge the powers, duties and functions of her office, by reason of illness, absence from Sri Lanka or any other cause, the President shall appoint another judge of the Supreme Court to act in the office of Chief Justice.” Sarath N. Silva seems to believe that, notwithstanding the fact that the 1st Respondent Chief Justice is neither ill, nor absent from Sri Lanka and on the contrary “fighting fit” to discharge her duties, the words “or any other cause” could be interpreted to mean that initiation of a process of impeachment empowers the President to make such an acting appointment. The Petitioner states that this is a mistaken interpretation by an individual who was at one time, well versed in the knowledge of the “Rules of Interpretation of Statutes.”
7. The Sovereign People of this blessed Island cannot be passive onlookers. A sham trial has already been conducted (reminiscent of the infamous case of the Samurdhi employee who was tied to a tree), perhaps due to the facts that we no longer have the likes of Lalith Athulathmudali and Sarath Muttetuwegama, in the House of Representatives and Hon. Dinesh Guawardena has apparently been unwilling or unable to persuade the President, elected by the Sovereign People, to refer Standing Order 78A to the Supreme Court for an authoritative opinion under Article 129(1) as recommended by him and others in P3, in spite of being the Chief Government Whip. Civil Society must gear itself to ensuring that justice is done to their Chief Justice. If justice is denied to her, Sri Lanka is in for turbulent times leading to certain anarchy. We can no longer go about our own business expecting that someone else will be the target.
8. The Petitioner states that Your Ladyship’s Court is the last bastion against what appears to be the tyranny of a ruthless dictatorship, and that if this unlawful attempt to impeach the CJ succeeds all other Judges who display any independence and integrity will be similarly impeached at will and replaced by persons willing to make judicial orders as dictated to by the Executive, thereby causing the independence and integrity of the Judiciary to be shattered irrevocably, giving rise to a state of anarchy.
9. The Petitioner apprehends that history may repeat itself and the 1st Respondent CJ like her eminent predecessor Hon. N.D.M.Samarakoon QC, and possibly all other independent Judges will find their “Courts and Chambers have been locked and barred with armed police guards placed on the premises to prevent access to them”, by an act or acts of one or more “blundering enthusiastic bureaucrats” as in September 1983 as aforementioned, in para 18.
10. The Petitioner laments that **unless Your Ladyship’s Court decisively and expeditiously exercises the sole and exclusive jurisdiction vested by the Sovereign People in Your Ladyship’s Court, to authoritatively interpret the relevant provisions of the 1978 Constitution and take effective pre-emptive action, it may pave the way for the Executive President, with the active support of the elected Legislature and his appointees in the Executive Branch, to emulate or even surpass President Morsi of Egypt or at the very least render the Judiciary impotent and therefore redundant, and lawyers will be reduced to the status of “fools prancing around in a meaningless charade” as predicted by the late Mr. H.L.de Silva PC when addressing a BASL Seminar re appointments to the Judiciary” held at the BMICH on 30th August, 1999, in an attempt to prevent the appointment of Sarath N. Silva as Chief Justice**.
11. The Petitioner states that in such an event:
12. his fundamental right to be heard at a fair trial by a competent court guaranteed by Article 13(3), will be violated,
13. his fundamental right to be presumed innocent until he is proved guilty by a competent Court guaranteed by Article 13(5) will be violated, and
14. his fundamental right to apply to the Supreme Court in terms of Article 126 for a remedy in respect of the infringement or imminent infringement by Executive or Administrative action of a fundamental right to which he is entitled under the provisions of Chapter III of the Constitution, guaranteed by Article 17, will be violated.
15. The Petitioner states that irremediable harm and mischief will be caused not only to him but also to all Sri Lankans, the achievement of peace and tranquility that all Sri Lankans yearn for will be irrevocably shattered and Sri Lankans will be subject to anarchy unless Your Ladyship’s Court, will request/urge/direct the 1st Respondent to refrain from taking cognisance of this unlawful exercise, by the 3rd to 13th Respondents, and of any further acts by any individual or body of persons arising therefrom, pending the quashing of Standing Order No. 78A as being inconsistent with the Constitution.
16. The Petitioner states that the impugned acts of the Respondents constitute Administrative and Executive action and entitle the Petitioner to invoke the special jurisdiction of Your Ladyship’s Court in this matter.
17. The Petitioner has not previously invoked the special jurisdiction of Your Ladyship’s Court in this matter save and except by SC Application No. 682/2012 which he will withdraw when it is called in Your Ladyships Court for support on 12th December 2012. and pleads that documents A and P1 to P3 be deemed to be part and parcel of this Petition.

WHEREFORE the Petitioner humbly prays that Your Ladyship’s Court be pleased to:

1. grant leave to proceed in the first instance;
2. declare that the Petitioner’s fundamental right to a fair trial by a competent Court guaranteed by Article 13(3) of the Constitution, his fundamental right to be presumed innocent until he is proved guilty by a competent Court guaranteed by Article 13(5), and his fundamental right to apply to the Supreme Court for a remedy in terms of Article 126 of the Constitution in respect of an infringement or imminent infringement of a fundamental right as guaranteed by Article 17 of the Constitution have been infringed or such infringement is imminent, as a result of the unlawful acts aforementioned, of the 2nd to 13th Respondents;
3. quash Standing Order No. 78A set out in P1 as being inconsistent with Articles 3, 4 and 74(1)(ii) of the Constitution;
4. direct the 2nd Respondent to refrain from proceeding with any further action in respect of the unlawful trial conducted by 3rd to 13th Respondents in terms of Standing Order 78A, pending final determination of this matter;
5. request/urge/direct the 1st Respondent to refrain from taking any further cognisance of the unlawful trial conducted by 3rd to 13th Respondents in terms of Standing Order 78A, or of any further acts arising therefrom, pending final determination of this matter;
6. direct the 14th Respondent to refrain from processing any documents purporting to appoint any individual as Acting Chief Justice or as Chief Justice to replace the 1st Respondent, pending final determination of this matter;
7. direct the 15th and 16th Respondents to take all steps necessary to ensure that the 1st Respondent Chief Justice and all other members of the Judiciary will be able to carry out their lawful duties as Judicial Officers, pending final determination of this matter;
8. grant the Petitioner Costs and such other relief as to Your Ladyship’s Court shall seem meet.

 Petitioner