**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Application under and in terms of Articles 17, 35 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**SC FR Application No. 351/ 2018**

**SC FR Application No. 352/ 2018**

**SC FR Application No. 353/ 2018**

**SC FR Application No. 354/ 2018**

**SC FR Application No. 355/ 2018**

**SC FR Application No. 356/ 2018**

**SC FR Application No. 358/ 2018**

**SC FR Application No. 359/ 2018**

**SC FR Application No. 360/ 2018**

**SC FR Application No. 361/ 2018**

**PETITIONERS**

Rajavarothiam Sampanthan,
No176, Customs Road,
Trincomalee.
**Petitioner (SC FR 351/ 2018)**

1. Kabir Hashim,
   156 Lake Drive,
   Colombo 8

2. Akila Viraj Kariyawasam,
   306 (D2) Bauddhaloka Mawatha,
   Colombo 7
   **Petitioners (SC FR 352/ 2018)**

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

2. Dr. Paikiasothy Saravanamuttu
   No. 3, Ascot Avenue
   Colombo 00500
   **Petitioners (SC FR 353/ 2018)**

Lal Wijenayake
Secretary,
United Left Front,
1003, 1/1 Sri Jayewardenepura Mawatha
Rajagiriya
**Petitioner (SC FR 354/ 2018)**

Gabadagamage Champika Jayangani Perera, Attorney-at-Law, 60 Anderson Road, Kalubowila, Dehiwela.
**Petitioner (SC FR 355/ 2018)**

1. Anura Kumara Dissayanake,
   No, 464/20, Pannipitiya Road, Pelwatta, Battaramulla.

2. Bimal Ratnayake,
   No.1, 2nd Lane Jambugasmulla Mawatha, Nugegoda

3. Vijitha Herath,
   No. 154, Yakkala Road, Gampaha

4. Dr. Nalinda Jayatissa,
   No. 41, Hospital Road, Homagama.

5. Sunil Hadunetti,
   No. 4, Yeheyya Road,
   Izadeen Town, Matara

6. Nihal Galapaththi,
   No. 208/2, Muthumala Mawatha, Pallikudawa, Thangalle.

**Petitioners (SC FR 356/ 2018)**

Manoharan Ganesan, MP,
No. 24, Sri Maha Vihara Road,
Pamankada, Dehiwala.
**Petitioner (SC FR 358/ 2018)**

1. Hon. Rishad Bathiudeen, MP,
   Leader,

2. Hon. Ameer Ali, MP,
   Chairman,

3. Hon. Abdullah Mahroof MP
   National Organizer,

4. Hon. Ishak Rahuman, MP,
   Deputy Leader,

   All of All Ceylon Makkal Congress
   7th Floor, 296, Galle Road, Colombo 6.
   **Petitioners (SC FR 359/ 2018)**

1. Rauff Hakeem,
   Leader-Sri Lanka Muslim Congress,
   Dharussalam,
   51, Vaxhaul Lane,
   Colombo 2.

2. Seyed Ali Zahir Moulana,
   Dharussalam
   51, Vaxhaul Lane,
   Colombo 2.

3. Faizal Casim,
   Dharussalam,
   51, Vaxhaul Lane,
   Colombo 2.

4. H. M. M. Harees,
   Dharussalam,
   51, Vaxhaul Lane,
   Colombo 2.

5. M. I. M. Mansoor,
   Dharussalam,
   51, Vaxhaul Lane,
   Colombo 2.

6. M. S. Thowfeek,
   Dharussalam,
   51, Vaxhaul Lane,
   Colombo 2.

7. A. L. M. Nazeer,
   Dharussalam,
   51, Vaxhaul Lane,
   Colombo 2.

**Petitioners (SC FR 360/ 2018)**

Professor S Ratnajeevan H Hoole
Member of the Election Commission
Elections Secretariat
P O Box 02
Sarana Mawatha, Rajagiriya 10107

and

88, Chemmany Road,
Nallur, Jaffna.

**Petitioner (SC FR 361/ 2018)**

**Vs.**

**RESPONDENTS**

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

2. Mahinda Deshapriya,
   Chairman

3. N.J Abeysekara PC
   Member

4. Prof. Ratnajeevan Hoole,
   Member

2nd to 4th of:

The Election Commission,
Election Secretariat,
Sarana Mawatha, Rajagiriya.
**Respondents in all cases except in SC FR 352/2018 and 354/2018**

AND

Honourable Karu Jayasuriya,
Speaker of Parliament,
Parliament of Sri Lanka,
Sri Jayewardenepura Kotte.
**5th Respondent in SC FR 353/ 2018 and in 355/2018**

AND

Commissioner General of Elections,

Election Commission,
Election Secretariat, Sarana Mawatha,
Rajagiriya

Dhammika Dassanayake,
Secretary General of Parliament,
Parliament of Sri Lanka, Sri Jayawardenapura,
Kotte
**5th and 7th Respondents in SC FR 356/ 2018**

AND

M. A. P. C Perera,
Commissioner General of Elections,
Elections Secretariat,
PO Box 02,
Sarana Mawatha,
Rajagiriya, 10107

Udaya Seneviratne,
Secretary to the President,
Presidential Secretariat,
Colombo 01.
**4th and 5th Respondents SC FR 361/ 2018**

AND

1. Prof. Gamini Lakshman Pieris
   No.37, Kirula Place,
   Colombo 5

2. Udaya Prabath Gammanpila,
   65/14G, Wickramasinghe Mawatha,
   Kumaragewatte Road, Pelawatte, Battaramulla

3. Wellawattage Jagath Sisira Sena de Silva
   No.174/10, Uthuwankande Road,
   Thalawathugoda

4. Mallika Arachchige Channa Sudath Jayasumana
   21/1A, Upananda Road,
   Attidiya

5. Premnath Chaminda Dolawatte
   No.50 Ihala Bomiriya,
   Kaduwela
   **1st to the 5th Added-Respondents in SC FR 351/2018**

**BEFORE**

H.N.J PERERA, CJ.
BUWANEKA ALUWIHARE, PC. J.
SISIRA J. DE ABREW, J.
PRIYANTHA JAYAWARDENA, PC. J.
PRASANNA JAYAWARDENA, PC. J.
VIJITH. K. MALALGODA, PC. J.
MURDU N. B. FERNANDO, PC. J.

**COUNSEL**

K. Kang-Isvaran, PC with M. A Sumanthiran, PC., Viran Corea, Ermiza Tegal, Niran Anketell, Junaita Arulnantham and J. Crosette Thambiah instructed by Mohan Balendra for the Petitioner in SC FR 351/ 2018

Sanjeewa Jayawardena PC, with Rukshan Senadheera for the 1st Added Respondent in SC FR 351/ 2018

Manohara de Silva PC, with Samantha Rathwatte PC, with Canishka Witharana and Boopathy Kahathuduwa for the 2nd Added-Respondent in SC FR 351/ 2018

M.U.M. Ali Sabry PC, with Ruwantha Cooray, Naamiq

Nafath, Ramzi Bacha and Hassan Hameed instructed by Athula de Silva for the 3rd Added-Respondent in SC FR 351/ 2018

Gamini Marapana PC, with Palitha Kumarasinghe PC, and Kushan D'Alwis PC, Ganesh Dharmawardana, Navin Marapana, Kaushalya Molligoda and Uchitha Wickremasinghe instructed by Sanath Wijewardana for the 4th Added-Respondent in SC FR 351/2018

Canishka Witharana with Chandana Botheju, Thissa Yapa, H. M. Thilakarathna instructed by Nilantha Wijesinghe for the 5th Added- Respondent in SC FR 351/ 2018

Thilak Marapana PC, with Ronald Perera PC, and Suren Fernando instructed by Vidanapathirana Associates for the Petitioners in SC FR 352/ 2018

Viran Corea with Bhavani Fonseka, Khyati Wickremenayake, and Inshira Faliq instructed by R.M Balendra for the Petitioners in SC FR 353/ 2018

Dr. Jayampathi Wickremarathne with Kanchana Yatunwala instructed by Vidanapathirana Associates for the Petitioner in SC FR 354/ 2018

A.Sumanthiran PC, with Niran Anketell instructed by M. Balendran for the Petitioner in SC FR 355/ 2018
J.C. Weliamuna PC, with Shantha Jayawardena, Pasindu Silva

and Thilini Vidanagamage for the Petitioners in SC FR 356/ 2018

Geoffrey Alagarathnam PC, with Lasantha Gamsinghe for the Petitioner in SC FR 358/ 2018

Suren Fernando with Shiloma David for the Petitioners in SC FR 359/ 2018

Ikram Mohomaed PC, with Thisath Wijaygunawardena PC, Nizam Karipper PC, A. M. A. Faaiz , M. S. A. Wadood , Roshaan Hettiaarachchi , Tamya Marjan , Milhan Ikram Mohomad, Nadeeka Galhena and Mariam Saadi Wadood for the Petitioners in SC FR 360/ 2018

Hejaaz Hizbullah with Muneer Thoufeek, M. Jegadeeswaran, Shifam Mahroof and M. Siddeque for the Petitioner in SC FR 361/ 2018

Jayantha Jayasuriya PC, Attorney General with Dappula de Livera PC, Solicitor General, Sanjay Rajaratnam, PC, Senior Additional Solicitor General, Indika Demuni de Silva, PC, Additional Solicitor General, Farzana Jameel PC, Additional Solicitor General, Nerin Pulle, Deputy Solicitor General, Shaheeda Barrie, Senior State Counsel, Kanishka de Silva Balapatabendi State Counsel and Manohara Jayasinghe State Counsel for the Attorney General and the 1st Respondent.

**<u>ARGUED ON</u>** 04th, 5th, 6th and 7th of December 2018

**<u>WRITTEN SUBMISSIONS</u>**

By the Petitioner on 30th November 2018.

By the 1st Respondent on 30th November 2018.

By the 1st Added Respondent on 30th November 2018 and 10th December 2018.

By the 2nd Added Respondent on 30th November 2018.

By the 3rd Added Respondent on 30th November 2018.

By the 4th Added Respondent on 30th November 2018 and 10th December 2018.

By the 5th Added Respondent on 30th November 2018.

**<u>DECIDED ON</u>** 13th December 2018

**H.N.J. Perera CJ,**

On Friday, 09th November 2018, His Excellency, the President issued a Proclamation which was published in the Extraordinary Gazette No. 2096/70 dated 09th November 2018.

This Proclamation states:

*"A PROCLAMATION BY HIS EXCELLENCY THE PRESIDENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA*

*KNOW YE that by virtue of the powers vested in me by paragraph (5) of Article 70 of the Constitution of the Democratic Socialist Republic of Sri Lanka to be read with paragraph (2) (c), of Article 33 of the Constitution of the Democratic Socialist Republic of Sri Lanka and paragraph (2) of Article 62 of the Constitution of the Democratic Socialist Republic of Sri Lanka and in pursuance of the provisions of section 10 of the Parliamentary Elections Act, No. 01 of 1981, I Maithripala Sirisena, President of the Democratic Socialist Republic of Sri Lanka, do by this proclamation-*

*(a) Dissolve Parliament from midnight today and summon the new Parliament to meet on the Seventeenth day of January, Two Thousand and Nineteen;*

*(b) Fix, Fifth day of January Two Thousand and Nineteen as the date for Election of the Members of Parliament;*

*(c) Specify the period beginning on the Nineteenth day of November Two Thousand and Eighteen and ending at Twelve Noon on the Twenty Sixth day of November, Two Thousand and Eighteen as the nomination period, during which nomination papers shall be received by the Returning Officers; and*

*(d) Specify each place mentioned in Column II of the Schedule hereto as the place of nomination for candidates seeking election in the electoral district mentioned in the corresponding entry in Column I of that Schedule.*

*Given at Colombo on this Ninth day of November, in the year Two Thousand and Eighteen.*

*By order of His Excellency,*

*UDAYA R. SENEVIRATNE,*
*Secretary to the President.*

*SCHEDULE*

| *Column I*<br>*Electoral District* | *Column II*<br>*Place of Nomination* |
|---|---|
| *No. 1 - Colombo* | *Office of the District Secretary, Colombo* |
| *No. 2 - Gampaha* | *Office of the District Secretary, Gampaha* |
| *No. 3 - ………………"* | |

On Monday, 12th November 2018, the Petitioner in SC FR 351/2018 filed this petition praying for a Declaration that the aforesaid Proclamation infringes the Petitioner's fundamental rights contained in Article 12 (1) of the Constitution; an Order quashing the aforesaid Proclamation, an Order declaring the Proclamation null, void *ab initio* and of no force or effect in Law, an Order quashing the decisions and/or directions contained in paragraphs (a), (b), (c) and (d) of the Proclamation and other related reliefs including interim reliefs suspending the operation of the Proclamation marked "P1". The aforesaid Proclamation was filed with the petition in SC/FR 351/2018 marked "P1".

The Petitioner is a citizen of the Republic, a Member of the Eighth Parliament of Sri Lanka and the Leader of the Opposition in the Eighth Parliament.

The Hon. Attorney General is named as the 1st Respondent to the petition. The Petitioner pleads that the Hon. Attorney General has been made a Respondent in terms of the first proviso to Article 35 (1) of the Constitution because *"[…] the executive and administrative act impugned in these proceedings was done by the President in his official capacity"* and also in his capacity as the Hon. Attorney General as required, *inter alia*, by Article 134 (1) read with Articles 17 and 126 of the Constitution.

The 2nd to 4th Respondents to the petition are the Chairman and Members of the Elections Commission.

It would be best to commence by setting out the nature of the Petitioner's case.

The essence of the Petitioner's case is succinctly pleaded in paragraphs [7] to [12] of the petition. In order to ensure accuracy, I will set out below where necessary the Petitioner's own words [quoted *verbatim* in italics and within inverted commas] in these paragraphs of the petition.

The Petitioner contends that the dissolution of Parliament sought to be effected by the Proclamation marked "P1" is *"ex facie unlawful and in violation of the Constitution and nothing flows from the same"* because:

(i) "*The President is expressly prohibited by the Constitution from dissolving Parliament until the expiration of a period of not less than four years and six months from the date appointed for its first meeting*" and *"the date appointed for the first meeting of the Eighth Parliament of Sri Lanka was 1st September 2015."* as established by the Gazette Notification dated 26th August 2015 marked "P2".

In this regard, it should be mentioned here that the Petitioner is basing this contention upon Article 70 (1) of the Constitution which states

> *"The President may by Proclamation, summon, prorogue and dissolve Parliament:*
>
> *Provided that the President shall not dissolve Parliament until the expiration of a period of not less than four years and six months from the date appointed for its first meeting, unless Parliament requests the President to do so by a resolution passed by not less than two-thirds of the whole number of Members (including those not present), voting in its favour.".*

It should also be stated that a perusal of "P2" and "P1" shows that while "P2" establishes that the first meeting of the Eighth Parliament was on 01st September 2015, the Proclamation marked "P1" was issued on 09th November 2018 - *i. e:* only three years and two months and eight days after the first meeting of the Eighth Parliament.

Thus, the period of four and half years specified in the proviso to Article 70 (1) had not passed when the Proclamation marked "P1" was issued;

(ii) *"The only exception provided by the Constitution to the above prohibition is where Parliament requests the President to dissolve Parliament by a resolution passed by not less than two-thirds of the whole number of Members (including those not present) voting in its favour."* and *"no such resolution has been passed by Parliament requesting the President to dissolve Parliament."*.

In this regard, it is undisputed among the parties to this application that, up to this date, there has been no resolution passed by a two third majority of Parliament requesting His Excellency, the President to dissolve Parliament. The Court can also take judicial notice of the fact that, up to this date, no such resolution has been passed;

*(iii)* *"Thus and otherwise, the Petitioner states that the purported dissolution of Parliament dated 9th November 2018 was inter alia:*

*a. In violation of the express prohibition contained in the Constitution contained in the proviso to Article 70 (1);*
*b. An unconstitutional attack on Parliament;*
*c. Ultra vires the powers of the President;*
*d. Unlawful;*
*e. An assault on the legislative power of the People;*
*f. A violation of the sovereignty of the People;*
*g. A violation of the rights of the Petitioner and each and every Member of Parliament;*
*h. Arbitrary, irrational, capricious, vexatious and unreasonable;*
*i. Action that offends and is in breach of the principles of reasonableness and legitimate expectation and is motivated by improper objectives; and*
*j. Null and void and of no force or effect in law."*;

Thereafter and with regard to the Petitioner's right to invoke the fundamental rights jurisdiction of this court, the Petitioner pleads in paragraphs [13] to [17] of the petition that the impugned actions of His Excellency, the President constitute executive or administrative action within the meaning of Article 17 read with Article 126 of the Constitution and were done by His Excellency, the President *"in his official capacity"*. The Petitioner goes on to plead that the said impugned actions of *"purporting to dissolve Parliament as contained in "P1" amounts to an infringement of the rights of the Petitioner recognized under and in terms of Article 12 (1) of the Constitution."* In this connection, the Petitioner states that the Petitioner and every member of Parliament were entitled by law to complete their respective terms in Parliament according to law and have been unlawfully denied that opportunity by the impugned actions of His Excellency, the President and further, that the said denial violates the rights of all their electors [of the Petitioner and every other member of Parliament] who are citizens of the Republic and are entitled to representation in Parliament according to the law.

In paragraph [18] of the petition, the Petitioner has averred that "*the issuance of "P1" was motivated by improper objectives inasmuch as the following demonstrates that the ulterior motive behind a sequential pattern of acts described below was to secure control of the purported newly appointed Prime Minister over the reins of the government.".*" It is unnecessary to recount here the alleged *"sequential pattern of acts"* which the Petitioner has described in sub-clauses (a) to (n) of paragraph [18]. It will suffice to say that the Petitioner's contention is that the events of 26th October 2018 and thereafter which are manifested by the Gazette Notifications marked "P3" to "P9" [these events are in the public domain and need not be described here] and the fact that Parliament, which had been prorogued on 27th October 2018, was due to meet again on 14th November 2018 in a climate where there was uncertainty with regard to who then had the majority in Parliament, led to the dissolution of Parliament set out in the Proclamation marked "P1" issued on 09th November 2018.

In paragraphs [20] to [23] and [25] to [26] of the petition, the Petitioner states that "P1" has been issued *"with improper objectives not sanctioned by law"* and that the impugned actions *"have gravely endangered the role of Parliament, representative democracy and the rule of law"* and have created what the Petitioner describes as *"a constitutional crisis"*. The Petitioner states that *"Parliament being one of the organs of government must be protected from unconstitutional assaults by the executive on its independence, stature and role."*. The Petitioner pleads that he has made his application invoking the jurisdiction of this Court *"in the interests of safeguarding these cherished principles"* and *"in the interests of restoring the democratic process, the rule of law and constitutional governance."*

In paragraph [24] of the petition, the Petitioner states *"a General Election - however desirable as a matter of political expediency even to the Petitioner and his party - cannot be called and held except in terms of the law."*. In paragraph [29] of the petition, the Petitioner states that the Proclamation marked "P1" would *"cast a pall of unprecedented illegitimacy over all incidental actions thereto, including the purported election of a new Parliament. This illegitimacy would shake the basic democratic structure on which Sri Lankan society is built."*.

On 12th November 2018 nine other broadly similar applications were filed. They were: (i) SC FR 352/2018 filed by Kabir Hashim and Akila Viraj Kariyawasam naming the Hon. Attorney General as the Respondent in his aforesaid dual capacity; (ii) SC FR 353/2018 filed by the Centre for Policy Alternatives [Guarantee] Ltd and Dr. Paikiasothy Saravanamuttu naming as Respondents the same four Respondents as in the present petition [*ie:* SC FR 351/2018] and also Hon. Karu Jayasuriya, Speaker of Parliament as

the fifth Respondent; (iii) SC FR 354/2018 filed by Lal Wijenayake, Secretary, United Left Front naming the Hon. Attorney General as the Respondent in his aforesaid dual capacity; (iv) SC FR 355/2018 filed by G.C.J. Perera naming as Respondents the same four Respondents as in the present petition [*ie:* SC FR 351/2018] and also Hon. Karu Jayasuriya, Speaker of Parliament as the fifth Respondent; (v) SC FR 356/2018 filed by Anura Kumara Dissanayake, Bimal Rathnayake, Vijitha Herath, Dr. Nalinda Jayatissa, Sunil Handunetti, and Nihal Galappaththi naming the same four Respondents as in the present petition [*ie:* SC FR 351/2018] and also the Commissioner General of Elections and Dhammika Dasanayake, Secretary General of Parliament as two more Respondents; (vi) SC FR 358/2018 filed by Manoharan Ganesan naming the same four Respondents as in the present petition [*ie:* SC FR 351/2018]; (vii) SC FR 359/2018 filed by Rishad Bathiudeen Ameer Ali, Abdullah Mahroof and Ishak Rahuman naming the same four Respondents as in the present petition [*ie:* SC FR 351/2018]; (viii) SC FR 360/2018 filed by Rauf Hakeem, Seyed Ali Zahir Moulana, Faizal Cassim, H.M.M. Harees, M.I.M. Mansoor, M.S. Thowfeek and A.L.M. Nazeer naming the same four Respondents as in the present petition [*ie:* SC FR 351/2018]; and (ix) SC FR 361/2018 filed by Professor S. Ratnajeevan H. Hoole, Member of the Elections Commission naming the Hon. Attorney General as the Respondent in his aforesaid dual capacity, Mr. Mahinda Deshapriya, Chairman and member of the Elections Commission, Mr. N.J. Abeyasekera, PC member of the Elections Commission, M.A.P.C. Perera, Commissioner General of Elections and Udaya Seneviratne, Secretary to the President as the Respondents to the petition.

The Petitioners in SC FR 353/2018, SC FR SC 355/2018, FR 356/2018, SC FR 358/2018 and SC FR 361/2018 prayed for an interim order restraining the aforesaid 2nd, 3rd, 4th - namely, the Chairman and members of the Elections Commission - from acting in terms of the Proclamation marked “P1”. That was in addition to praying for an interim order staying the operation of the Proclamation marked “P1”.

The Petitioners in SC FR 353/2018, SC FR 355/2018 and SC FR 356/2018 plead that the impugned actions of His Excellency, the President referred to above violate the Petitioners’ rights guaranteed by Article 14 (1) (a) of the Constitution in addition to violating the Petitioners’ rights guaranteed by Article 12 (1) of the Constitution. The Petitioners in SC FR 358/2018 pleads that the impugned actions of His Excellency, the President referred to above violate the Petitioners’ rights guaranteed by Articles 14 (1) (a), 14 (1) (b) and 14 (1) (c) of the Constitution in addition to violating their rights guaranteed by Article 12 (1) of the Constitution. The Petitioner in SC FR 361/2018 pleads that the impugned actions of His Excellency, the President referred to above violate the Petitioner’s rights guaranteed by Article 10 of the Constitution in addition to

violating his rights guaranteed by Article 12 (1) of the Constitution. As stated later on, this Court has only granted leave to proceed under Article 12 (1) of the Constitution. Therefore, the alleged violation of rights guaranteed by Articles 10 and 14 (1) (a), 14 (1) (b) and 14 (1) (c) need not be considered.

The Petitioners in SC FR 352/2018, SC FR 354/2018 and SF FR 358/2018 allege that the actions of His Excellency, the President on 26th October 2018 [*ie:* the actions referred to in "P3", "P4" and "P5" relating to the removal and appointment of Prime Ministers and/or the dissolution of the Cabinet of Ministers] are in violation of the applicable provisions of the Constitution and/or are *ultra vires* the Constitution and/or are extra-constitutional. The merits of those allegations are outside the scope of the present application which relates only to the validity of the Proclamation marked "P1". Therefore, they need not be considered.

When the aforesaid nine applications were taken up by Court on 12th November 2018, the Hon. Attorney General who is named as a Respondent in all the applications in his aforesaid dual capacity, appeared. Applications dated 12th November 2018 seeking to intervene and be added as parties were filed by the aforesaid five Added Respondents - namely, Prof. Gamini Lakshman Pieris, Udaya Prabhath Gammanpila, Dr. W.J.S.S. De Silva, M.A.C.S. Jayasumana and P.C. Dolawatta.

The gravity and urgency of the matters in issue in these applications made it incumbent on the Court to hear the parties before Court without delay and decide the limited question of whether the Petitioners should be granted leave to proceed in the first instance and, if so, whether the issue of any interim reliefs were essential also in the first instance. Therefore, the Court ordered that these applications be supported on 12th November 2018. Accordingly, these applications were supported on 12th November 2018 before the Bench which had been listed to hear cases in Court 502 on that day in the usual course of listing of cases done the previous week.

On 12th and 13th November 2018, the Court heard submissions made by Mr. Kanag-Isvaran, PC representing the Petitioner in this application [SC FR 351/2018], Mr. Tilak Marapana, PC representing the Petitioners in SC FR 352/2018, Mr. Viran Corea representing the Petitioners in SC FR 353/2018, Dr. Jayampathy Wickramaratne, PC representing the Petitioner in SC FR 354/2018, Mr. M.A. Sumanthiran, PC representing the Petitioner in SC FR 355/2018, Mr. J.C.Weliamuna, PC representing the petitioners in SC FR 356/2018, Mr. G.J.T. Alagaratnam, PC representing the Petitioners in SC FR 358/2018, Mr. Suren Fernando representing the Petitioners in SC FR 359/2018, Mr. Ikram Mohamed, PC representing the Petitioners in SC FR 359/2018 and Mr. Hejaz

Hisbullah representing the Petitioner in SC FR 361/2018. Thereafter, the Court heard submissions made by Mr. Jayantha Jayasuriya, PC, Attorney-General and by Mr. Sanjeeva Jayawardena, PC, Mr. Manohara De Silva, PC, Mr. Ali Sabry, PC, Mr. Gamini Marapana, PC and Mr. Canishka Vitharana representing the aforesaid five Intervenient-Petitioners.

Having considered these submissions, the Court made Order on 13th November 2018 allowing the applications for intervention made by the aforesaid five intervenient-Petitioners. Thus, they are now the 1st to 5th Added Respondents named in the Caption.

On 13th November 2018, having considered the submissions made on behalf of all the parties before us, the Court made Order granting the Petitioners in all nine applications leave to proceed under Article 12 (1) of the Constitution. In the circumstances of these cases, the Court also considered it necessary to issue Interim Orders in all nine applications staying the operation of the Gazette Extraordinary No. 2096/70 dated 09th November 2018 [which is marked "P1" with the petition in the present application no. SC FR 351/2018] until 07th December 2018. Further, the Court issued Interim Orders in SC FR 353/2018, SC FR 355/2018, SC FR 356/2018, SC FR 358/2018 and SC FR 361/2018 restraining the Chairman and members of the Elections Commission [who are the aforesaid 2nd, 3rd and 4th Respondents in the present application no. SC FR 351/2018] and/or their servants, subordinates and agents from acting in terms of the said Gazette Extraordinary No. 2096/70 dated 09th November 2018, until 07th December 2018.

In view of the need to hear and determine these applications without delay, the Court directed the added Respondents to file their statements of objections on or before 19th November 2018, the Petitioners to file their counter affidavits, if any, on or before 26th November 2018 and all parties to file their Written Submissions on or before 30th November 2018. The hearing of all these applications was fixed for 04th, 05th and 06th December 2018.

In terms of the aforesaid Order, the Hon. Attorney General and the five added Respondents have filed their statements of objections [by way of affidavits], the Petitioners have filed their counter affidavits and all these parties have filed their written submissions before 30th November 2018.

A bench comprising the aforesaid seven Judges was nominated to hear and determine these nine applications.

The 1st added Respondent has tendered his affidavit dated 19th November 2018 in reply to the petitions. In their affidavits in reply to the petition in the present case [SC FR

351/2018], the 3rd, 4th and 5th added Respondents make similar averments to those made by the 1st added Respondent. Therefore, it will suffice to set out the positions taken by the 1st added Respondent in his affidavit. In the interest of accuracy, I will reproduce those averments *verbatim* where necessary [quoted *verbatim* in italics and within inverted commas]. Where the 3rd, 4th or 5th added Respondents have made averments which have not been made by the 1st added Respondent, those averments will be referred to separately.

Firstly, the 1st added Respondent has pleaded, by way of *"preliminary objections"* that:

(i) the Petitioner has misrepresented material facts; (ii) the Petitioner's application is misconceived in Law; and (iii) "*His Excellency, the President has acted lawfully and within the powers conferred upon him in terms of Article 33 (2), Article 62 (2) and Article 70 (3) Proviso (ii) of the Constitution and, therefore, there has been no infringement of any Fundamental Right of the Petitioner, hence the Application of the Petitioner should be dismissed in limine."*

The 1st added Respondent has also pleaded, by way of a further *"preliminary objection"* that *"what is before Court is not a Supreme Court special determination in order to determine upon constitutionality, but is a fundamental rights application"* and, accordingly, the jurisdiction vested in this Court when dealing with these applications is *"to make just and equitable orders that have to be viewed in the corrected perspective in law."*. However, the 3rd, 4th and 5th Respondents have not taken up this position in their affidavits.

These *"preliminary objections"* averred by the 1st added Respondent address the merits of the dispute before Court and, therefore, will be considered when the Court is examining the merits of the cases of the Petitioners, the Respondents and the added Respondents.

Thereafter, in paragraph [9] of his affidavit, the 1st added Respondent recounts events which have occurred since the conducting of the long delayed Local Government elections in February 2018, the critical challenges faced by the economy and the events which have occurred on and after 26th October 2018 including the events which occurred in Parliament on and after 14th November 2018. Having done so, the 1st added Respondent pleaded that, *"in these compelling, unprecedented and critical circumstances, H.E. the President of the Republic, in the due exercise of the powers conferred on him by the Constitution, dissolved Parliament as a prelude to resorting to taking the matter before the People at a General Election."*. In paragraph [22] of his

affidavit, the 1st added Respondent has stated that *"as at the date of dissolution of Parliament as contained in the relevant Gazette, the highly complex situation and the very volatile circumstances that created their own extreme exigencies, warranted H.E the President in resorting to the said dissolution of Parliament."*.

While acknowledging in paragraph [10] of his affidavit that *"a General Election cannot be called and held <u>except in terms of the Law</u>"*, the 1st added Respondent states that *"in this instance the dissolution of Parliament and the calling of elections is lawful."*

In paragraph [15] of his affidavit, the 1st added Respondent sets out the basis on which he seeks to support his aforesaid assertion that the issue of the Proclamation marked "P1" is lawful:

" (a) *The provisions inter alia of Articles 62 (2), 33 (2) (c), 70 (3) Proviso (ii) and*

*70 (5) and Articles 3 and 4 of the Constitution and the doctrine of separation of powers, render the said dissolution per se legitimate and valid in law;*

(b) *The proviso to Article 70 (1) does not impose any form of fetter whatsoever on the President's substantive power to dissolve Parliament referable to Articles 33 (2) (c) and 62 (2), inasmuch as the restriction inserted in the said proviso only applies to a situation where the legislature itself exercises its power, in a limited situation, to invite the President to dissolve Parliament, prior to the effluxion of a period of four years and six months;*

(c) *Article 70 (3) Proviso contains the specific words `at any time while the Parliament stands prorogued' and that those words cannot in law be treated as redundant or surplusage;*

(d) *That in any event, even in such a situation and even when such an invitation is received, the President exercise the ultimate discretion with regard to dissolution or non-dissolution;*

(e) *Furthermore, the structure and arrangement of the Constitution and its relevant Articles and Chapters, support the aforesaid;*

(f) *The particular juxtaposition of the aforesaid Article, is, as will be elucidated*

*during the course of the oral hearing, also be of significant importance;*

*(g)* *If the Petitioner's contention is substantiated in Law, it would mean that Your Lordships would have to ignore the clear and unambiguous language in Articles 33 and 62 and insert words into the provisos of Articles 70, which is not permitted in Law;*

*(h)* *Furthermore, the words 'In addition to', is most telling, as will be elucidated in detail at the hearing."*

In paragraph [16] of his affidavit, the 1st added Respondent avers that the Petitioner's application *"Is incompatible with the larger right of the people to exercise their franchise even prior to the expiration of the formal term of parliament."*.

In paragraph [18] of his affidavit, the 1st added Respondent has also stated that, under and in terms of Articles 33 (2) (c), 62 (2) and the Proviso to Article 70 (3), the President has the power to dissolve Parliament while Parliament stands prorogued.

In paragraph [19] of his affidavit, the 1st added Respondent states that accepting the interpretation given by the Petitioner to the Articles of the Constitution which deal with the power of the President to dissolve Parliament would require this Court to *"completely ignore several established Rules of Interpretation of Statutes and that to do so would be contrary to the Law and the Constitution which Your Lordships are also called upon to respect and uphold, in order to protect, vindicate and enforce the right of the people."*.

The 1st added Respondent also pleads in paragraph [17] of his affidavit that *"in any event and without prejudice to the aforesaid, the practical consequences of a declaration which is adverse to the said dissolution endangers practical consequences and results of very serious proportions and in the ultimate equation the jurisdiction of Your Lordships' Court under Articles 17 and 126 is discretionary. In any event, Your Lordships will not accept the postponement of an election as being Just and Equitable."* In this regard, the 1st Respondent goes to plead in paragraph [21] of his affidavit that *"the premature dissolution of Parliament as opposed to any purported extension of the term of office of Parliament does not result in the violation of the franchise or of suffrage and instead in fact promotes the right of Franchise of the People and the right of self-determination of the People and of the Constituency as a whole and advances the expression of the supreme will of the People as a collective body, in a Constitutional context."*. In

paragraph [23] of his affidavit, the 1st added Respondent contends that the grant of the reliefs prayed for in the petition will infringe the right to franchise of the 1st added Respondent and all citizens of Sri Lanka which is enshrined in Articles 3 and 4 of the Constitution.

Finally, in paragraph [20] if his petition the 1st added Respondent has averred that *"the fundamental checks and balances between the Legislature and the Executive, including inter alia the power of the Legislature to impeach the President and the power of the President to dissolve Parliament cannot be eroded into without adversely impacting the inalienable Sovereignty and Franchise of the People and consequently, the preservation by Article 33 (2) (c) of the power of the President to dissolve Parliament subject to Article 35 and as a prelude to a General Election enabling the People who are supreme and the repository of inalienable Sovereignty to exercise their right of Franchise should be upheld by Your Lordships' Court."*.

In addition, the 3rd added Respondent has contended in paragraphs [15] to [24] of his affidavit that: (i) the reliefs sought by the Petitioner are contrary to Article 3 read with Article 4 of the Constitution and, if granted, will suppress the will of the people; (ii) the people are the source of all power and *"When there is a never ending conflict and unclear definition of each of their powers the safest bet is to go to the source of the power which is the `people'*; (iii) granting the reliefs sought by the Petitioner will amount to a direct contravention of previous determinations by this Court that a renunciation or reduction or restriction of executive power by way of an amendment to the Constitution could be effected only with the approval of the people at a referendum; and (iv) *"the said issue never arose in the present 19th Amendment as Article 33 (2) (c) retained the power of the President to dissolve Parliament. However, there was no such Article in the previous 19th Amendment empowering the President to dissolve Parliament."*.

The 5th added Respondent has contended in paragraphs [17], [20] and [21] of his affidavit that: (i) the President is under a constitutional duty to uphold sovereignty of the People by ensuring that the Government and the State function without any difficulties or failure and that *"In the circumstances the President shall have power to exercise executive powers entrusted in him by the people to dissolve the Parliament on permissible provisions in the constitution in order to preserve the State and the Government."*; (ii) fundamental rights are subject to the limitations specified in Article 15 (7) of the Constitution and *"wherefore the decision of the President taken in terms of the Constitution in the interest of national security, public order cannot be challenged by the*

*Petitioner. Further Your Lordships have jurisdiction to consider the circumstances which led to dissolution of parliament in determining this matter on fair and equitable basis, which may also enter into the political sovereign."*; and (iii) *"constitutional provisions should always receive a fair, liberal and progressive interpretation so that its true objective might be promoted ..... constitutions are to be interpreted to in a manner so as to resolve the present difficulties addressing the conditions prevailing in contemporary society. Constitutions do not expect to perform impossibilities."*.

The 5th added Respondent has made several statements in paragraphs [18] and [19] of his affidavit with regard to the effect of the Order of this Court staying the Proclamation marked "P1" on the proceedings in Parliament on 14th November 2018 and thereafter. He also refers to the effect of the events which have occurred on or after 14th November 2018. These matters have no bearing on the issue before this Court in these applications.

The 2nd added Respondent has, in his affidavit dated 19th November 2018, taken a somewhat different approach to the aforesaid positions stated by the 1st, 3rd, 4th and 5th added Respondents.

The 2nd added Respondent raises the following *"Preliminary Objections"*: (i) Members of Parliament are necessary parties to the Petitioner's application and the failure to add all Members of Parliament is fatal to the maintainability of the application; (ii) the Petitioner's application is misconceived in law inasmuch as the Petitioner has not established a violation of a fundamental right, and (iii) in any event, the Proclamation marked "P1" is not subject to judicial review and, further, *"the basis on which His Excellency the president formed an opinion to dissolve parliament is a political decision which your lordship's court has no jurisdiction to inquire into"*; and (iii) the alleged violation has a specific remedy provided by the Constitution because *"where the president's act is unconstitutional, a specific remedy is provided in Article 38 (2) (a) (i) and therefore, the Petitioner ought to have if at all resorted to that remedy. In any event it is my position that the president's act is constitutional and has not violated the law in any manner."*.

In paragraph [10] of his affidavit, the 2nd added Respondent succinctly sets out the basis on which he seeks to support his aforesaid assertion that the issue of the Proclamation marked "P1" is lawful [reproduced *verbatim* to ensure accuracy]:

*"   (a)   If the interpretation put forward by the Petitioner that parliament cannot be*

*dissolved until four years and six months from the date of appointment is adopted such shall lead to unworkable and disastrous consequences particularly in a situation where no party represented in parliament has a majority.*

(b) *Article 33 (2) (c) was introduced this new sub article to the constitution by the 19th Amendment and that there would have not been any reason to introduce this new provision, for the reason the legislature intended that sub Article to be a standalone section, giving the power to president to dissolve parliament in exceptional situations warranting such dissolution.*

(c) *The power set out in Article 33 are powers enumerated `in addition' to any other Article in the constitution. Therefore, the president has the power to dissolve parliament without the approval of the parliament notwithstanding Article 70.*

(d) *The sovereign power of the republic is vested in the people and therefore any attempt to seek a mandate from the people cannot be construed to mean unconstitutional as the constitution itself and all organs of government derives its power from the people.".*

Thereafter, in paragraphs [11] to [14] of his affidavit, the 2nd added Respondent has stated that there were seven Parliamentary Elections held during the period from 1989 to 2015 and that one party or alliance secured a clear majority in Parliament only at the Parliamentary Elections held in 1989 and 2010. The 2nd added Respondent pleads that, in this background, *"it is the prerogative of the president to dissolve parliament if he is satisfied that no party will be able to form a government."* and that *"the decision of the president to dissolve the parliament was correctly made in as much, the President had sufficient grounds to come to a conclusion that no party in the parliament commands a majority."* and that, in the present circumstances, *"no party in the parliament is able to form a government and as a result parliament could have come to stand still unless it was dissolved."*. The 2nd added Respondent has filed a further affidavit dated 03rd December 2018 tendering additional documents. In that second affidavit, he states that, to the best of his knowledge, *"up to date no resolution was moved in parliament to establish that Hon. Ranil Wickramasinghe or any other member of parliament commands the confidence of the parliament nor has Hon. Ranil Wickramasinghe or any member of parliament submitted any material to his excellency the president to establish that any member of*

*parliament that such member commands the confidence of parliament. Therefore, I state that the decision to dissolve parliament was made by the president as he had no other alternative and therefore correct in law.".*

Mr. Udaya Ranjith Seneviratne has filed an affidavit dated 19th November 2018 in the present case – *i.e:* SC FR 351/2018. He has done so in his capacity as the Secretary to His Excellency, the President since he is not named as a Respondent in his personal capacity.

He states, by way of *"preliminary objections"* that this Court has no jurisdiction to hear and determine the Petitioner's application, that the Petitioner's application is misconceived in law, that the Petitioner has failed to cite all necessary and affected parties and that the Petitioner's application is not in conformity with the Supreme Court Rules, 1990.

In paragraph [12] of his affidavit, the Secretary to His Excellency, the President states *"I admit that the first proviso to Article 35 (1) of the Constitution recognizes the right of any person to make an application under Article 126 against the Attorney General, in respect of anything done or omitted to be done by the President in his official capacity."*.

In paragraph [16] of his affidavit, the Secretary to His Excellency, the President states *"I state that Parliament may be summoned, prorogued and dissolved inter alia in terms of Article 33 (2) (c), Article 70 (1), Article 70 (2), Article 70 (5), Article 70 (6), Article 70 (7), proviso to Article 70 (1) and proviso (ii) to Article 70 (3) of the Constitution."*.

In paragraphs [18], [22] and [27] of his affidavit, the Secretary to His Excellency, the President states that *"His Excellency the President has acted at all times in accordance with the provisions of the Constitution"* and *"His Excellency the President has always acted according to the law and in terms of the Constitution"* and *"That, at all times material to this Application, His Excellency the President has acted in terms of the powers, duties and functions reposed in the President under the Constitution and all applicable laws and written laws, in issuing the Proclamation marked P1;"* and *"That His Excellency the President has acted bona fide in the best interest of the country and its People with a view to protect and enhance the inalienable sovereignty and in accordance with the Constitution and the law;"* and *"That His Excellency the President has not violated the Constitution and in particular the Fundamental Rights of the Petitioner by issuing the Proclamation marked "P1";"* and *"That His Excellency the President has at all times acted in order to ensure that the Constitution is respected and upheld and that*

*the Fundamental Rights, including the franchise of the People have been respected, secured and advanced;"*

The Secretary to His Excellency, the President has also averred *"That His Excellency the President has on 11th November, 2018 by an Address to the Nation disclosed the reasons which necessitated the dissolution of Parliament by the Proclamation marked P1. I annex hereto marked **1R1** a transcript of the said Address to the Nation."*.

The Petitioners' applications were all taken up for hearing on 4th December 2018 - application nos. SC FR 351/2018, SC FR 352/2018, SC FR 353/2018, SC FR 354/2018, SC FR 355/2018, SC FR 356/2018, SC FR 358/2018, SC FR 359/2018, SC FR 360/2018, and SC FR 361/2018 since the questions in issue in all these applications were much the same. Accordingly, we heard submissions made on behalf of Petitioners in these ten applications by Mr. Kanag-Iswaran, PC, Mr. Tilak Marapana, PC, Mr. Viran Corea, Dr. Jayampathy Wickramaratne, PC, Mr. M.A. Sumanthiran, PC, Mr. J.C. Weliamuna, PC, Mr. Suren Fernando, Mr. G.J.T. Alagaratnam, PC, Mr. Ikram Mohamed, PC, and Mr. Hejaz Hizbullah, respectively.

Thereafter, submissions were made by Mr. Jayantha Jayasuriya PC, the Hon. Attorney General appeared in his official capacity. Mr. Sanjeeva Jayawardena, PC, Mr. Manohara De Silva, PC, Mr. M.U.M. Ali Sabry, PC, Mr. Gamini Marapana, PC, and Mr. Canishka Vitharana who appeared respectively for the 1st to 5th added Respondents.

When hearings commenced on 04th December 2018, several learned counsel appearing for intervenient Petitioners who had filed applications seeking to be added as Respondent but had not been added as Respondents since their applications were not before the Court on 12th November 2018, sought permission to, nevertheless, make submissions. In view of the importance of the issue before the Court, these requests were permitted on an exceptional basis, in terms of Article 134 (3) of the Constitution. Accordingly, we heard submissions made by Mr. Gomin Dayasiri, Mr. Samantha Ratwatte PC, Mr. V.K. Choksy, Mr. Chrishmal Warnasuriya, Mr. K. Deekiriwewa, and Mr. Darshan Weerasekera.

All counsel made exhaustive submissions before us, stretching over 4 days. The Petitioners in all 10 applications, the Attorney General and the added Respondents have submitted written submissions on 30th November 2018, and some of them have submitted further written submissions after the cases were taken up for hearing. Mr. Samantha

Ratwatte PC, Mr. V.K. Choksy and Mr. Chrishmal Warnasuriya, have also filed written submissions. I have endeavoured to carefully consider both oral and written submissions made by all counsel when examining the issues before us.

Having set out the cases of the parties before us in some detail, I proceed to consider and determine the issues before us in these applications.

**Jurisdiction**

When, on 12th and 13th November 2018, the Petitioner's application in the present case [*i.e:* SC FR 351/2018] and the other eight applications were supported by counsel for the Petitioners and were opposed by the Attorney General and counsel for the five added Respondents in the course of submissions spanning two days, neither the Attorney General nor counsel for the added Respondents disputed the jurisdiction of the Supreme Court to hear and determine any of the issues that arise in these applications challenging the validity of the Proclamation marked "P1".

However, when Mr. Udaya Ranjith Seneviratne, in his capacity as the Secretary to His Excellency, the President filed his affidavit dated 19th November 2018 he has pleaded that this Court has no jurisdiction to hear and determine these applications but did not explain the basis on which he makes that claim. The 2nd added Respondent has also pleaded in his affidavit dated 19th November 2018 that the Proclamation marked "P1" is not subject to judicial review and, in this connection, has stated that the basis on which His Excellency, the President formed his opinion that Parliament should be dissolved is a *"political decision"* which this Court has no jurisdiction to inquire into. Further, the 2nd added Respondent has stated that the Petitioner cannot invoke the fundamental rights jurisdiction of the Supreme Court since the Petitioner, as a Member of Parliament, had the specific remedy provided by Article 38 (2) (a) (i) of the Constitution of giving the Hon. Speaker notice of resolution moving for the removal of His Excellency, the President from office under the provisions of Article 38 (2) (a) (i) of the Constitution.

It is to be noted that none of the other added Respondents – *i.e:* the 1st, 3rd, 4th and 5th Respondents - have, in their affidavits, disputed the jurisdiction of the Supreme Court to hear and determine these applications. In fact, in their affidavits the 1st and 5th Respondents expressly state that the power vested in the President by Article 33 (2) (c) of the Constitution is *"subject to Article 35"* of the Constitution while the 3rd and 4th added

Respondents expressly state that the power vested in the President by Article 33 (2) (c) of the Constitution is *"subject to Article 35 Proviso I"* of the Constitution

Further, in their written submissions tendered on 30th November 2018 before the hearing was taken up on 04th December 2018 — Mr. Sanjeeva Jayawardena, PC on behalf of the 1st added Respondent, Mr. Manohara De Silva, PC on behalf of the 2nd added Respondent, Mr. Ali Sabry, PC on behalf of the 3rd added Respondent, Mr. Gamini Marapana, PC on behalf of the 4th added Respondent and Mr. Canishka Witharana on behalf of the 5th added Respondent do not dispute the jurisdiction of the Supreme Court to hear and determine these applications.

However, the written submissions tendered on behalf of the Attorney General urge that the Supreme Court is precluded from exercising its fundamental rights jurisdiction in respect of these applications. That contention is made on the following two fold basis:

(a) A submission that the Petitioners in all nine applications rely on their claim that His Excellency, the President intentionally and/or wilfully and/or unlawfully violated the Constitution and/or committed an abuse of the powers of his office and that, therefore, the only remedy available to the Petitioners is under the specific mechanism provided by Article 38 (2) of the Constitution;

(b) A submission that the dissolution of Parliament does not constitute *"executive or administrative action"* falling within the purview of Article 126 of the Constitution.

At the hearing which commenced on 04th December 2018, the Hon. Attorney General made exhaustive submissions in support of these two preliminary objections. Learned Counsel for the five added Respondents stated that they associate themselves with the aforesaid two preliminary objections raised by the Attorney General but did not press these issues.
The submission set out in (a) above will be considered first.

In this regard, the Hon. Attorney General submits that since, as specified by Article 118 (b) of the Constitution, the Supreme Court can exercise its jurisdiction for the protection of fundamental rights under and in terms of Article 126 of the Constitution only subject to the provisions of the Constitution, the Supreme Court is precluded or fettered from exercising that fundamental rights jurisdiction in the present applications because Article

38 (2) of the Constitution provides a *“specific mechanism”* or *“a specific procedure or mechanism”* setting out the manner in which the Supreme Court can exercise jurisdiction with regard to the Petitioners’ complaints of alleged intentional violation of the Constitution and/or alleged abuse of the powers of his office by His Excellency, the President. It is submitted that, therefore, the Petitioners’ complaints are *“not justiciable”* under Article 126.

Article 38 (2) of the Constitution deals with the procedure to be followed where any Member of Parliament wishes to move for the removal of the President then in office or—as is more usually said in common parlance—wishes to move for the impeachment of the President then in office. The gist of Article 38 (2) is that:

(i) any Member of Parliament may give the Hon. Speaker written notice of a resolution alleging that the President then in office is incapable of discharging the functions of his office by reason of physical or mental infirmity because the President then in office is guilty of intentional violation of the Constitution and/or misconduct or corruption involving the abuse of the powers of his office and/or three other grounds and seeking an inquiry and report thereon by the Supreme Court;

(ii) the Hon. Speaker is permitted to entertain such notice of a resolution only if it has been signed by not less than two thirds of the Members of Parliament or unless it is signed by not less than one half of the Members of Parliament and the Hon. Speaker is satisfied that the allegations merit inquiry and report by the Supreme Court;

(iii) in instances where the Hon. Speaker entertains such notice of such a resolution, he is bound to refer the resolution to the Supreme Court for inquiry and report and the Supreme Court shall, after due inquiry, make a report of its determination to Parliament together with the reasons therefor;

(iv) in cases where the Supreme Court has reported to Parliament that the allegations made in the resolution have been established, the Parliament may by a resolution passed by not less than two thirds of the Members of Parliament [including those not present] voting in its favour, remove the President from office.

The Hon. Attorney General submits that the procedure referred to in Article 38 (2) for the Supreme Court constitutes a *"specific mode"* prescribed by the Constitution for the Supreme Court to exercise jurisdiction in respect of the Petitioners' complaints that His Excellency, the President has intentionally violated the Constitution and/or is guilty of the abuse of the powers of his office. It has been submitted that, therefore, the Supreme Court cannot disregard this *"specific provision"* referred to in Article 38 (2) and exercise its jurisdiction for the protection of fundamental rights under Article 118 (b) of the Constitution in the Petitioners' applications.

This submission fails on several counts.

Firstly, the submission is logically flawed in the case of these particular applications. To put in another way, the submission is a glaring *non sequitur* in the specific circumstances of these applications. The simple reason for that observation is that these applications challenge a dissolution of Parliament and a Member of a Parliament which is dissolved by the President without notice and literally overnight, cannot have recourse to Article 38 (2) because, at the time the applications are filed, no Parliament would exist in which a motion for impeachment can be brought.

Secondly, Article 38 (2) of the Constitution need even be considered only where proceedings for the impeachment of His Excellency, the President have commenced and the Hon. Speaker has referred a resolution to the Supreme Court for inquiry and report or, at the least, when such proceedings are impending. However, no such circumstances have arisen. In fact, there is absolutely no suggestion before us that the Petitioner [or any of the Petitioners in the other applications] has any intention of giving notice of a resolution under Article 38 (2) for the impeachment of His Excellency, the President. The complaint in these applications that the impugned act of His Excellency, the President has allegedly violated the Constitution and/or abused the powers of his office and, thereby, violated the fundamental rights of the Petitioners does not mean that the Petitioner [or any of the other Petitioners] intends to take the extreme step of attempting to impeach His Excellency, the President. Thus, the submission made on behalf of the Hon. Attorney General is founded on hypothesis and is without factual basis or merit.

Thirdly, the inalienable right of every citizen of our country to invoke the fundamental rights jurisdiction of the Supreme Court is a cornerstone of the sovereignty of the people which is the *Grundnorm* of our Constitution. Thus, Article 4 (d) declares *"the fundamental rights which are by the Constitution declared and recognized shall be*

*respected, secured and advanced by all the organs of government and shall not be abridged, restricted or denied, save in the manner and extent hereinafter provided.".*

It has been emphasised time and again by this Court that it is a foremost duty of the Supreme Court to protect, give full meaning to and enforce the fundamental rights which are listed in Chapter III of the Constitution. Thus, Sharvananda CJ observed in **MUTUWEERAN vs. THE STATE** [5 Sri Skantha's Law Reports 126 at p. 130]; *"Because the remedy under Article 126 is thus guaranteed by the Constitution, a duty is imposed upon the Supreme Court to protect fundamental rights and ensure their vindication.".* In the same vein, Ranasinghe J stated in **EDIRISURIYA vs. NAVARATNAM** [1985 1 SLR 100 at p. 106] that, *"A solemn and sacred duty has been imposed by the Constitution upon this Court, as the highest Court of the Republic, to safeguard the fundamental rights which have been assured to the citizens of the Republic as part of their intangible heritage. It, therefore, behoves this Court to see that the full and free exercise of such rights is not impeded by any flimsy and unrealistic considerations.".*

In honouring this duty, the Supreme Court is giving tangible and effective life and meaning to the sovereignty of the people. The single and only instance specified in the Constitution where the exercise of these fundamental rights may be restricted is in circumstances falling within the ambit of Article 15 of the Constitution. The present applications do not fall with the ambit of Article 15 in the absence of any laws which have been passed prescribing restricting the operation of Article 12 (1) in the interests of national security, public order or any other of the specific grounds referred to in Article 15 (7) of the Constitution. Further, it hardly needs to be said that, the mere fact the procedure described in Article 38 (2) of the Constitution provides for the Supreme Court to inquire into a resolution and report to Parliament, cannot deprive this Court of its jurisdiction under Article 118 (b) read with Article 126 for the protection of fundamental rights. In the absence of a specific and express provision in the Constitution which strips the Supreme Court of jurisdiction under Article 118 (b) read with Article 126 and Article 17 for the protection of fundamental rights, the provisions of Article 118 (b) read with Article 126 and Article 17 will prevail. Therefore, this Court has the jurisdiction and, in fact, a solemn duty to hear and determine these applications according to the law.

Fourthly, the procedure specified in Article 38 (2) refers solely to the exercise of the power of the Legislature. It has to be understood that the role of the Supreme Court under Article 38 (2) is limited to inquiring into the allegation or allegations contained in a resolution which has been referred to the Court by the Hon. Speaker and making a report thereon to Parliament. The Supreme Court is, essentially, performing a fact-finding

function upon the direction of Parliament. It is Parliament which determines what is to be done with the report submitted by the Supreme Court to Parliament. Thus, the limited fact-finding role of the Supreme Court under Article 38 (2) cannot be equated with the exercise of judicial power by the Supreme Court in the protection of fundamental rights. In any event, the hypothetical possibility that the Supreme Court *may* be called upon to perform a limited fact-finding role *if* a motion under Article 38 (2) is referred to the Supreme Court by the Hon. Speaker cannot, by any stretch of imagination, deprive the Supreme Court of its jurisdiction under Article 118 (b) read with Article 126 for the protection of fundamental rights in the "here and now".

Fifthly, it is patently clear that these applications are solely by way of personal applications which are restricted to an invocation of the jurisdiction of this Court for the protection of the Petitioners' fundamental rights. This is also manifested by the reliefs prayed for by the Petitioners which are limited to declarations that the Proclamation marked "P1" violate their fundamental rights under Article 12 (1) and/or Article 14 (1) (a) of the Constitution and Orders quashing "P1" and related interim reliefs. The Petitioners do *not* pray for a declaration that His Excellency, the President has intentionally violated the Constitution or committed an abuse of the powers of his office. Thus, the Petitioners' applications before us cannot be logically connected with the entirely different nature of proceedings under and in terms of Article 38 (2) which set in motion the power of the legislature to impeach a President who is then in office and, in the exercise of that power of the Legislature, provide for the Legislature to request the Supreme Court to inquire into and report on the allegation or allegations contained in a resolution.

Sixthly, the mere fact that Article 38 (2) provides for any Member of Parliament to give the Hon. Speaker notice of a resolution under Article 38 (2) does not mean that those Petitioners who are Members of Parliament will be entitled to or be able to have the Supreme Court inquire into and report on the merits of the resolution. The success or failure of the efforts of any Member of Parliament to have such a resolution inquired into and reported on by the Supreme Court is dependent entirely upon the resolution being supported by a minimum of one half of the Members of Parliament. Further, even in instances where a Member of Parliament gives notice of a resolution in terms of the procedure specified in Article 38 (2) of the Constitution for the impeachment of a President then in office and the Supreme Court does inquire into and furnish a report, the passing of that resolution is again dependent on not less than two thirds of the Members of Parliament [including those not present] voting in its favour in the exercise of the

legislative power of Parliament. Therefore, the mere existence of the procedure described in Article 38 (2) cannot deprive those Petitioners who are Members of Parliament of the inalienable right of every citizen of our country to invoke the fundamental rights jurisdiction of the Supreme Court. To emphasise the point, the fundamental rights jurisdiction of the Supreme Court can be immediately invoked by any Member of Parliament in his capacity as a citizen of Sri Lanka and he can obtain a determination by this Court. His right to do so is not dependent on cobbling together the required majority of Members of Parliament. Thus, there is no valid comparison between the procedure specified in Article 38 (2) of the Constitution for the impeachment of a President then in office and the inalienable right of a Member of Parliament, as a citizen of Sri Lanka, to invoke the jurisdiction of this Court for the protection of fundamental rights.

The submissions made on behalf of the Hon. Attorney General have also referred to the decision in **MALLIKARACHCHI vs. SHIVA PASUPATHI** [1985 1 SLR 74]. However, that decision is founded on the absolute immunity which was enjoyed by the President by operation of Article 35 (1) of the Constitution prior to the 19th Amendment to the Constitution. The position is very different now with the introduction of the first proviso to Article 35 (1) by the 19th Amendment to the Constitution which states *"Provided that nothing in this paragraph shall read and construed as restricting the right of any person to make an application under Article 126 against the Attorney-General, in respect of anything done or omitted to be done by the President, in his official capacity."*. In fact, in paragraph [12] of his affidavit, the Secretary to His Excellency, the President has stated *"I admit that the first proviso to Article 35 (1) of the Constitution recognizes the right of any person to make an application under Article 126 against the Attorney General, in respect of anything done or omitted to be done by the President in his official capacity."*. Thus, the decision in MALLIKARACHCHI vs. SHIVA PASUPATHI is of little relevance today. Further, it is seen that although it has been submitted on behalf of the Hon. Attorney General that *"The judgment also opines that Article 38 also acts as an effective check on the President's powers under the 1978 Constitution"*, a perusal of the judgment shows that Sharvananda CJ only referred to the provisions of Article 38 and commented [at p.78] *"It will thus be seen that the President is not above the law."* That *obiter* comment cannot be taken as authority for the submission Article 38 strips this Court of its jurisdiction for the protection of the Petitioners' fundamental rights. In any event, even when the Constitution afforded full immunity to the President, his actions have been reviewed on the basis that *"immunity shields only the doer and not the act"* (**KARUNATHILAKA vs. DAYANANDA DISSANAYAKE** [1991 1 SLR 157]) Thus, immunity, even in its former absolute

capacity, would only have shielded the person of President from punitive consequences and not the acts that stem from the Office of the executive.

It should also be mentioned that, in any event, the aforesaid submission made by the Hon. Attorney General cannot even be made in the case of the Petitioners in SC FR 353/2018, SC FR 354/2018, SC FR 355/2018 and SC FR 361/2018 who were and/or are not Members of the Eighth Parliament and, therefore, have no opportunity of bringing a motion for the impeachment of the President. The contention that these Petitioners must be deemed to have an opportunity to bring a motion for the impeachment of the President through their elected Members of Parliament is divorced from reality and is without merit.

Finally, it has to be observed that the acceptance of the submission made by the Hon. Attorney General will render the first proviso to Article 35 (1) meaningless for the most part. That is because the President has an array of duties, powers and functions under the Constitution and many of the acts done or omitted to be done by the President in his official capacity will relate to his duties, powers and functions under the Constitution. Thus, if the submission made on behalf of the Hon. Attorney General is carried to its logical end, the result will be the emasculation of the first proviso to Article 35 (1). That cannot be permitted by this Court which must honour its constitutional duty under Article 4 (d) and vigorously protect the totality of its jurisdiction for the protection of fundamental rights conferred by Article 118 (b) read with Article 126 of the Constitution.

For the aforesaid reasons, the submission made by the Hon. Attorney General and set out in (a) above – *i.e:* that the only remedy available to the Petitioner is under the mechanism provided by Article 38 (2) of the Constitution—is rejected.

The submission set out in (b) above will be considered next.

In this regard, it has been submitted on behalf of the Attorney General that the dissolution of Parliament by the President does not constitute *"executive or administrative action"* falling within the purview of Article 126 of the Constitution and, therefore, is covered by the immunity granted by Article 35 (1) of the Constitution.

Article 35 (1) of the 1978 Constitution stipulated that during the period when a President holds office, no proceedings can be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him in his official or private capacity. Thus, prior to the 19$^{th}$ Amendment, Article 35 (1) conferred a blanket immunity

upon a President [so long as he holds office] from being sued in respect of any act or omission done by him in his official capacity *qua* President or in his private capacity.

However, as is well known, the proviso to Article 35 (1) introduced by the 19th Amendment to the Constitution introduced a very significant change. It states *"Provided that nothing in this paragraph shall be read and construed as restricting the right of any person to make an application under Article 126 against the Attorney-General, in respect of anything done or omitted to be done by the President, in his official capacity."*.

Thus, the proviso to Article 35 (1) entitles any person who complains that an act or omission by the President in his official capacity has violated a fundamental right of that person to institute a fundamental rights application under and in terms of Article 126 of the Constitution against the Hon. Attorney General and seek a determination by the Supreme Court with regard to his complaint. In other words, the proviso to Article 35 (1) makes acts or omissions by the President in his official capacity justiciable within the limited sphere of an invocation of the jurisdiction for the protection of fundamental rights conferred on the Supreme Court by Article 118 (b) read with Article 126 of the Constitution and subject to the stipulation that the Hon. Attorney General [and not the President] is to be made the Respondent to the fundamental rights application filed by that person. It hardly needs to be said that the Hon. Attorney General is to be named as the Respondent in the place of the President and as his representative.

Since the proviso to Article 35 (1) grants the right to challenge acts or omission by the President *"in his official capacity"* only by way of the specific procedure of making a fundamental rights application under Article 126 of the Constitution, it follows that *"executive or administrative action"* by the President *"in his official capacity"* may be challenged in terms of the proviso to Article 35 (1). That is because Article 126 (1) stipulates *"The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by* ***executive or administrative action*** *of any fundamental right or language right declared and recognised by Chapter III or Chapter IV."* [emphasis added]

As mentioned earlier, it has been submitted on behalf of the Hon. Attorney General that the issue by His Excellency, the President of the Proclamation marked "P1" stating that Parliament is dissolved does not constitute *"executive or administrative action"* and, therefore, cannot be made the subject of an application made under Article 126 of the Constitution in terms of the proviso to Article 35 (1) of the Constitution.

The Court must now examine the merits of that submission.

In this regard, the Hon. Attorney General submits that Article 30 (1) of the Constitution describes the President as being the Head of State, the Head of the Executive and of the Government and the Commander-in-Chief of the Armed Forces. He goes on to seek to draw a distinction between acts done by the President as the Head of State and as the Commander-in-Chief of the Armed Forces on the one hand and acts done by the President as the Head of the Executive and of the Government on the other hand.

The Hon. Attorney General then submits that only acts done by the President as the Head of the Executive and of the Government can be regarded as acts done in the exercise of *"general executive powers of governmental nature"* which constitute *"executive or administrative action"* subject to review under Article 126. He seeks to differentiate acts done by the President as the Head of State and as the Commander-in-Chief of the Armed Forces and categorise such acts as those done in the exercise of the *"plenary powers of the Head of State"* and *not* done in the exercise of *"general executive powers of governmental nature"*. On that basis, the Hon. Attorney General contends that acts done by the President as the Head of State and as the Commander-in-Chief of the Armed Forces are done in the exercise of the *"plenary powers of the Head of State"* and, therefore, do not constitute *"executive or administrative action"* which is justiciable under Article 126.

The Hon. Attorney General goes on to submit that acts done by the President under the powers listed in Article 33 (2) of the Constitution [including the power of dissolving Parliament under Article 33 (2) (c)] are all acts done in the exercise of *"plenary executive powers"* of the President held by him as part of the *"plenary powers of the Head of State"* and are not "acts done by the President in the exercise of his *"general executive powers of governmental nature"*. On that basis, the Hon. Attorney General submits that the President's power of dissolving Parliament under Article 33 (2) (c) does not constitute *"executive or administrative action"* which is justiciable under Article 126.

In support of his contention that there exists a "special type" of executive power of the President which is in the nature of *"plenary executive powers"* exercised by the President in the capacity of the Head of State and not in the capacity of the Head of the Executive and Government, the Hon. Attorney General cites a passage from the **SC Reference 2/2003** where five judges of this Court headed by His Lordship, S.N. Silva CJ stated;

*"That in terms of the several Articles of the Constitution analysed in this opinion and upon interpreting its content in the context of the Constitution taken as a whole, the plenary executive power including the defence of Sri Lanka is vested and reposed in the President of the Republic of Sri Lanka. The Minister appointed in respect of the subject of defence has to function within the purview of the plenary power thus vested and reposed in the President [...] The plenary executive power and the defence of Sri Lanka vested and reposed in the President includes the control of the Forces, the Army, the Navy and Air Force of which the President is the Commander-in-Chief as provided in Article 30 (1) of the Constitution."*.

The Hon. Attorney General has expressly submitted that the *"plenary executive power"* referred to by the Court in SC Reference 2/2003 is comparable to the *"plenary power of the Sovereign or in our context the Head of State"*. It appears the Hon. Attorney General seeks to equate the term *"plenary executive power"* used by the Court in SC Reference 2/2003 to a royal prerogative power which is subject to no restriction. Royal prerogative power is described in the Shorter Oxford Dictionary [5th ed at p.2331] as *"The special right or privilege exercised by a monarch or head of State over all other people, which overrides the law and is in theory subject to no restriction"*.

The word "plenary" comes from the Latin *"plenus"* which means "full". The Shorter Oxford Dictionary [5th ed. at p.2243] defines *"plenary"* as meaning *"Complete, entire, perfect, not deficient in any element or respect, absolute, unqualified"*. Black's Law Dictionary [9th ed. at p. 1273] defines *"plenary"* as meaning *"Full; complete; entire"*. Webster's New International Dictionary of the English Language [2nd ed. at p.1889] defines *"plenary"* as meaning *"Full; entire; complete; absolute; perfect; unqualified; as, a plenary license, authority."*

Thus, the words *"plenary power"* simply mean "full power" or "complete power" and should not be taken to and cannot be taken to mean a species of inherent unrestricted omnipotent power held by a Head of State which is akin to royal prerogative power. In this regard, it must be remembered that the President, who is the Head of State under the Constitution, is but a creature of the Constitution. His powers are only those which are specifically vested in him by the Constitution and the law. Equally, the exercise of these powers by the President are circumscribed by the provisions of the Constitution and the law. Thus, in **SUGATHAPALA MENDIS vs. CHANDRIKA KUMARATUNGA** [2008 2 SLR 339 at p. 374] Tilakawardane J stated, *"Furthermore, being a creature of the Constitution, the President's powers in effecting action of the Government or of state officers is also necessarily limited to effecting action by them that accords with*

*the Constitution."* At p 373, she held that, *"…no single position or office created by the Constitution has unlimited power and the Constitution itself circumscribes the scope and ambit of even the power vested with any President who sits as the head of this country."*.

Thus, the suggestion inherent in the submission made on behalf of the Hon. Attorney General that the President, in his capacity as the Head of State, has a species of inherent unrestricted omnipotent power which is akin to royal prerogative power held by a monarch, has to be emphatically rejected. Since 1972, this country has known no monarch and this Court must reject any submission that carries with it a suggestion to the contrary. It is apt to refer to the decision in **VISUVALINGAM vs. LIYANAGE** [1983 1 SLR 203 at p.222] where Samarakoon CJ emphatically rejected the proposition advanced by Deputy Solicitor General that the President of Sri Lanka has *"inherited the mantle of a Monarch"*.

In any event, a perusal of the opinion expressed by this Court in SC Reference 2/2003 shows that the term *"plenary executive power"* was used in the context of the aforesaid meaning of the word *"plenary"* as a reference to the fact that "complete" executive power including the defence of Sri Lanka and the control of the three Forces was vested in the President by the Constitution. In SC Reference 2/2003, this Court did not suggest that the executive power of the defence of Sri Lanka and the control of the three Forces vested in the President or, for that matter, the executive powers of the Head of State vested in the President by Article 30 (1) of the Constitution are in any way superior to or different from the executive powers of the Head of the Executive and of the Government vested in the President by other Articles of the Constitution. This is reflected in the later judgment of His Lordship, S.N. Silva CJ in **SINGARASA vs. THE AG** [2013 1 SLR 245] where the learned Chief Justice observed [at p.255] that our Constitution *"is a departure from the monarchical form of government such as the UK based on plenary power and omnipotence"* and [at p.256] *"There could be no plenary executive power that pertain to the Crown as in the U.K. and the executive power of the President is derived from the People laid down as in Article 4(b)"*. Later on, His Lordship stated [at p. 260] *"The President is not the repository of plenary executive power as in the case of the Crown in the U.K. As it is specifically laid down in the basic Article 3 cited above the plenary power in all spheres including the powers of Government constitutes the inalienable Sovereignty of the People."*

Before leaving this subject, it is necessary to mention here that the statement made in the written submissions tendered on behalf of the Attorney General that this court has previously referred to an *"an exercise of 'prerogative power'"* and that therefore *"even*

*in the context of a Republican Constitution prerogative powers continue to maintain its vitality"* is incorrect. A perusal of the judgment of Amerasinghe J in **MAITHRIPALA SENANAYAKE vs. MAHINDASOMA** [1998 2 SLR 333] shows that His Lordship used the term 'prerogative power' only when summing up the submissions made on behalf of the appellants and Respondents and when referring to the views of the academics Philips and Jackson [Constitutional and Administrative Law – 7th Ed. at p. 662] and when referring to the concept of the royal prerogative which prevailed in England [at p. 341, 342, 360 and 369]. His Lordship Justice Amerasinghe did not recognise the existence of any prerogative power which existed in the President under our Constitution.

In view of the principle set out above, this Court cannot accept the submission made on behalf of the Hon. Attorney General that there are some powers which are vested in the President which are not limited by the provisions of the Constitution and which are, therefore, not subject to review in appropriate circumstances.

Next it is necessary to examine whether the act of dissolution of Parliament by the President amounts to "executive or administrative action" within the meaning of Article 126 of the Constitution.

The Constitution does not define or describe what is meant by the term *"executive or administrative action"*. It appears to assume that the words are adequately descriptive and speak for themselves. As far as I am aware, this Court has, advisedly, not ventured an attempt at defining the term. Instead, the question of whether an act or omission can be regarded as constituting *"executive or administrative action"* must be decided on the nature of the powers that are exercised, the nature of the act and the facts of each case.

In **PERERA vs. UNIVERSITY GRANTS COMMISSION** [1978-79-80 1 SLR 128 at p. 137-138] Sharvananda J as he then was, observed, *"The expression 'executive or administrative action' embraces executive action of the state or its agencies or instrumentalities exercising Governmental functions. It refers to the exertion of state power in all its forms."*

To determine whether the act of dissolving Parliament falls within the ambit of executive or administrative action it is necessary to examine whether the power and nature of the act were executive or administrative. In this regard, it is to be noted that CHAPTER VII of the Constitution which is titled *"THE EXECUTIVE - The President of the Republic"* is where the office of President is described, the manner of election and term of office of the President is specified, the duties and powers of the President are listed, the

accountability of the President to Parliament is stipulated, the immunity of the President from suit is formulated and several other provisions relevant to the office of President are set out. This shows that the office of the President and the powers he holds are of an executive character. That conclusion is solidified by Article 4 (b) of the Constitution which specifies that the President exercises the executive power of the people. This fact has been recognised in several decisions of this Court.

Therefore, it would appear that the exercise of the power of dissolution of Parliament which is listed as one of the powers of the President in Article 33 which is within CHAPTER VII titled *"THE EXECUTIVE The President of the Republic"*, is one manner in which the President exercises executive power. That, in turn, would suggest that the dissolution of Parliament by the President is an executive act which falls within the definition of *"executive or administrative action"*.

In **PARAMESWARY JAYATHEVAN vs. ATTORNEY GENERAL** [1992 2 SLR 356 at p. 360] Kulathunga J observed, with Ramanathan J, Perera J and Wijetunga J agreeing, that acts done by public officers *"under colour of office in the exercise or the purported exercise of government functions"* are ordinarily regarded as constituting *"executive or administrative action"*. In the present case, the issue by His Excellency, the President of the Proclamation marked "P1" was undoubtedly done *"under colour of office"* of the President and, further, done by the President *"in the exercise or the purported exercise of government functions"* if one were to use the words of Kulathunga J.

This analysis is fortified by the comments of Fernando J in **FAIZ vs. AG** [1995 1 SLR 372, at p 381], where referring to the term "executive or administrative" used in the Constitution, His Lordship stated *"That phrase does not seek to draw a distinction between the acts of "high" officials (as being "executive"), and other officials (as being "administrative"). "Executive" is appropriate in a Constitution, and sufficient, to include the (official) acts of all public officers, high and low, and to exclude acts which are plainly legislative or judicial (and of course purely private acts not done under colour of office). The need for including "administrative" is because there are residual acts which do not fit neatly into this three-fold classification…Thus "administrative" is intended to enlarge the category of acts within the scope of Article 126; it serves to emphasise that what is excluded from Article 126 are only acts which are legislative or judicial…"*

In **THENUWARA vs. SPEAKER OF PARLIAMENT** [SC FR 665/2012 decided 24th March 2014] Marsoof J, with Ekanayake J, Hettige J, Wanasundera J and Marasinghe J agreeing, approved and followed the views expressed by Fernando J in FAIZ vs. AG and held that the impugned act of the Speaker of Parliament appointing a Parliamentary Select Committee amounted to an executive or administrative act within the meaning of Article 126 of the Constitution. Describing the impugned act of the Speaker, Marsoof J observed [at p 09-10], *"This was an integral part of a sui generis function of Parliament which did not fit easily into the legislative executive or judicial spheres of government and bore a unique complexion in that, while being more disciplinary in nature, it could not be exercised by Parliament alone and had to be performed in concurrence with the President of Sri Lanka, as contemplated by Article 107(2) and (3) of the Constitution .... I am inclined to the view that the impugned act of the Speaker of the House of Parliament to appoint a Parliamentary Select Committee was indeed 'executive or administrative action' within the meaning of Article 126 of the Constitution."*

Applying the rationale expounded by this Court in the several decisions referred to earlier, I see no reason why the powers vested in the President under Article 33(2) of the constitution should be regarded as anything other than executive action by the President. While the president may when exercising those powers be doing so *qua* Head of State in a historical sense, any such flavour of acting as Head of State does not detract from the core feature that the President is exercising executive powers.

This conclusion is fortified by the specific exemption from this Court's jurisdiction of the President's power to declare War and Peace under Article 33 (2) (g) of the Constitution. The maxim *expressio unius est exclusio alterius* enunciates the principle of interpretation that the specific mention of only one item in a list implies the exclusion of other items. Referring to this maxim, Maxwell [12th ed at p. 293] states *"By the rule usually known in the form of this Latin maxim, mention of one or more things of a particular class may be regarded as silently excluding all other members of the class..."* Similarly, Bindra [7th ed. at p 147] states, *"The express mention of one thing implies the exclusion of another. This maxim is the product of logic and common sense."* Bindra states [10th ed. at p. 1281] *"In construing a provision of the constitution, resort may be had to the well-recognised rule of construction contained in the maxim 'expressio unius est exclusio alterius', and the expression of one thing in the Constitution may necessarily involve the exclusion of other things not expressed [Exp Yalladingham 1 Wall 243 (US); Brosnan v Maryland 12 Wheat 419 (US)]. An exception of any particular case presupposes that all those which are not included in such exception are embraced within the terms of a general grant or prohibition. The rule is likewise well-established that where no exception is made in*

*terms, none will be made by mere implication or construction [Rhode Island v Massachussets 12 Pet 657 (US)].".*

It appears to me that this is an appropriate instance in which the maxim should be applied to raise the inference that the exclusion of the power to declare War and Peace under Article 33 (2) (g) from the ambit of the Proviso to Article 35(1) of the Constitution denotes that all the other powers of the President which are listed in Article 33 (2) are, subject to review by way of an application under Article 126 in appropriate circumstances which demand the Court's review of those powers.

No doubt some of the powers vested in the President by Article 33 (2) may not, in practice, be reviewable by an application under Article 126 depending on the facts before court. For example, it is hard to think of instances where the performance by the President of a purely ceremonial function [as under Article 33 (2) (b)] would be amenable to review by this Court. On the other hand, it is conceivable that several of the other executive powers vested in the president by Article 33 (2) (c) [other than under Article 33 (2) (g) which is expressly excluded] could be, in appropriate circumstances, subject to challenge under a fundamental rights application under Article 126.

In this connection, it is relevant to mention here the decision in **EDWARD SILVA vs. BANDARANYAKE** [1997 1 SLR 92 at p. 95] where Fernando J, referring to the President's power of appointing Judges of the Supreme Court stated *"The learned Attorney-General submitted that the President in exercising the power conferred by Article 107 had a "sole discretion". I agree with this view. This means that the eventual act of appointment is performed by the President and concludes the process of selection. It also means that the power is neither untrammelled nor unrestrained, and ought to be exercised within limits, for, as the learned Attorney-General said, the power is discretionary and not absolute. This is obvious. If, for instance, the President were to appoint a person who, it is later found, had passed the age of retirement laid down in Article 107(5), undoubtedly the appointment would be flawed: because it is the will of the People, which that provision manifests, that such a person cannot hold that office. Article 125 would then require this Court, in appropriate proceedings, to exercise its judicial power in order to determine those questions of age and ineligibility. Other instances which readily come to mind are the appointment of a non-citizen, a minor, a bankrupt, a person of unsound mind, a person who is not an Attorney-at-Law or who has been disbarred, or a person convicted of an offence involving moral turpitude."*

It should also be mentioned that in **SINGARASA vs. AG** (*supra*) S.N. Silva CJ held that the accession by the then President to the Optional Protocol to the International Covenant on Civil and Political Rights was in excess of the power of the President as contained in the then Article 33 (f) of the Constitution [which is on the same lines as Article 33 (2) (h) of the Constitution after the 19th Amendment] and did not bind the Republic *qua* State and has no legal effect within the State. Although that was a decision where the Supreme Court was hearing an Application for Special Leave to Appeal from a judgment of the Court of Appeal, the principle laid down by the Court that an act of the President in the exercise of his powers under Article 33 (2) (h) is subject to review by the Court fortifies the conclusion reached above that all the powers listed in Article 33 (2) [except the power to declare War and Peace listed in Article 33 (2) (g)] are subject to review under Article 126 in appropriate circumstances.

In this connection, Chief Justice Silva stated [at p 261], *"On the other hand where the President enters into a treaty or accedes to a Covenant the content of which is `inconsistent with the provisions of the Constitution or written law' it would be a transgression of the limitation in Article 33 (f) cited above and ultra vires. Such act of the President would not bind the Republic qua state. This conclusion is drawn not merely in reference to the dualist theory referred to above but in reference to the exercise of governmental power and the limitations thereto in the context of Sovereignty as laid down in Article 3, 4 and 33(f) of the Constitution."* His Lordship continued (at p. 263-264), *"Therefore the accession to the Optional Protocol in 1997 by the then President and Declaration made under Article 1, is inconsistent with the provisions of the Constitution specified above and is in excess of the power of the President as contained in Article 33(f) of the Constitution. The accession and declaration does not bind the Republic qua state and has no legal effect within the Republic."*

For the aforesaid reasons, the submission made on behalf of the Attorney General and set out in (b) above – *i.e:* the dissolution of Parliament does not constitute *"executive or Administrative action"* falling within the purview of Article 126 of the Constitution – is rejected.

Next it is necessary to consider the submission of Mr. Manohara de Silva PC appearing for the 2nd added Respondent. He submitted that when Article 3 is read with Article 4 of the Constitution, the Courts through which the judicial power of the people is exercised by Parliament, must ensure that the people in whom sovereignty is vested are given the ability to fully and meaningfully exercise the power of franchise, which is an integral component of sovereignty. He further submitted that Article 105 of the Constitution

places a duty on the Supreme Court to protect, vindicate and enforce the rights of the people which include the right of franchise. He submitted that therefore, this Court cannot impugn the Proclamation marked "P1" since it gives the people the right to exercise their franchise. He further submitted that since the sovereignty of the people is exercised by Parliament through the Court, this Court cannot make any order which prevents the people from exercising their will through the exercise of their franchise.

However, the guiding rule is that this Court is obliged to act to uphold the Rule of Law. Mr. de Silva's submission overlooks the fundamental premise that any exercise of franchise, must be at an election which is duly and lawfully held and which satisfies the Rule of Law. A departure from that rule will result in the negation of the requirement of the Rule of Law that an election must be lawfully called and be lawfully held and, thereby, adversely affect the results of an ensuing election. The basic principle is that nothing valid can result from an illegality. Therefore, I am of the view that the Court has ample jurisdiction and in fact a duty to examine whether "P1" was issued in accordance with the provisions of the Constitution.

The 2nd added Respondent submitted that the Proclamation marked "P1" is not subject to judicial review and, further, *"the basis on which His Excellency, the President formed an opinion to dissolve Parliament is a political decision which your lordship's court has no jurisdiction to inquire into"*.

However, this submission too is countered by the aforesaid rule that while His Excellency's decision to issue "P1" may have been a political decision, the power to dissolve Parliament is specified in the Constitution, and, therefore, this Court has both the power and the duty to examine whether the issue of "P1" was in accordance with the Constitution.

In his affidavit the 2nd added Respondent has also submitted that these applications cannot be maintained because of the failure to include all Members of Parliament, who are necessary parties. Mr. Manohara de Silva, PC did not make a submission to such effect before us. In any event, it appears to me that the Petitioner is not required to list the other Members of Parliament as Respondents.

Finally, although the 1st to 4th added Respondents have stated in their affidavits by way of *"preliminary objections"* that the Petitioner has misrepresented material facts and that

Petitioners' application is misconceived in Law, none of the learned counsel appearing for these added Respondents made submissions to such effect before us.

For the aforesaid reasons, the preliminary objections are overruled and I hold that this court has the jurisdiction to hear the merits of the case.

**The provisions of the Constitution relating to dissolution**

All counsel have agreed that, in essence, there are three provisions of the Constitution which have to be considered when deciding the applications before us. They are Article 33 (2), Article 62 (2) and Article 70. The Petitioners contend that Article 48 (1) and Article 48 (2) also support their cases. The Hon. Attorney General and the added Respondents disagree with that contention.

I set out below Article 33 (2) (c), Article 62 and Article 70. In the case of Article 70, only Articles 70 (1) to 70 (5) are set out below. Since the wording of these three Articles in the Sinhala language is in issue, the Articles as they appear in the Sinhala language are also set out so that reference can be made to the Articles as expressed in the two languages, where required.

Article 33 (2) appears under Chapter VII titled *"THE EXECUTIVE - The President of the Republic"* and states:

*"33 (2) In addition to the powers, duties and functions expressly conferred or imposed on, or assigned to the President by the Constitution or other written law, the President shall have the power -*

*(a) to make the Statement of Government Policy in Parliament at the commencement of each session of Parliament;*

*(b) to preside at ceremonial sittings of Parliament;*

*(c) to summon, prorogue and dissolve Parliament; ....."*

*....."*

“(2) ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් හෝ වෙනත් ලිඛිත නීතියකින් හෝ ප්‍රකාශිතවම ජනාධිපතිවරයා වෙත පවරා හෝ නියම කර ඇත්තා වූ බලතලවලට සහ කාර්යයන්ට අමතරව, ජනාධිපතිවරයාට -

(අ) පාර්ලිමේන්තුවේ එක් එක් සැසිවාරය ආරම්භයේ, පාර්ලිමේන්තුවේ

දී ආණ්ඩුවේ ප්‍රතිපත්ති ප්‍රකාශය කිරීමට බලය ඇත්තේය;

(ආ) පාර්ලිමේන්තුවේ මංගල රැස්වීම්වල මුලසුන දැරීමට බලය

ඇත්තේය;

(ඇ) පාර්ලිමේන්තුව කැඳවීමට, වාර අවසන් කිරීමට සහ විසුරුවා හැරීමට බලය ඇත්තේය. …..”

Article 62 appears under Chapter X which is titled *“THE LEGISLATURE - Parliament”* and states:

*“62. (1) There shall be a Parliament which shall consist of two hundred and twenty -five Members elected in accordance with the provisions of the Constitution.*

*(2) Unless Parliament is sooner dissolved, every Parliament shall continue for five years from the date appointed for its first meeting and no longer, and the expiry of the said period of five years shall operate as a dissolution of Parliament.”*

“62 (1) ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ විධිවිධානවලට අනුකූලව තෝරා පත් කර ගනු ලබන

මන්ත්‍රීවරයන් දෙසිය විසිපස් දෙනකුගෙන් සමන්විත පාර්ලිමේන්තුවක් වන්නේය.

(2) සෑම පාර්ලිමේන්තුවක්ම පළමුවරට රැස්වීමට නියමිත දින පටන් පස් අවුරුද්දකට

නොවැඩි කාලයක් පවත්නේය .එහෙත් නියමිත කාල සීමාව ඉකුත්වීමට පෙර පාර්ලිමේන්තුව විසුරුවා හරිය හැක්කේ ය .එකී

පස් අවුරුදු කාලය ඉකුත්ව ගිය විට ම පාර්ලිමේන්තුව විසිර ගියාක් සේ සලකෙන්නේ ය."

Article 70 which is in Chapter XI titled *"THE LEGISLATURE - Powers and Procedures"* reads as follows:

*"70. (1)* *The President may by Proclamation, summon, prorogue and dissolve Parliament: Provided that the President shall not dissolve Parliament until the expiration of a period of not less than four years and six months from the date appointed for its first meeting, unless Parliament requests the President to do so by a resolution passed by not less than two-thirds of the whole number of Members (including those not present), voting in its favour.*

*(2)* *Parliament shall be summoned to meet once at least in every year.*

*(3)* *A Proclamation proroguing Parliament shall fix a date for the next session, not being more than two months after the date of the Proclamation : Provided that at any time while Parliament stands prorogued the President may by Proclamation -*

*(i)* *summon Parliament for an earlier date, not being less than three days from the date of such Proclamation, or*

*(ii)* *subject to the provisions of this Article, dissolve Parliament.*

*(4)* *All matters which, having been duly brought before Parliament, have not been disposed of at the time of the prorogation of Parliament, may be proceeded with during the next session.*

*(5)* *(a)* *A Proclamation dissolving Parliament shall fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation.*

(b) *Upon the dissolution of Parliament by virtue of the provisions of paragraph (2) of Article 62, the President shall forthwith by Proclamation fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation. ....”*

“70 (1) ජනාධිපතිවරයා විසින් ප්‍රකාශයක් මගින් පාර්ලිමේන්තුව කැඳවීම,

පාර්ලිමේන්තුවේ වාරාවසාන කිරීම සහ පාර්ලිමේන්තුව විසුරුවා හැරීම කල හැක්කේය:

එසේ වුවද, පාර්ලිමේන්තුව විසින් එහි නොපැමිණි මන්ත්‍රීවරුන් ද ඇතුලුව මුළු මන්ත්‍රීවරයන්ගේ සංඛ්‍යාවෙන් තුනෙන් දෙකකට නොඅඩු සංඛ්‍යාවකගේ යෝජනා සම්මතයක් මගින් පාර්ලිමේන්තුව විසුරුවා හරින ලෙස ජනාධිපතිවරයාගෙන් ඉල්ලීමක් කරනු ලබන්නේ නම් මිස, පාර්ලිමේන්තුවේ ප්‍රථම රැස්වීම සඳහා නියම කරගනු ලැබූ දිනයෙන් අවුරුදු හතරක් සහ මාස හයක කාලයක් අවසන් වන තෙක් ජනාධිපතිවරයා විසින් පාර්ලිමේන්තුව විසුරුවා හැරීම නොකල යුත්තේ ය".

(2) පාර්ලිමේන්තුව සෑම වසරකට වරක්වත් කැඳවිය යුත්තේය.

(3) පාර්ලිමේන්තුවේ වාරය අවසන් කරන්නා වූ ප්‍රකාශනයෙන් ඊළඟ වාරය පටන් ගැනීම සඳහා දිනයක් නියම කළ යුත්තේ ය .ඒ දිනය ප්‍රකාශනයේ දින සිට මාස දෙකක් නොඉක්මවන දිනයක් විය යුත්තේ ය:

එසේ වුව ද, පාර්ලිමේන්තුවේ වාරයක් අවසන් කොට ඇති කවර හෝ අවස්ථාවක -

(i) ප්‍රකාශනයක් මගින්, ඒ ප්‍රකාශනයේ දින සිට තුන් දවසකට 'කලින් දිනයක්' නොවිය යුතු නියමිත කලින් දිනයක රැස්වන ලෙස පාර්ලිමේන්තුව කැඳවීමට; හෝ

(ii) මේ ව්‍යවස්ථාවේ විධිවිධානවලට යටත්ව, ප්‍රකාශනයක් මගින් පාර්ලිමේන්තුව විසුරුවා හැරීමට; හෝ

ජනාධිපතිවරයාට බලය ඇත්තේය.

(4) යථා පරිදි පාර්ලිමේන්තුව ඉදිරියට ගෙන එනු ලැබ, පාර්ලිමේන්තුවේ වාරය අවසාන කරන අවස්ථාව වන විට කටයුතු නිම කරනු ලැබ නොමැති යම් කාරණා ඇත්තේ ද, ඒ සියලු කාරණා පිළිබඳව පාර්ලිමේන්තුවේ ඊළඟ සභා වාරයේ දී ඉතිරි පියවර ගැනීමට පාර්ලිමේන්තුවට බලය ඇත්තේ ය.

(5) (අ) පාර්ලිමේන්තුව විසුරුවා හරින ප්‍රකාශනයෙහි, අභිනව

පාර්ලිමේන්තුවට මන්ත්‍රීවරයන් තෝරාපත් කර ගන්නා දිනය හෝ දින නියම කොට තිබිය යුත්තේ ය . එසේ ම, එකී ප්‍රකාශනය නිකුත් කළ දින සිට මාස තුනක් ගත වන්නට පෙර දිනයකට අභිනව පාර්ලිමේන්තුවේ පළමුවන රැස්වීම ඒ ප්‍රකාශනයෙන් ම කැඳවිය යුත්තේ ය.

(ආ) 62 වන ව්‍යවස්ථාවේ (2) වැනි අනු ව්‍යවස්ථාවේ විධිවිධාන

ප්‍රකාර පාර්ලිමේන්තුව විසුරුවා හරිනු ලැබූ විට ජනාධිපතිවරයා විසින් පාර්ලිමේන්තු මන්ත්‍රීවරයන් තේරීම සඳහා ප්‍රකාශනයක් මගින් නොපමාව දිනයක් හෝ දින නියම කොට අභිනව පාර්ලිමේන්තුව, ඒ ප්‍රකාශනයේ දින සිට තුන් මාසයකට පසු දිනයක් නොවන දිනයක රැස්වන ලෙස කැඳවිය යුත්තේ ය .

Before moving on to set out the differing positions of the parties on how these Articles should be understood and construed, it is necessary to set out Articles 48(1) and Article 48 (2) since the Petitioners seek to also rely on Articles 48(1) and (2) in support of their arguments. These Articles read as follows:

*"48. (1) On the Prime Minister ceasing to hold office by death, resignation or*

*otherwise, except during the period intervening between the dissolution of Parliament and the conclusion of the General Election, the Cabinet of Ministers shall, unless the President has in the exercise of his powers under Article 70, dissolved Parliament, stand dissolved and the President shall appoint a Prime Minister, Ministers of the Cabinet of Ministers, Ministers who are not members of the Cabinet of Ministers and Deputy Ministers in terms of Articles 42, 43, 44 and 45: Provided that if after the Prime Minister so ceases to hold office, Parliament is dissolved, the Cabinet of Ministers shall continue to function with the other Ministers of the Cabinet as its members, until the conclusion of the General Election. The President may appoint one such Minister to exercise, perform and discharge the powers, duties and functions of the Prime Minister, and the provisions of Article 47 shall, mutatis mutandis, apply.*

*(2)* *If Parliament rejects the Statement of Government Policy or the Appropriation Bill or passes a vote of no-confidence in the Government, the Cabinet of Ministers shall stand dissolved, and the President shall, unless he has in the exercise of his powers under Article 70, dissolved Parliament, appoint a Prime Minister, Ministers of the Cabinet of Ministers, Ministers who are not members of the Cabinet of Ministers and Deputy Ministers in terms of Articles 42, 43, 44 and 45."*

"48 (1) පාර්ලිමේන්තුව විසුරුවා හරිනු ලැබීමත් මහා මැතිවරණය අවසාන වීමත් අතර කාලය තුළ හැර, ධුරයෙන් ඉවත් කරනු ලැබීමෙන් හෝ ඉල්ලා අස්වීමෙන් හෝ අන්‍යාකාරයකින් හෝ අග්‍රාමාත්‍යවරයා ධුරය දැරීම නතර වූ විට, 70 වන ව්‍යවස්ථාව යටතේ ස්වකීය බලතල ක්‍රියාත්මක කරමින් ජනාධිපතිවරයා විසින් පාර්ලිමේන්තුව විසුරුවා හැර ඇතොත් මිස, අමාත්‍ය මණ්ඩලය විසිරෙන්නේය .එසේ වූ විට ජනාධිපතිවරයා විසින් 42 වන, 43 වන, 44 වන, සහ 45 වන ව්‍යවස්ථා අනුව අග්‍රාමාත්‍යවරයකු ද, අමාත්‍ය මණ්ඩලයේ අමාත්‍යවරුන් ද, අමාත්‍ය මණ්ඩලයේ සාමාජිකයන් නොවන අමාත්‍යවරුන් ද, නියෝජ්‍ය අමාත්‍යවරුන් ද පත් කළ යුත්තේය:

එසේ වුව ද, ඉහත කී පරිදි අග්‍රාමාත්‍යවරයා ධුරය දැරීම නතර වීමෙන් පසුව පාර්ලිමේන්තුව විසුරුවා හරිනු ලැබුවහොත්,

අමාත්‍ය මණ්ඩලය, අමාත්‍ය මණ්ඩලයේ අනෙකුත් අමාත්‍යවරුන්ගෙන් සමන්විතව මහා මැතිවරණය අවසාන වන තෙක් ක්‍රියා කළ යුත්තේ ය .තව ද අග්‍රාමාත්‍යවරයාගේ බලතල, කාර්ය සහ කර්තව්‍ය ක්‍රියාත්මක කිරීම සඳහා සහ ඉටු කිරීම සඳහා ජනාධිපතිවරයා විසින් එකී අමාත්‍යවරයන් අතුරෙන් යම් අමාත්‍යවරයකු පත් කරනු ලැබිය හැක්කේ ය .තවද 47 වන ව්‍යවස්ථාවේ විධිවිධාන අවශ්‍ය වෙනස් කිරීම් සහිතව මේ සම්බන්ධයෙන් අදාළ වන්නේ ය.

(2) පාර්ලිමේන්තුව විසින් ආණ්ඩුවේ ප්‍රතිපත්ති ප්‍රකාශය හෝ විසර්ජන පනත් කෙටුම්පත හෝ ප්‍රතික්ෂේප කළ හොත් එවිට ද ආණ්ඩුව කෙරෙහි විශ්වාස භංග යෝජනාවක් සම්මත කළ හොත් එවිට ද අමාත්‍ය මණ්ඩලය විසිරෙන්නේ ය .එසේ වූ විට 70 වන ව්‍යවස්ථාව යටතේ ස්වකීය බලතල ක්‍රියාත්මක කරමින් ජනාධිපතිවරයා විසින් පාර්ලිමේන්තුව විසුරුවා හරිනු ලැබුවහොත් මිස, ජනාධිපතිවරයා විසින් 42 වන, 43 වන, 44 වන සහ 45 වන ව්‍යවස්ථා අනුව අග්‍රාමාත්‍යවරයෙක්ද, අමාත්‍ය මණ්ඩලයේ අමාත්‍යවරුන් ද, අමාත්‍ය මණ්ඩලයේ සාමාජිකයන් නොවන අමාත්‍යවරුන් ද, නියෝජ්‍ය අමාත්‍යවරුන් ද පත් කළ යුත්තේ ය .

**The Petitioners' submissions**

The parties are all agreed that the Articles of the Constitution which are relevant to the question before us are Articles 33 (2) (c), Article 62 and Article 70.

The Petitioners submit that these Articles mean and should be read and understood in the following way:

(a) Article 33 (2) (c) only recognises the existence of a power of the President to summon, prorogue and dissolve Parliament and states that power is vested in the President. The Petitioners submit that this power vested in the President by Article 33 (2) (c) is nothing but a

“*nude power”* which cannot be exercised other than in terms of and within the confines of Article 70;

(b) The only manner in which the President can exercise that power to summon, prorogue and dissolve Parliament is set out and limited by the provisions of Article 70. The Petitioners submit that the President can exercise the power to dissolve Parliament only subject to and in compliance with the provisions of Article 70;

(c) Article 62 (1) specifies that Parliament shall consist of 225 members while Article 62 (2) specifies that a duly elected Parliament shall continue for five years from the date appointed for its first meeting and no longer, and shall stand dissolved at the end of that five year period.

The Petitioners submit that Article 62 (2) does not confer any power upon the President to dissolve Parliament. They submit that the words *“unless sooner dissolved”* [“එහෙත් නියමිත කාල සීමාව ඉකුත්වීමට පෙර පාර්ලිමේන්තුව විසුරුවා හරිය හැක්කේ ය.”] in Article 62 (2) only recognise the possibility that Parliament may be dissolved before the expiry of the five years in situations where the President has issued a Proclamation under and in terms of and subject to the restrictions specified in Article 70 (1) and in compliance with Article 70 (1).

Thus, the Petitioners’ position is that while Article 33 (2) (c) only recognises and vests in the President the power to dissolve Parliament, the only manner in which the President may exercise that power is specified and limited by the provisions of Article 70.

The Petitioners go on to submit that the overarching provision specifying the manner and method of the exercise of the President’s power to dissolve Parliament and controlling that power is Article 70 and, in particular, Article 70 (1) which specifies that the only way the President may dissolve Parliament is by the issue of a Proclamation and the Proviso to Article 70 (1) which stipulates that no such Proclamation can be issued until the expiration of four and a half years from the date of the first meeting of that Parliament unless not less than two thirds of the Members

of Parliament (including those not voting) have by a resolution requested the President to dissolve Parliament, and the President is of the view that such request should be acceded to.

The Petitioners submit that there is no difference in the meaning of Article 62 (2) in the English language and the same Article in the Sinhala language. They submit that Article 62 (2) in the English language is couched in one long sentence while Article 62 (2) in the Sinhala language says the exact same thing as Article 62 (2) in the English language but in three separate sentences.

They submit that the words *"Unless sooner dissolved"* and "එහෙත් නියමිත කාල සීමාව ඉකුත්වීමට පෙර පාර්ලිමේන්තුව විසුරුවා හරිය හැක්කේ ය." in Article 62 (2) are in the passive sense and do not vest any power in the President to dissolve Parliament.

The Petitioners draw attention to the fact that Article 62 (2) makes no mention of the President. In this connection, the Petitioners submit that Article 62 (2) is placed in Chapter X of the Constitution which is titled *"THE LEGISLATURE - Parliament"* and point out that the only reference to the President in that Chapter is in Article 65 which deals with the President's power to appoint and remove the Secretary General of Parliament. The Petitioners' position is that Article 62 (2) does not confer any power upon the President to dissolve Parliament.

The Petitioners submit that the fact that Parliament can only be dissolved under the provisions of Article 70 is reflected and recognised in Article 48(1) and Article 48 (2) since these Articles which refer to the dissolution of Parliament by the President *"in the exercise of his powers under Article 70*" and to no other provision in the Constitution under which the President could have dissolved Parliament.

**The submissions of the Hon. Attorney General, the Added Respondents and the Intervenient Petitioners**

The Hon. Attorney General and the added Respondents submit that Articles 33 (2) (c), Article 62 and Article 70 should be read and understood in the following way:

(a) Article 33 (2) (c) has been specifically included by the 19th

Amendment as a new power vested in the President to summon prorogue and dissolve Parliament at his discretion and which can be exercised independent of the restraints set out in Article 70(1). They highlight that Article 33 (2) of the 1978 Constitution prior to the 19th Amendment had no provision referring to the President's power to summon, prorogue and dissolve Parliament.

They submit that Article 33 (2) (c) formulates and recognises a *sui generis* and overarching *"executive-driven"* dissolution of Parliament by the President which is independent of the power of dissolution referred to in Article 70 (1) and is not subject to the limits and restraints specified by Article 70 (1);

(b) Article 70 (1) only applies to a *"legislature driven"* dissolution of Parliament in which the President may, at the request of Parliament made by a resolution passed by not less than two thirds of the Members of Parliament, dissolve Parliament during the first four and a half years of its life time and, dissolve Parliament at his discretion and without a request from Parliament at any time after the expiry of that period of four and a half years;

(c) Article 62 (2) read with Article 33 (2) (c) vests in the President an independent and separate power to dissolve Parliament at any time under provisions of Article 33 (2) (c) without being circumscribed by Article 70 (1).

In this regard, the written submissions tendered on behalf of the Hon. Attorney General state *"However, with the introduction of the Nineteenth Amendment to the Constitution on the 15th of May 2015, the President's power to dissolve Parliament was, for the first time, recognised under **TWO** distinct and separate Articles in the Constitution.*

*The **first** is Article 33 (2) (c), which is an 'Executive driven dissolution process'. The **second** is Article 70 (1), which is the "Legislative driven dissolution process.'"*

It has been submitted that the fact that Article 33 (2) (c) is a new provision introduced under the 19th Amendment cannot be ignored and that the power vested in the President under this Article is *"[...] a sui generis, additional and overarching power, conferred on*

*the President, independent of the power of dissolution of the President referred to in Article 70(1) of the Constitution."*

Further, it has been submitted that the fact that Article 33 (2) states that the powers vested in the President thereby are *"in addition to the powers, duties and functions expressly conferred or imposed on, or assigned to the President by the Constitution or other written law"* ["අමතරව"] lends force to the contention that the power vested in the President by Article 33 (2) (c) is unrestrained by and *"goes beyond"* the restrictions in Article 70 (1).

It has been submitted that, if the framers of the 19th Amendment had intended to make the powers set out in Article 33 (2) (c) subject to Article 70 (1), they would have stipulated that Article 33 (2) (c) is *"subject to the provisions of Article 70"* or is *"subject to the other provisions of the Constitution"* It has been submitted that, *"Therefore, in the absence of any such restrictive language, Article 33 (2) (c) of the Constitution must be read as a distinct and separate provision conferring power on the President to dissolve Parliament at any time."*

With regard to Article 70 (1), the written submissions tendered on behalf of the Hon. Attorney General state that *"…the proviso to Article 70 (1) of the Constitution was never intended to apply to the President's power under Article 33 (2) (c)",* and that such proviso, *"...cannot now be 'read into' Article 33 (2) (c) in the guise of constitutional interpretation. Such an attempt will render the Chapeau of Article 33 (2) (c) meaningless and redundant."*

It has been submitted that Article 70 (1) refers only to a *"legislature driven process"* where the Legislature requests the President to dissolve Parliament, and where the President *"may"* exercise his powers and dissolve Parliament when such a request is made. Thus, it was submitted that Article 70 (1) gives the President a discretion to either accede to a request by Legislature or not, and that therefore, the proviso operates only as a fetter on Parliament with regard to the manner in which Parliament may request a dissolution, but that it remains at the President's discretion whether to accept or deny such request.

It was further submitted that in any event, the proviso in Article 70 (1) must be construed as being limited in its operation to Article 70 and cannot apply to the separate power of dissolution conferred on the President by Article 33 (2) (c).

With regard to Article 62 (2), it was submitted by the Hon. Attorney General that this Article reinforces the submission that the President has the power to dissolve Parliament at any time under Article 33 (2) (c) prior to the expiry of the five year term referred to in Article 62 (2). In this connection, it has been submitted that,

> *"It is observed that Article 62(2) of the Constitution contains 3 limbs:*
>
> *a. The Term of Parliament will be limited to five years.*
>
> *b. Parliament however can be dissolved prior to the expiry of its Term.*
>
> *c. Upon expiry of its five-year Term, Parliament shall be deemed to have been dissolved.*
>
> *It must be noted that limb (b) above does not make any reference to Article 70(1) of the Constitution.* ***<u>This limb therefore categorically recognises that Parliament can be dissolved at anytime prior to its five year term.</u>***
>
> *Furthermore, there is no restriction recognised under Article 62 (2) of the Constitution on the exercise of the President's power to dissolve Parliament at any time during Parliament's five-year term.*
>
> *Accordingly, it is respectfully submitted that Article 62 (2) of the Constitution reinforces the interpretation advanced in these proceedings, that the President has the power to dissolve Parliament at any time during its five-year term in terms of Article 33 (2) (c) of the Constitution."*

With regard to Article 48 (1) and Article 48 (2), it was submitted that the reference in these two Articles to the President *"in the exercise of his powers under Article 70"* does not preclude the President from exercising his powers under Article 33 (2) (c) to dissolve Parliament.

Mr. Sanjeeva Jayawardena, PC, appearing for the 1st added Respondent, took up a somewhat different position and submitted that the *"substantive power of dissolution"* of Parliament is vested in the President by Article 62 (2) and that the reference to the President's power to dissolve in Article 33 (2) (c) is in the *"enumeration of presidential*

*powers"*. He described Article 62 (2) as a *"stand alone power"* which is set out and recognised in the words *"Unless parliament is sooner dissolved…"* ["එහෙත් නියමිත කාල සීමාව ඉකුත්වීමට පෙර පාර්ලිමේන්තුව විසුරුවා හරිය හැක්කේ ය."]

He submitted that the manner in which this *"stand alone power"* may be exercised is set out and manifested in Article 70 (5) (a) and Article 70 (5) (b) which read: *"70 (5) (a) A Proclamation dissolving Parliament shall fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation; 70 (5) (b) Upon the dissolution of Parliament by virtue of the provisions of paragraph (2) of Article 62, the President shall forthwith by Proclamation fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation;"*

Mr. Jayawardena contended that, Article 70 (b) recognises that the President has the power vested in the President by Article 62 (2) read with Article 33 (2) (c) to dissolve Parliament before its five year term expires and that when the President exercises that power, Article 70 (5) (b) requires him to fix the dates for the election of Members to Parliament and to summon the new Parliament to meet within three months of such Proclamation.

Mr. Manohara de Silva, PC, appearing for the 2nd added Respondent, submitted that Article 33 (2) (c) was inserted by the 19th Amendment as a *"solution to the problem"* created by the introduction of Article 70 (1). He submitted that this was done to cater for situations such as, for instance, where an Appropriation Bill is defeated or where the exigencies of the circumstances make it necessary for the President to dissolve Parliament prior to the expiry of the four and a half year period referred to in the proviso to Article 70 (1). He submitted that Article 33 (2) (c) was deliberately introduced by the 19th Amendment because the earlier safeguards set out in provisos (b) and (d) of Article 70 (1) were removed by the 19th Amendment. Mr. de Silva demonstrated that since 1989, only two of the Parliaments elected by the people have had a single party or alliance with a majority. He submitted that in the context of this history of "hung parliaments", the President must have the opportunity to dissolve Parliament where a deadlock or a harmful situation transpires. He went on to contend that, in view of this necessity, Article 33 (2) (c) was introduced by the 19th Amendment to give the President the overarching and unrestricted power to dissolve Parliament whenever he thought it necessary to do so. Mr. De Silva also submitted that Article 62 (2) is an *"unequivocal and unambiguous"*

statement in the Constitution that the President has unqualified power to dissolve Parliament before the expiry of five years.

Mr. Ali Sabry, PC, appearing for the 3rd added Respondent, submitted that the Court must harmoniously construe and interpret the provisions of Articles 70, 62 (2) and 33 (2) (c) when determining the power vested in the President to dissolve Parliament. He submitted that Article 62 (2) is the empowering provision giving the President power to dissolve Parliament; that Article 70 (1) sets out the procedure for doing so; and that Article 33 (2) (c) identifies a separate power given to the President. He too categorised the provisions of 70 (1) as referring to a *"legislature driven process"*. Mr. Sabry also submitted that Article 33 (2) (c) was inserted by the 19th Amendment to the Constitution to cater for the removal of the safeguards which existed in the former Article 70 (as it existed prior to the 19th Amendment).

Mr. Gamini Marapana, PC appearing for the 4th added Respondent submitted that Articles 33 (2) (c) and 62 (2) confer on the President a power to dissolve Parliament which is not subject to Article 70 (1) or any other provision. In support of this contention, he submitted that, if it had been intended that Article 33 (2) (c) should be subject to Article 70 (1), either Articles 33 (2) (c) and Article 62 (2) should have expressly stated that they were *"subject to Article 70 (1)"* or Article 70 (1) should have contained the words *"notwithstanding the provisions in Articles 33 (2) (c) and Article 62 (2)".*

He went on to submit that the proviso to Article 70 (3) states that *"at any time while Parliament stands prorogued the President may by proclamation ... (ii) subject to the provisions of this Article, dissolve Parliament."* He contended that the use of the words *"at any time"* are important and operative words of the proviso to Article 70 (3) and must be given meaning. He submitted that the words *"at any time"* in the proviso to Article 70 (3) make it clear that the power of dissolving Parliament during a prorogation of Parliament may be exercised by the President at any time, without being subject to the restriction of the period of four and a half years referred to in the second paragraph of Article 70 (1). He argued that any other interpretation would render the words *"at any time"* in the proviso to Article 70 (3) redundant and superfluous and would thus contravene established rules of interpretation.

Mr. Canishka Vitharana who appeared for the 5th added Respondent submitted that Article 33 (2) (c), Article 62 (2) and Article 70 (5) create a "triangle" which comprehensively sets out an unfettered power vested in the President to dissolve

Parliament. He submitted that there is a different triangle constituted by Articles 33 (2) (c), Article 62 (2) and Article 70(1) by which the President also has the power to dissolve Parliament at Parliament's request within the first four and a half years of its term. He submitted that Article 62 (2) is posited *"in the middle"* of both triangles. Mr. Vitharana submitted that, in this instance, the President has acted within and in terms of the first triangle described above when he issued "P1".

Mr. Vitharana went on to submit that where there is a clash between the President and the Legislature and the President wishes to dissolve Parliament, the Constitution provides that the President's *"will must prevail"* and that, thereby, the President is placed in a position of *"supremacy" vis-à-vis* the Legislature with regard to the dissolution of Parliament.

The submissions made by the several learned counsel who appeared for the intervenient Petitioners accord with what has been submitted on behalf of the Hon. Attorney General and by learned counsel appearing for the added Respondents. In addition, Mr. Samantha Ratwatte, PC submitted that, since Article 3 of the Constitution declares that the sovereignty of the People includes the right to exercise the franchise and Article 83 of the Constitution stipulates that Article 3 is an *"entrenched"* provision of the Constitution, the construction of any Article of the Constitution to have the effect of restricting the exercise of the right of franchise, would be a violation of the sovereignty of the people and be offensive to the Constitution. Mr. Choksy submitted that the Constitution dictates that the President holds a pre-eminent position *vis-a-vis* the Legislature and that the President's will must prevail over the Legislature. Mr. Warnasuriya submitted that Article 33A of the Constitution imposes a duty on the President to dissolve Parliament in circumstances where it is apparent that Parliament has *"failed"*. Mr. Deekiriwewa described Article 62 (2) as an "*emergency door"* which empowered the President to dissolve Parliament when there *"is a crisis"*. Mr. Weerasekera submitted that the Petitioner in the present application [SC FR 351/2018] is not entitled to invoke the fundamental rights jurisdiction of this Court because the Petitioner is not differently circumstanced from other Members of Parliament.

**Decision**

The decision in this case rests on the correct manner in which Article 33 (2) (c), Article 62 and Article 70 of the Constitution are to be read, understood and applied. The

Petitioners complain that the Proclamation marked "P1" has been issued *ultra vires* and in contravention of the powers and procedures set out in these Articles and that, therefore, their fundamental rights guaranteed by Article 12 (1) of the Constitution have been violated.

The essence of the task before us is to examine these Articles and determine whether or not the Proclamation marked "P1" has been issued in terms of and in compliance with the powers and procedures set out in these Articles.

When doing so, we must keep in mind established and accepted principles of law which apply when a Court construes or interprets a Constitution. Learned counsel appearing for all the parties before us have inundated the Court with a plethora of decisions of the Courts and statements of the law by renowned and recognised writers on constitutional law. It will be appropriate to mention at this point some of those principles which we consider should be kept in mind when we determine these applications.

The first rule is that words in a statute must be given their ordinary meaning. As Maxwell on the Interpretation of Statues states [12th ed. at p. 28-29] *"The rule of construction is to 'intend the Legislature to have meant what they actually expressed'. The object of all interpretation is to discover the intention of Parliament, 'but the intention of Parliament must be deduced from the language used', for 'it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law.' Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise… Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient: words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the court is to expound the law as it stands, and to 'leave the remedy (if one be resolved upon) to others."*

In the same vein, Bindra [7th Ed. at pp.1337-1338] states, *"The consequences of a particular construction, if the text be explicit, can have no impact on the construction of a constitutional provision [Kesavananda Bharati v State of Kerala]. If the language employed is plain and unambiguous, the same must be given effect to irrespective of the consequences that may arise. Consequences may well be considered in fixing the scope and ambit of a power, where the text of the statute creating the power is unclear and*

*ambiguous [Kesavananda Bharati v State of Kerala (1973) 4 SCC 225, p 690 Per Palekar J]."*

Further, as Bindra observes [12th ed. at p. 205] at *"The legislature is a proverbial good writer in its own field, no matter that august body is subject to periodic criticism. It is not competent for the court to proceed on the assumption that the legislature knows not what it says, or that it has made a mistake. We cannot assume a mistake in an Act of Parliament. If we think so, we should render many Acts uncertain by putting different constructions on them according to our individual conjectures. The draftsman of the Act may have made a mistake. If so, the remedy is for the legislature to amend it. The legislature is presumed not to have made a mistake even if there is some defect in the language used by the legislature, it is not for the court to add to or amend the language or by construction make up deficiencies which are left in the Act."*.

These principles have been followed by this Court. Thus, Amerasinghe J stated, in **SOMAWATHIE vs. WEERASINGHE** [1990 2 SLR 121 at p. 124], *"How should the words of this provision of the Constitution be construed? It should be construed according to the intent of the makers of the Constitution. Where, as in the Article before us, the words are in themselves precise and unambiguous and there is no absurdity, repugnance or inconsistency with the rest of the Constitution, the words themselves do best declare that intention. No more can be necessary than to expound those words in their plain, natural, ordinary, grammatical and literal sense."*

The next principle of interpretation which should be mentioned is that, where there is more than one provision in a statute which deal with the same subject and differing constructions of the provisions are advanced, the Court must seek to interpret and apply the several provisions harmoniously and read the statute as a whole. That rule of harmonious interpretation crystallises the good sense that all the provisions of a statute must be taken into account and be made to work together and cohesively to enable the statute to achieve its purpose.

As Sripavan J, as he then was, stated in **HERATH vs. MORGAN ENGINEERING (PVT) LTD** [2013 1 SLR 222 at p. 229], *"Whether it is the Constitution or the Act, the Courts must adopt a construction that will ensure the smooth and harmonious working of the Constitution or the Act as the case may be, considering the cause which induced the legislature in enacting it."*

In **<u>CHIEF JUSTICE OF ANDHRA PRADESH vs. LVA DIXITULA</u>** [AIR 1979 SC 193], the Supreme Court of India stated that, *"Where two alternative constructions are possible, the court must chose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions, or undermines or tends to defeat or destroy the basis scheme and purpose of the enactment. These canons of construction apply to our Constitution with greater force [….]"*

In the often cited Canadian case of **<u>DUBOIS vs. R</u>** [(1985) 2 SCR 350 at 356] Justice Lamer stated *"Our Constitutional Charter must be construed as a system where every component contributes to the meaning as a whole and the whole gives meaning to its parts. […] The court must interpret each section of the Charter in relation to the other."*

In this regard, it is pertinent to reproduce here the guidelines formulated by Dhavan J in **<u>MOINUDDIN vs. STATE OF UTTAR PRADESH</u>** [AIR 1960 All 484, p 491] with regard to the approach to be adopted by a Court which is faced with alternate constructions of a statutory provision. The learned judge stated, "*The choice between two alternative constructions should be made in accordance with well recognized canons of interpretation:*

*Firstly, if two constructions are possible the Court must adopt the one which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law nugatory.*

*Secondly, constitutional provisions are not to be interpreted and applied, by narrow technicalities but as embodying the working principles for practical Government.*

*Thirdly, the provisions of a Constitution are not to be regarded as mathematical formulae and that their significance is not formal but vital. Hence practical considerations rather than formal logic must govern the interpretation of those parts of the Constitution which are obscure.*

*Fourthly, in a choice between two alternative constructions, the one which avoids a result unjust or injurious to the nation should be preferred.*

*Fifthly, before making its choice between two alternate meanings, the Court must read the Constitution as a whole, take into consideration its different parts and try to harmonise them.*

*Sixthly, above all Court should proceed on the assumption that no conflict or repugnancy between different parts was intended by the framers of the Constitution."*

In such situations, the Court must take into account all the words in a statute and ensure that no provision is made redundant or superfluous. In this regard, Bindra states that [12th ed. at p.208-209] *"The Legislature is deemed not to waste its words or to say anything in vain. The presumption is always against superfluity in a statute […] A construction which would render the provision nugatory ought to be avoided. No word should be regarded as superfluous unless it is not possible to give a proper interpretation to the enactment, or the meaning given is absurd or inequitable […] No part of a provision of a statute can be ignored by just saying that the legislature enacted the same not knowing what it was saying. We must assume that the legislature deliberately used that expression and it intended to convey some meaning thereby. Law should be interpreted so as not to make any word redundant, if it is possible to interpret it so as to utilise the meanings of all words used in the legislation."*.

Further, as Bindra states [10th ed. at p. 1269], *"One section of an Act cannot be held ultra vires of another section of the Act. In a contingency of this kind, the only course open to court is to put a harmonious interpretation thereupon [Mahavir Prasad v State of Rajasthan AIR 1966 Raj 256, p 258, per Dave CJ].",* and (at p. 1271), *"It is a well-settled principle of interpretation that all parts of the Constitution should be read together and harmoniously. [VR Sheerama Rao v Telugudesam AIR 1983 AP 96 – Andhra Pradesh High Court]"*.

The general rules of statutory construction apply to constitutional interpretation. Bindra [10th ed., at pp. 1263-1264) states *"The Constitution being essentially in the nature of a statute, the general rules governing the construction of statues in the main apply to the constructions of the Constitution as well. The fundamental rule of interpretation is the same, whether it is the provisions of the Constitution or an Act of Parliament, namely, that the court will have to ascertain the intention gathered from the words in the Constitution or the Act as the case maybe. And where two constructions are possible, that one should be adopted which would ensure a smooth and harmonious working of the Constitution and eschew that which would lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law nugatory [Chandra*

*Mohan Lal v State of Uttar Pradesh AIR 1966 SC 1987; Shakuntala S Tiwari v Hemchand M Singhania AIR 1987 SC 1823].".*

However, when interpreting provisions in a Constitution, a Court must approach its' task keeping in mind that the document before the Court is the foundation, charter of governance and guiding light of the nation. The Court is duty bound to carry out that task in a manner which correctly understands and interprets the provisions of the Constitution so as to uphold the Rule of Law and constitutional certainty. The Court must remain alive to the need to understand and apply the Constitution in accordance with the intention of its makers and also take into account social, economic and cultural developments which have taken place since the framing of the Constitution.

Thus, Bindra [10th ed. at p. 1262] states, *"A Constitution is a documentation of the founding faiths of a nation and the fundamental directions for their fulfilment. So much so, an organic, not pedantic, approach to interpretation, must guide the judicial process. The healing art of harmonious construction, not the tempting game of hairsplitting promotes the rhythm of the law [Fatehchand Himatlal v State of Maharashtra (1977) Mah LJ 205, (1977) MP LJ 201(SC) per Krishna Iyer J]."* Bindra goes on to state [at p.1261], *"Accustomed as we have been in our day-to-day administration of justice to the interpretation of numerous statutes, we are apt to lose sight of the fact that the Constitution is unlike most statutes that we come across, has to be judged from somewhat different standards. The constitution is the very framework of the body policy: its life and soul; it is the fountainhead of all its authority, the main spring of all its strength and power. The executive, the legislature and the judiciary are all its creation, and derive their sustenance from it. It is unlike other statutes, which can be at any time altered, modified or repealed. Therefore, the language of the constitution should be interpreted as if it were a living organism capable of growth and development if interpreted in the broad and liberal spirit, and not in a narrow and pedantic sense."*

Dealing with the interpretation of a Constitution, Bindra emphasizes [at p. 1284], *"A democratic Constitution cannot be interpreted in a narrow and pedantic (in the sense of strictly literal) sense. Constitutional provision is to be interpreted in the light of basic structure of the Constitution [Shriram Industrial Enterprises Ltd, Meerut v Union of India (1995) 2 LBESR 822 (All)]. It lays down basic norms of community life, which on judicial interpretation, find their true reflection in every aspect of individual and collective human life. Therefore any constitutional interpretation which subverts the free social order is anti-constitutional [Prof Manubhai D Shah v Life Insurance Corpn (1981) 22 Guj LR 206]. It is the basic and cardinal principle of interpretation of a democratic Constitution that it is to be interpreted to foster, develop and enrich democratic*

*institutions. To interpret a democratic Constitution so as to squeeze the democratic institutions off their life is to deny the people or a section thereof the full benefit of the institutions which they have established for their benefit [Prof Manubhai D Shah v Life Insurance Corpn (1981) 22 Guj LR 206].*

Bindra also reminds us that the task of interpreting a Constitution should not be in an overly technical manner and states [10th ed. at p.1261-1262] *"The Constitution is written to be understood by the voters; its words and phrases are used in their normal and ordinary sense as distinguished from technical meaning. The simplest and most obvious interpretation of a Constitution; if in itself sensible, is the most likely to be that meant by the people in its adoption [Green v United States 2 L Ed 2d 672, p 703, 356 US 165]. There is no war between Constitution and common sense [Mapp v Ohio 6 L Ed 1081, p 1091, per Clark J]."*

On the same lines, Bindra observes [10th ed. at p. 1274] *"A constitutional provision will not be interpreted in the attitude of a lexicographer, with one eye on the provision and the other on the lexicon. It is the duty of the court to determine in what particular meaning or particular shade of meaning the words or expression was used by the constitution-makers, and in discharging the duty, the court will take into account the context in which it occurs the object for which it was used, its collocation, the general congruity with the concept or object it was intended to articulate and a host of other considerations. Above all, the court will avoid repugnancy with accepted norms of justice and reason [HH Maharajadhiraja Madhav Rao Jivaji Rao v Union of India (1971) 1 SCC 85]."*.

Next, it is to be kept in mind that the task of interpreting a statute must be done within the framework and wording of the statute and in keeping with the meaning and intent of the provisions in the statute. A Court is not entitled to twist or stretch or obfuscate the plain and clear meaning and effect of the words in a statute to arrive at a conclusion which attracts the Court.

In **SOMAWATHIE vs. WEERASINGHE** [*supra*, at p.128], Amerasinghe J stated, *"[…] we have to interpret the Constitution on the same principles of interpretation as apply to ordinary law and that we have no right to stretch or twist the language in the interest of any political, social or constitutional theory The principle that in interpreting a Constitution, a construction beneficial to the exercise of legislative or administrative power should be adopted, may not be of any great help when the statutory provisions that fall to be considered relate to the constitutional guarantees of the freedom and civil rights of individual citizens against abuse of governmental power. We must assume that*

*there was a sufficient and indeed a grave need for the enactment of the Chapter on fundamental rights as part of the Constitution. The question before us is not as to the expediency, still less as to the wisdom of these provisions, but is one of law depending on the construction of the relevant articles of the Constitution. It is no doubt a legitimate, and in the case of a Constitution, a cogent argument, that the framers could not have meant to enact a measure leading to manifestly unjust or injurious results to the nation and that any admissible construction which avoids such results ought to be preferred. Having regard to the precise and comprehensive provisions of chap. III of the Constitution, we are not in the happy position of a learned Judge of the United States, who is said to have observed that there was no limit to the power of judicial legislation under the "due process" clause of the 5th and 14th Amendments, except the sky. I consider it to be both legally and constitutionally unsound, even though the invitation has been extended to us by learned counsel, to eviscerate the Constitution by our own conceptions of social, political or economic Justice".*

A guiding principle when a Court interprets the Constitution is that the Court must adopt an approach which enforces the Rule of Law, which is one of the fundamental principles upon which our Constitution is built.

Thus, in **WIJEYARATNE vs. WARNAPALA** [SC FR 305/2008 decided on 22nd September 2009 at p.5] Sripavan J, as he then was, stated *"It has been firmly stated in several judgments of this Court that the "Rule of Law" is the basis of our Constitution. (Vide Vishvalingam vs. Liyanage (1983) 1SLR 236; Premachandra vs. Jayawickrema (1994) 2SLR 90. `If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective' – Bhagwati J in Gupta and Others vs. Union of India, (1982) AIR (SC) 197.*"

In **PREMACHANDRA vs. MAJOR MONTAGUE JAYAWICKREMA** [1994 2 SLR 90, at p. 102] this Court stated "*When considering whether the exercise of a statutory power or discretion, especially one conferred by our Constitution, is subject to review by the judiciary, certain fundamental principles can never be overlooked. The first is that our Constitution and system of government are founded on the Rule of Law; and to prevent the erosion of that foundation is the primary function of an independent Judiciary."*

In **VASUDEVA NANAYAKKARA vs. CHOKSY** [2008 1 SLR 134 at p 180-181]. S.N. Silva CJ held, that, "*…the Rule of Law is the basis of our Constitution as affirmatively laid down in the decision of this Court in Visuvalingam v Liyanage and Premachandra v Jayawickrema and consistently followed in several subsequent decisions. The Rule of Law "postulates the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power. It excludes the existence of arbitrariness, of prerogative or wide discretionary authority on the art of the Government" (vide: Law of the Constitution by A. Dicey - page 202).*"

A related principle is that our Law does not recognise that any public authority, whether they be the President or an officer of the State or an organ of the State, has unfettered or absolute discretion or power.

As Fernando J emphasised in **DE SILVA vs. ATUKORALE** [1993 1 SLR 283 at p. 296-297], *"The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do neither unless it acts reasonably and in good faith and upon the lawful and relevant grounds of public interest. Unfettered discretion is wholly inappropriate to a public authority, which possesses powers solely in order, that it may use them for the public good."*

On similar lines. Eva Wanasundera, PC J stated in **PREMALAL PERERA vs. TISSA KARALIYADDA** [SC FR No. 891/2009 decided on 31st March 2016 at p.5], *"The said authorities have specifically rejected the notion of unfettered discretion given to those who are empowered to act in such capacity and held that discretions are conferred on public functionaries in trust for the public, to be used for the good of the public, and propriety of the exercise of such discretions is to be judged by reference to the purposes for which they were so entrusted."*.

In **SUGATHAPALA MENDIS vs. CHANDRIKA KUMARATUNGA** (*supra*) Tilakawardane J held [at p 380] with regard to the powers of the President *"That the President, like all other members of the citizenry, is subject to the Rule of Law, and consequently subject to the jurisdiction of the courts, is made crystal clear by a plain reading of the Constitution, a point conclusively established in Karunathilaka v Dissanayake by Justice Fernando…"* . Her Ladyship stated [at p. 373] *"...no single*

*position or office created by the Constitution has unlimited power and the Constitution itself circumscribes the scope and ambit of even the power vested with any President who sits as the head of this country."*

In the Determination by this Court **IN RE THE NINETEENTH AMENDMENT TO THE CONSTITUTION**, [SC SD 04/2015 at p.6-7] Sripavan CJ held `*Article 42 states "The President shall be responsible to Parliament for the due exercise, performance and discharge of powers, duties and functions under the Constitution and any written law, including the law for the time being relating to public security.' Thus the President's responsibility to Parliament for the exercise of Executive power is established. Because the Constitution must be read as a whole, Article 4(b) must also be read in light of Article 42.* ***Clearly the Constitution did not intend the President to function as an unfettered repository of executive power unconstrained by the other organs of governance.***"

It has also been frequently recognised by this Court, that our Constitution enshrines the doctrine of separation of powers. In this regard, S. N. Silva CJ held, **IN RE THE NINETEENTH AMENDMENT TO THE CONSTITUTION** [2002 3 SLR 85 at p. 98] *"…This balance of power between the three organs of government, as in the case of other Constitutions based on a separation of power is sustained by certain checks whereby power is attributed to one organ of government in relation to another.*"

In **JATHIKA SEVAKA SANGAMAYA vs. SRI LANKA HADABIMA AUTHORITY** [SC Appeal 13/2015 decided on 16th December 2015] Priyantha Jayawardena, PC J, stated, "*The doctrine of separation of powers is based on the concept that concentration of the powers of Government in one body will lead to erosion of political freedom and liberty and abuse of power. Therefore, powers of Government are kept separated to prevent the erosion of political freedom and liberty and abuse of power. This will lead to controlling of one another. There are three distinct functions involved in a Government of a State, namely legislative, the executive and the judicial functions. Those three branches of Government are composed of different powers and function as three separate organs of Government. Those three organs are constitutionally of equal status and also independent from one another. One organ should not control or interfere with the powers and functions of another branch of Government and should not be in a position to dominate the others and each branch operates as a check on the others. This is accomplished through a system of "checks and balances", where each branch is given certain powers so as to check and balance the other branches… The doctrine of separation of powers is enshrined in Article 4 read with Article 3 of the Constitution of the Democratic Socialist Republic of Sri Lanka."*

It is necessary to state here that our Law does not provide for a Court to review or question the validity of a statute which has been enacted by the Legislature. Thus, in **GAMAGE vs. PERERA** [2006 3 Sri L.R. 354 at p.359] Shirani Bandaranayake CJ stated: *"Article 80(3) of the Constitution refers to a Bill becoming law and reads as follows: "Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed thereon, no Court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever". The aforesaid Article thus had clearly stated that in terms of that Article, the constitutional validity of any provision of an Act of Parliament cannot be called in question after the certificate of the President or the Speaker is given. Reference was made to the provisions in Article 80(3) of the Constitution and its applicability by Sharvananda, J. in Re the Thirteenth Amendment to the Constitution and had expressed his Lordship's views in the following terms: `Such a law cannot be challenged on any ground whatsoever even if it conflicts with the provisions of the Constitution, even if it is not competent for Parliament to enact it by a simple majority or two third majority.*"

Finally, I wish to set out here two more principles which must guide us in deciding this application.

Firstly, this Court has a sacred duty to uphold the integrity and supremacy of the Constitution. Thus, in **PREMACHANDRA vs. MAJOR MONTAGUE JAYAWICKREMA** [*supra*, at p. 111] the Court declared *"In Sri Lanka, however, it is the Constitution which is supreme, and a violation of the Constitution is prima facie a matter to be remedied by the Judiciary".*

Secondly, this Court must be mindful of the guidelines brought to our attention by the Hon. Attorney General when he concluded his submissions before us by citing the words of the Supreme Court of the United States of America in **BAKER vs. CARR** [369 U.S. 186 1962] which declared *"The Court's authority - possessed of neither the purse nor the sword – ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements."*

Having set out the aforesaid principles which are relevant when determining the applications before us, I must now examine the nature, meaning and effect of Articles 33 (2) (c), 62 (2) and 70.

To start with, a reading of Article 33 in its entirety sheds light on how Article 33 (2) (c) is to be understood.

First, Article 33 (1) lists the principal constitutional duties of the President. It is significant to note that the first and foremost of those duties cast upon the President is the duty to *"ensure that the Constitution is respected and upheld."*.

Thereafter, Article 33 (2) states that *"In addition to the powers, duties and functions expressly conferred on or imposed on the President by the Constitution or other written law, the President shall have the power -"* to do any of the eight types of acts listed in Article 33 (2) (a) to (h). The President's power *"to summon, prorogue and dissolve Parliament"* is one of those eight types of power and is listed in Article 33 (2) (c).

It is significant that, although Article 33 (2) (c) states that the President has the power to summon, dissolve and prorogue Parliament, Article 33 (2) (c) does not state how that power is to be exercised or state the manner in which the President is entitled to exercise that power.

In the absence of any words in Article 33 (2) (c) which describe the manner in which the President is entitled to exercise the power of summoning, proroguing and dissolving Parliament, the Court must look at the other provisions of the Constitution for guidance to ascertain how the power referred to in Article 33 (2) (c) may be lawfully exercised by the President. The principle that the Court should do so is illustrated in Bindra's statement [10th ed. at p.48] that *"In construing a constitutional provision, it is the duty of the court to have recourse to the whole instrument, if necessary, to ascertain the true intent and meaning of any particular provision [Dounes v Bidwell 182 US 244]. The subject, the context, and the intention of the body inserting a word in the federal Constitution are all to be considered in determining its construction. [M'Culloch v Maryland 4 Wheat 316 (US)]."*.

When that is done, it is seen that the only provision in the Constitution which sets out the manner in which Parliament may be summoned, prorogued or dissolved by the President is Article 70.

A perusal of Article 70 shows that it is structured in a manner which comprehensively and in detail sets out the manner and circumstances in which the President may summon,

dissolve and prorogue Parliament. To start with, the first paragraph of Article 70 (1) specifies that a summoning, prorogation or dissolution of Parliament by the President is to be by effected by a Proclamation issued by the President.

Thereafter, the second paragraph of Article 70 (1) [which starts with the words *"Provided that ..."* and has been described as a *"proviso"* by the Hon. Attorney General and the added Respondents and, in contrast, described as an *"exception"* by Mr. Alagaratnam who appears for the Petitioners in SC FR 358/2018] stipulates restrictions on the President's power to dissolve Parliament.

Next, Articles 70 (2), (3), (5), (6) and (7) specify requirements placed on the President's power of summoning Parliament and the instances where the President is mandatorily required to summon Parliament within specified time frames.

Finally, Article 70 (3) delineates the limits and requirements placed on the President's power to prorogue Parliament.

Thus, the only provision in the Constitution which states the instrument by which the President can exercise his power of summoning, proroguing and dissolving Parliament is the first paragraph of Article 70 (1) which stipulates that the President is to issue a Proclamation to such effect. That was the position under the Ceylon (Constitution) Order in Council, 1946 in which Article 15 (1) stated that the Governor may *"by Proclamation summon, prorogue, or dissolve Parliament"* and also under the 1972 Republican Constitution in which Articles 41 (1), Article 41 (2) and Article 41 (6) read with Article 21 (b) make it clear that the President can exercise his power of summoning, proroguing and dissolving Parliament only by issuing a Proclamation. Article 70 (1) of the 1978 Republican Constitution continued in the same vein and stated that the power of the President to summon, prorogue and dissolve Parliament is to be exercised by the President issuing a Proclamation. Accordingly, the conclusion must be that Article 70 (1) in the present Constitution [as amended by the 19th Amendment] follows that long constitutional history and makes it clear that the President can exercise his power of summoning, proroguing and dissolving Parliament only by issuing a Proclamation to such effect.

Thereafter, a comprehensive and detailed specification of the parameters, limits and circumstances in which the President may issue a Proclamation summoning, proroguing

and dissolving Parliament are set out in clear and specific language in the second paragraph of Article 70 (1) and in Articles 70 (2) to Article 70 (7).

Thus, it is evident that while Article 33 (2) (c) is by way of a general provision in which the President's power of summoning, proroguing and dissolving Parliament is enumerated in Article 33 (2) along with seven other powers vested in the President, the specific and detailed provisions of Articles 70 (1) to Article 70 (7) comprehensively specify the manner and method by which the President may lawfully exercise his power of summoning, proroguing and dissolving Parliament.

Referring to situations such as in the present case where a statute contains both a general provision and a specific provision dealing with the same subject, Bindra [12th ed. at p 732] states *"Where there is in the same statute a specific provision and also a general provision that, in its most comprehensive sense, would include matters embraced in the former, the particular provision must be operative and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision [Mulji Tribhovan Sevak v Dakore Municipality AIR 1922 Bom 247; Harnam Singh v State of Punjab AIR 1960 Punj 186, p 191]. When there are two sections in a statute, one dealing specially with any particular subject which is also included in some of the provisions of another section, which is couched in general terms, the provisions of this latter section should not affect the provisions of the former section unless there is specific provision to the contrary in the statute itself. Where there are two articles (limitation) which may possibly govern a case, one more general and the other more particular and specific, the latter article ought to be adopted [Magundappa v Javali AIR 1965 Mys 237, p 238 per Tukol J; Manichvasagam v Muthuveeraswami AIR 1963 Mad 362, p 364 per Ram Chandra CJ]."*

In these circumstances, the inescapable inference is that the detailed provisions set out in Article 70 with regard to the manner and method of the exercise of the President's power of summoning, proroguing and dissolving Parliament and the restrictions and limits placed on that power must be read together with and are inextricably linked to the power referred to in Article 33 (2) (c) of the Constitution.

The resulting conclusion must be that the President's power of summoning, proroguing and dissolving Parliament referred to in Article 33 (2) (c) of the Constitution can only be exercised under and in terms of the scheme set out in Article 70 and is circumscribed and

limited by the provisions of Article 70 and can be exercised only within and in conformity with the provisions of Article 70.

This conclusion is fortified by the wording of Article 48 (1) and (2) which refer to the President dissolving parliament acting *"in the exercise of his powers under Article 70."* and contemplate no possibility of the President having dissolved Parliament without reference to Article 70.

Accepting the Respondent's contention that the power of issuing a Proclamation summoning, proroguing or dissolving Parliament under Article 33 (2) (c) and ignoring the provisions of Article 70, will render the entirety of Article 70 redundant and superfluous and thereby offend the rule that statutory interpretation must ensure that no provision of the Constitution is ill-treated in that manner.

The added Respondents have also submitted that following the introduction of the second paragraph of Article 70 (1) by the 19th Amendment and the deletion of the powers vested in the President under Article 70 (1) of the 1978 Constitution to dissolve Parliament on the rejection of a statement of Government Policy following the completion of the first Session of Parliament or following the rejection of two consecutive Appropriation Bills [Article 70 (1) (b) and Article 70 (1) (d) of the 1978 Constitution], the framers of the 19th Amendment realized that it was inadvisable to render the President unable to dissolve Parliament for four and half years even in such situations where it was evident that Parliament was dysfunctional. They contend that Article 33 (2) (c) was intentionally inserted by the 19th Amendment as a new provision to preserve with the President a power to dissolve Parliament at any time and at his sole discretion irrespective of the confines of Article 70 (1).

We see nothing on the face of Article 33 (2) (c) or in the Determination of this Court **IN RE THE 19TH AMENDMENT [2015]** [SC SD 04/2015] which supports that view. That submission is hypothetical and cannot be accepted.

In any event, following the 19th Amendment, Article 70 (1) and Article 33 (2) (c) must be read and understood as they now appear in the Constitution. The Court cannot dispute or review these provisions. The Court is expressly prohibited from doing so by Article 80(3) which states that *"Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be being endorsed thereon, no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any*

*ground whatsoever."* That restriction was clearly declared by this Court in **GAMAGE vs. PERERA** *(supra)* which was cited earlier.

Accordingly, the submission made on behalf of the Hon. Attorney General and by the added Respondents that Article 33 (2) (c) confers a *sui generis*, independent, overarching and unfettered power upon the President to dissolve Parliament at his sole discretion and without reference to Article 70 has to be rejected.

It must also be stressed that, as set out earlier when identifying the relevant principles of the law and statutory interpretation, this Court has, time and again, stressed that our law does not permit vesting unfettered discretion upon any public authority whether it be the President or any officer of the State. The suggestion that Article 33 (2) (c) vests in the President an unfettered discretion to summon, prorogue and dissolve Parliament at his sole wish and without reference to the clear and specific provisions of Article 70 is anathema to that fundamental rule and therefore must be rejected. As this Court has emphasized on several occasions, the President is subject to the Constitution and the law, and must act within the terms of the Constitution and the law. As this Court has also stated on several occasions, the guiding principle must be the furtherance and maintenance of the Rule of Law. The submission made on behalf of the Hon. Attorney General and the added Respondents runs counter to that principle and must be rejected.

Further, accepting the contention advanced by the Hon. Attorney General and the added Respondents that Article 33 (2) (c) vests an unfettered power upon the President to dissolve Parliament whenever he may wish to do so, will result in an absurd and untenable situation where any President, whomsoever he may be, will have the absolute power to dissolve Parliament whenever he may wish to - even in order to prevent his impeachment or because the composition of a newly elected Parliament is not to his liking.

No doubt, a duly elected President is not likely to act in such a manner. But, that expectation, however confident it may be, does not detract from the duty placed upon the Court to remain alive to the danger inherent in accepting the aforesaid contention. The principles of interpretation referred to above make it clear that such an interpretation should not be accepted unless the express words in the Constitution dictate so. As explained earlier, that is not the case.

It should also be mentioned that accepting the contention advanced by the Hon. Attorney General and the added Respondents will vest an unfettered power upon the President to dissolve Parliament whenever he may wish to do so and *sans* any restrictions. That will result in empowering a President to place the very continuation of any Parliament subject to his sole power and, thereby, place a President in a position of supreme power over the Parliament. That would then negate the effectiveness of Article 33A which stipulates that the President shall be responsible to Parliament for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and written law. Such a development will be inimical to the principle enunciated by this Court that all three organs of Government have an equal status and must be able to continue to be able to maintain effective checks and balance on each other.

The submission made by the Hon. Attorney General and the added Respondents who all sought to categorise the power of dissolution of Parliament created and recognised by Article 33 (2) (c) read together with and subject to Article 70 (1) as a solely "*legislative driven dissolution"* and postulated the existence of a separate and independent "*executive driven dissolution"* based solely on Article 33 (2) (c) has to be rejected for the same reasons set out above. This submission is without substance since any dissolution of Parliament [other than upon the expiry of the Parliament's full term of five years] has to be by way of a Proclamation made by the President and is, therefore, *"executive driven"* to use the words of the Hon. Attorney General and added Respondents. In this connection it is also relevant to note that Article 70 (1) confers upon the President a discretion with regard to whether or not to dissolve Parliament either at the request of Parliament before the expiry of four and half years from the date of that Parliament's first sitting or without the intervention of Parliament after the expiry of that period of four and a half years. Thus, in any foreseeable situation, the dissolution of Parliament before the end of its term of five years is ultimately the act of the Executive. The only instance where Parliament can be dissolved without an act of the President exercising his powers subject to the limitations under Article 70 (1) is upon the expiry of the Parliament's term of five years specified in Article 62 (2).

The Hon. Attorney General and the added Respondents have stressed on the words at the start of Article 32 which state "*In addition to"* [*"*අමතරව"]. They contend that these words denote that the power given to the President by Article 33 (2) (c) to summon, prorogue and dissolve Parliament is additional to, and independent of Article 70.

Firstly, the submission that Article 33 (2) (c) confers an overarching power which is independent of Article 70 (1) because of the words "*In addition to*" [*"*අමතරව"] at the commencement of Article 33 (2) cannot be accepted due to the reasoning set out earlier.

Further, this Court is obliged to accord a plain and ordinary meaning to the words in Article 33 (2). Accordingly, it is plain to see that Article 33 (2) sets out the fact that the powers listed in Article 33 (2) (a) to (h) are in addition to the powers, duties, and functions conferred or imposed on or assigned to the President by the other provisions of the Constittion including Article 70.

In this connection it is also important to note that Article 70 (1) in the original 1978 Constitution prior to the 19th Amendment stated "The President may, from time to time, by Proclamation summon, prorogue and dissolve Parliament." After the 19th Amendment, Article 70 (1) reads "The President may, by Proclamation summon prorogue." The words "from time to time" which appeared in the original 1978 Constitution have been removed from Article 70 (1). It is seen that Article 70 (1) only uses the word "may" and refers to the President's ability to issue a Proclamation which summons, prorogues or dissolves Parliament. Article 70 (1) does not expressly state that the President has the power to do so. It is apparent that the 19th Amendment to the Constitution has regularised this omission by expressly stating in Article 33 (2) (c) that the President has this power. It is clear that Article 33 (2) (c) is only a recognition of President's power to summon, prorogue and dissolve Parliament under and in terms of Article 70.

Next it is necessary to consider the meaning and effect of Article 62 (2). Article 62 (1) specifies that Parliament shall consist of 225 members. Thereafter, Article 62 (2) states in English "*Unless Parliament is sooner dissolved, every Parliament shall continue for five years from the date appointed for its first meeting and no longer, and the expiry of the said period of five years shall operate as a dissolution of Parliament*" and in Sinhala "සෑම පාර්ලිමේන්තුවක්ම පළමුවරට රැස්වීමට නියමිත දින පටන් පස් අවුරුද්දකට නොවැඩි කාලයක් පවත්නේය. එහෙත් නියමිත කාල සීමාව ඉකුත්වීමට පෙර පාර්ලිමේන්තුව විසුරුවා හරිය හැක්කේ ය. එකී පස් අවුරුදු කාලය ඉකුත්ව ගිය විට ම පාර්ලිමේන්තුව විසිර ගියාක් සේ සලකෙන්නේ ය."

The Petitioners' contend that Article 62 (2) states in both Sinhala and English the following three positions:

I. State that Parliament shall continue for five years from the date appointed for its first meeting;

II. Recognize that Parliament may be sooner dissolved by the President – i.e: dissolved by the President before that period of five years;

III. State that the expiry of the period of five years will operate as an automatic dissolution by the effluxion of time without the intervention of the President or any other party.

They go on to submit that the "sooner" dissolution referred to in Article 62 (2) is clearly a reference to the fact that Parliament may be dissolved sooner than five years by a Proclamation issued by the President under and in terms of Article 70 (1).

On the contrary, the added Respondents contend that Article 62 (2) in Sinhala is significantly different from Article 62 (2) in English and that the Article 62 (2) in Sinhala states the following positions:

(a) State that Parliament shall continue for five years from the date appointed for its first meeting;

(b) State that Parliament may be dissolved by the President at any time prior to expiration of that five year periof because the words "එහෙත් නියමිත කාල සීමාව ඉකුත්වීමට පෙර පාර්ලිමේන්තුව විසුරුවා හරිය හැක්කේය" vests a power in the President to dissolve Parliament at any time, which is independent of Article 70 (1);

(c) State that the expiry of the period of five years will operate as an automatic dissolution by the effluxion of time without the intervention of the President or any other party.

The added Respondents go on to state that this meaning and understanding of Article 62 (2) is reflected and manifested in Article 70 (5) (b) which states in English, "*Upon the dissolution of Parliament by virtue of the provisions of paragraph (2) of Article 62, the President shall forthwith by Proclamation fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than*

*three months after the date of such Proclamation*" and in Sinhala "62 වන ව්‍යවස්ථාවේ (2) වැනි අනු ව්‍යවස්ථාවේ විධිවිධාන ප්‍රකාර පාර්ලිමේන්තුව විසුරුවා හරිනු ලැබූ විට ජනාධිපතිවරයා විසින් පාර්ලිමේන්තු මන්ත්‍රීවරයන් තේරීම සඳහා ප්‍රකාශනයක් මගින් නොපමාව දිනයක් හෝ දින නියම කොට අභිනව පාර්ලිමේන්තුව, ඒ ප්‍රකාශනයේ දින සිට තුන් මාසයකට පසු දිනයක් නොවන දිනයක රැස්වන ලෙස කැඳවිය යුත්තේ ය."

The contention of the added Respondents is that Article 62 (2) read with Article 70 (5) (b) in Sinhala has the effect of granting the President an unrestricted power to dissolve Parliament outside the confines of Article 70 (1).

Upon a careful examination of the language in Articles 62 (2) and 70 (5) (b) in both languages, it is clear that the added Respondents' submission has no merit or substance. I see no appreciable difference between the text in Sinhala and English in Article 62 (2) which both postulate the positions set out by the Petitioner in (I), (II) and (III) listed above.

The words, "unless sooner dissolved" in English is nothing more than a recognition of the fact that Parliament may be dissolved sooner than five years. The words "එහෙත් නියමිත කාල සීමාව ඉකුත්වීමට පෙර පාර්ලිමේන්තුව විසුරුවා හරිය හැක්කේය" in Sinhala say the very same thing.

Further, it has to be noted that neither the phrase "unless sooner dissolved" in English or the phrase "එහෙත් නියමිත කාල සීමාව ඉකුත්වීමට පෙර පාර්ලිමේන්තුව විසුරුවා හරිය හැක්කේය" in Sinhala give any idea as to who may effect that dissolution or the manner in which that dissolution may be effected. Even if one were to assume that since Article 33 (2) (c) states that the President has the power to dissolve Parliment and, therefore, any reference in Article 62 (2) to the dissolution of Parliament must be taken to mean a dissolution effected by the President, the inescapable fact is that Article 62 (2) does not state the method and manner of the exercise of such a power.

In these circumstances and for the reasons set out earlier, the conclusion must be that the "sooner" dissolution of Parliament referred to in Article 62 (2) is nothing but a recognition of the possibility that the President could have dissolved Parliament under the provisions of Article 70 (1) prior to expiry of the term of five years. Thus, the added

Respondents' contention that Article 62 (2) vests an independent and additonal method of dissolving Parliament free from the restricitons of Article 70 (1), must be rejected.It is necessary to state here that Article 70 (5) (a) stipulates that:

"*A Proclamation dissolving Parliament shall fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation."*

Thus, it is *ex facie* clear that Article 70 (5) (a) refers to a Proclamation under Article 70 (1) before the expiry of the Parliament's full term of five years. Thereafter, Article 70 (5) (b) states "*Upon the dissolution of Parliament by virtue of the provisions of paragraph (2) of Article 62, the President shall forthwith by Proclamation fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation*." It is equally clear that Article 70 (5) (b) only refers to a dissolution of Parliament by effluxion of time as specified by Article 62 (2) upon the expiry of Parliament's full term of five years - *i.e*: an automatic dissolution of Parliament at the end of five years without any intervention by the President. In this connection, since it has been previously concluded that Parliament can be dissolved by the President only by the issue of a Proclamation, the absence of a reference to "a Proclamation dissolving Parliament" in Article 70 (5) (b) is significant and leads to the irresistible inference that the words "Upon the dissolution of Parliament by virtue of the provisions of paragraph (2) of Article 62," in Article 70 (5) (b) only refer to and mean an automatic dissolution of Parliament at the end of five years without any intervention by the President as mentioned in Article 62 (2). It is for that reason that Article 70 (5) (b) does not refer to an issue of a Proclamation dissolving Parliament and only refers to the fixing of dates of the General Election and summoning of the new Parliament – *i.e*: after the previous Parliament, has automatically dissolved at the end of its five year term.

We have carefully read Article 70 (5) (b) in Sinhala which states "62 වන ව්‍යවස්ථාවේ (2) වැනි අනු ව්‍යවස්ථාවේ විධිවිධාන ප්‍රකාර පාර්ලිමේන්තුව විසුරුවා හරිනු ලැබූ විට ජනාධිපතිවරයා විසින් පාර්ලිමේන්තු මන්ත්‍රීවරයන් තේරීම සඳහා ප්‍රකාශනයක් මගින් නොපමාව දිනයක් හෝ දින නියම කොට අභිනව පාර්ලිමේන්තුව, ඒ ප්‍රකාශනයේ දින සිට තුන් මාසයකට පසු දිනයක් නොවන දිනයක රැස්වන ලෙස කැඳවිය යුත්තේ ය." The added Respondents submitted that the words "විසුරුවා හරිනු ලැබූ විට" in Article 62 (2) in Sinhala are significantly

different from the words "*Upon the dissolution of Parliament by virtue of the provisions of paragraph (2) of Article 62*," in English. We fail to see a real difference in the meaning of the phrase in English and the phrase in Sinhala. Article 70 (5) (b) in both languages only stipulates what should be done by the President after Parliament is dissolved by operation of Article 62 (2) at the end of five years – *i.e*: stipulate that the President must issue a Proclamation fixing the date of elections and summoning Parliament. Rather than vesting a 'power' in the President to dissolve Parliament, the said provision imposes 'an obligation' on the President to forthwith fix dates for elections and for the newly elected Parliament to meet when a Parliament stands dissolved upon the completion of its term. We see nothing in these words in Sinhala which suggest a different meaning from the words in English in Article 70 (5) (b).

The added Respondents' attempts to make out non-existent differences in the meaning of the words in Articles 62 (2) and 70 (5) in Sinhala and English have no substance and are a strained effort to twist or stretch the meaning of words which are readily understood to be the same when the plain and ordinary meaning of these words in both languages are accorded to them.

We must bear in mind Amerasinghe J's admonition in **SOMAWATHIE vs. WEERASINGHE** [*supra*, at p.128], that, *"[...] we have to interpret the Constitution on the same principles of interpretation as apply to ordinary law and that we have no right to stretch or twist the language in the interest of any political, social or constitutional theory."* Indeed, it appears to me that acting upon the tenuous interpretation sought to be placed on Article 62 (2) and 70 (5) (b) by the added Respondents who seek to rely upon non-existent differences in the language used in the Sinhala and English texts would disregard that wise counsel. Adopting the interpretation suggested by the added Respondents would require this Court to engage in the forbidden but *"tempting game of hairsplitting"* referred to by Krishna Iyer J and cited earlier. As the Indian Supreme Court stated in **HH MAHARAHADHIRAJA MADHAV RAO JIVAJI RAO vs. UNION OF INDIA** [1971 1 SCC 85], *"A constitutional provision will not be interpreted in the attitude of a lexicographer, with one eye on the provision and the other on the lexicon."*

Thus, the conclusion must be that Article 62 (2) does not vest any separate or independent power in the President to dissolve Parliament outside the mechanism specified in Article 70 (1).

To now turn to Article 70 (1), as I stated earlier, this Article comprehensively sets out the manner and method in which the President can summon, prorogue and dissolve Parliament. The question before us is the President's power of dissolution of Parliament.

The second paragraph of Article 70 (1) states, "*Provided that the President shall not dissolve Parliament until the expiration of a period of not less than four years and six months from the date appointed for its first meeting, unless Parliament requests the President to do so by a resolution passed by not less than two-thirds of the whole number of Members (including those not present), voting in its favour.*".

Thus, this Article stipulates in no uncertain terms that the President shall not dissolve Parliament during the first four and a half years from the date of its first meeting unless the President has been requested to do so by a resolution passed by not less than two thirds of the members of Parliament.

The second paragraph of Article 70 (1) makes it clear that, even upon receipt of such a request during the first four and a half years of the term of Parliament, the President has the discretion to decide whether or not he is to comply with such a request made by Parliament – *i.e:* the President is entitled to decide whether to dissolve Parliament or refrain from doing so, notwithstanding the request by Parliament.

The second paragraph of Article 70 (1) makes it also clear that, after the expiry of four and a half years of the term of Parliament, the President may dissolve Parliament at his discretion, irrespective of the wishes of the Members of Parliament.

Thus, the second paragraph of Article 70 (1) makes it crystal clear that the power of the President to dissolve Parliament by Proclamation is subject to and limited by the aforesaid two conditions.

Therefore, since as concluded earlier, Article 33 (2) (c) must be read with and is inextricably linked to Article 70, the power of the President to dissolve Parliament which is referred to in Article 33 (2) (c) is subject to and limited by the aforesaid two conditions stipulated in second paragraph of Article 70 (1).

The added Respondents have contended that the second paragraph of Article 70 (1) is a *"proviso"* which applies only to Article 70 (1) and cannot have any application to Article 33 (2) (c) or 62 (2). Mr. Alagaratnam PC, appearing for the Petitioner in SC FR 358/2018

has contended that the second paragraph of Article 70 (1) is not a *"proviso"* and is an *"exception"* which is of general application to all related Articles of the Constitution.

However, there is no necessity to examine such intricacies for the simple reason that all parties agree that the second paragraph of Article 70 (1) must, at the minimum, apply to Article 70 (1). As stated earlier, the first paragraph of Article 70 (1) makes it clear that any dissolution of Parliament by the President must be by way of a Proclamation issued by the President. It follows that, since the second paragraph of Article 70 (1) undisputedly applies to the first paragraph of Article 70 (1), any Proclamation issued by the President dissolving Parliament can be issued only subject to the limitations specified in the second paragraph of Article 70 (1). Consequently, any dissolution of Parliament referred to in Article 33 (2) (c) and Article 62 (2) can only be effected by way of a Proclamation issued under Article 70 (1) which, in turn, can be issued only subject to the limitations specified in the second paragraph of Article 70 (1).

Next, we must consider the proviso to Article 70 (3) which states that "*Provided that at any time while Parliament stands prorogued the President may by Proclamation - (i) summon Parliament for an earlier date, not being less than three days from the date of such Proclamation, or (ii) subject to the provisions of this Article, dissolve Parliament."*

Article 70 (3) states that the President may, subject to the provisions of *"this Article"*, issue a Proclamation dissolving Parliament even during a time when Parliament stands prorogued. The stipulation in Article 70 (3) that the issue of a Proclamation dissolving Parliament must be subject to the provisions of *"this Article"* must be read to mean a reference to the entirety of Article 70. That would necessarily include the entirety of Article 70 (1) and, in particular, the second paragraph of Article 70 (1).

The added Respondents have contended that the first line of the proviso to Article 70 (3), which start with the words *"Provided that at any time..,"* denotes that the time period of four and a half years specified in the second paragraph of Article 70 (1) does not apply to instances where the President dissolves Parliament at a time during which Parliament has been prorogued. In support of this argument, the added Respondents have submitted that the words *"at any time"* in the proviso to Article 70 (3) make it clear that the power of dissolving Parliament during a prorogation of Parliament may be exercised by the President at any time, without being subject to the restriction of the period of four and a half years referred to in the second paragraph of Article 70 (1). They argue that any other interpretation would render the words *"at any time"* in the proviso to Article 70 (3)

redundant and superfluous and would, thereby, contravene established rules of interpretation.

However, a careful reading of Article 70 (3) read with Article 70 (1) makes it evident that when a plain and ordinary meaning is accorded to 70 (3), this Article simply states that:

(i) The President is entitled to dissolve Parliament by the issue of a Proclamation at any time while Parliament is prorogued;

(ii) However, this must be done subject to the provisions of the entirety of Article 70, including, in particular, Article 70 (1).

We cannot see any reason or justification for adopting a less direct and simple way of understanding Article 70 (3) and its proviso. The plain and ordinary meaning of the words *"Provided that at any time while Parliament stands prorogued"* the President may issue a Proclamation dissolving Parliament coupled with the stipulation that such a Proclamation can only be issued subject to the provisions of Article 70 should only be understood simply by what those words state and have been identified in (i) and (ii) above.

Adopting the approach suggested by the added Respondents to interpret the plain and ordinary meaning of Article 70 (3) would once again disregard the wise counsel offered by Bhagwati J and Amerasinghe J. in the decisions cited earlier.

Accordingly, based on the analysis of the nature, effect and meaning of Articles 33 (2) (c), 62 (2) and 70 set out above, it is concluded that:

1. The enumeration of the President's powers in Article 33 (2) include and specify the power vested in the President to summon, prorogue and dissolve Parliament;

2. The President may exercise that power only within the terms of the Constitution and by acting in accordance with the procedure specified in Article 70 and subject to the limitations specified in Article 70;

3. Any dissolution of Parliament by the President can only be effected by way of a Proclamation issued under and in terms of the first paragraph of Article 70 (1);

4. By operation of the second paragraph of Article 70 (1), the President cannot dissolve Parliament during the first four and a half years of its term unless he has been requested to do so by a resolution passed by not less than two thirds of the Members of Parliament [including those not present]. Even upon receipt of such a resolution, the President retains the discretion to decide whether or not he should act upon such a request;

5. After the expiry of four and a half years of Parliament's term, the President is entitled, at his own discretion, to dissolve Parliament by issue of a Proclamation;

6. Upon the expiry of five years from the date of its first meeting, Parliament will dissolve `automatically' and without any intervention of the President by operation of Article 62 (2);

7. Upon such dissolution at the end of the five year term, the President must act under Article 70 (5) (b) and forthwith issue a Proclamation fixing a date for the General Election and summoning the new Parliament to meet within three months of that Proclamation.

To my mind, the reasoning and conclusions set out above gives effect to the first principle of statutory interpretation that the words of a statute must be given their plain and ordinary meaning and that the clear and unequivocal language of a statute must be enforced. The rule that provisions in the Constitution must be harmoniously read and applied so that the scheme of the Constitution can be made effective without rendering any provision superfluous or redundant, is complied with. Further, the reasoning and conclusions set out above ensures that the words in the relevant provisions are not strained or twisted in an attempt to reach a conclusion which is not justified by the provisions themselves. To my mind, the effect of this interpretation also accords with the duty cast on this Court to read and give effect to the provisions in the Constitution so as to uphold democracy, the Rule of Law and the separation of powers and ensure that no unqualified and unfettered powers are vested in any public authority.

As stated earlier in this judgment, it is an undisputed fact that the Proclamation marked "P1" has been issued before the expiry of the period of four and a half years from the date the Eighth Parliament had its first meeting. It is also undisputed that no resolution has been passed by Parliament requesting that Parliament be dissolved.

Therefore, on an application of the reasoning and conclusions set out above, I am compelled to hold that the Proclamation marked "P1" has been issued in contravention of the provisions of Article 70 (1) of the Constitution and is, therefore, null and void.

The submission made by some of the added Respondents that, irrespective of whether or not the provisions of the Constitution allow the issue of the Proclamation, the exigencies of the prevailing circumstances require that an election be held and, therefore, the Petitioners are not entitled to maintain this application, must be emphatically rejected. The Constitution governs the nation. Disregarding the Constitution will cast our country into great peril and mortal danger. The Court has a duty to uphold and enforce the Constitution. It is apt to reiterate and emphasise this Court's declaration in **PREMACHANDRA vs. MAJOR MONTAGUE JAYAWICKREMA** [*supra*, at p. 112] that*, "In Sri Lanka, however, it is the Constitution which is supreme, and a violation of the Constitution is prima facie a matter to be remedied by the Judiciary".*

It has been said by some of the added Respondents that refusing the Petitioners' applications will enable a General Election to be held in pursuance of the Proclamation marked "P1" and, therefore, justified because it will give effect to the franchise of the people. That submission is not correct. Giving effect to the franchise of the people is not achieved by the Court permitting a General Election held consequent to a dissolution of Parliament which has been effected contrary to the provision of the Constitution. Such a General Election will be unlawfully held and its result will be open to question. A General Election will be valid only if it is lawfully held. Thus, a General Election held consequent to a dissolution of Parliament which has been done contrary to the provisions of the Constitution will not be a true exercise of the franchise of the people.

Some of the added Respondents have submitted that the prevailing circumstances require that a General Election be held and that the Court should permit a General Election to be held. The Court cannot be motivated by those considerations which are inevitably tinged with political considerations and other issues outside the scope of the task before us, which is determining the constitutional validity of the Proclamation marked "P1". In any event, it appears to me that, there is ample provision in the second paragraph of Article 70 (1) for Parliament, which is under a duty to act in accordance with the will of people, to take steps to have a lawful General Election where it considers it necessary to do so.

The final point the Court must address is the submission made with regard to the basis of relief. Counsel for one of the intervenient Petitioners submitted that the Petitioners are

not entitled to the relief claimed as they have failed to demonstrate a positive act of 'unequal treatment' among those who are equally circumstanced in the present instance. However, our jurisprudence under Article 12 (1) has evolved since the doctrine of 'classification.'

*"[…] notwithstanding the Full bench decision in Elmore Perera's case, the Supreme Court has abandoned the classification theory in granting relief for infringement of right to equality. Relief is now freely granted in respect of arbitrary, and mala fide executive action in the exercise of the Court's jurisdiction under Article 126 of the Constitution*". (***Hon. Justice Kulatunga PC., "Right to Equality-National Application of Human Rights" [1999] BALJ, Vol. VIII, Part I, page 8***)

Article 12 (1), which perhaps has the most dynamic jurisprudence in our Constitutional law, offers all persons protections against arbitrary and mala fide exercise of power and guarantees natural justice and legitimate expectations. *Vide*. **CHANDRASENA vs. KULATUNGA AND OTHERS** [1996 2 SLR 327], **PREMAWATHIE vs. FOWZIE AND OTHERS** [1998 2 SLR 373], **PINNAWALA vs. SRI LANKA INSURANCE CORPORATION AND OTHERS** [1997 3 SLR 85], **SANGADASA SILVA vs. ANURUDDHA RATWATTE AND OTHERS** [1998 1 SLR 350], **KARUNADASA vs. UNIQUE GEM STONES LTD AND OTHERS** [1997 1 SLR 256], **KAVIRATHNE AND OTHERS vs. PUSHPAKUMARA AND OTHERS** [SC FR 29/2012 SC Minutes 25.06.2012]

The Supreme Court has even extended the jurisprudence under Article 12 (1) to encompass the protection of Rule of Law. In **JAYANETTI vs. LAND REFORM COMMISSION** [1984 2 SLR 172] His Lordship Justice Wanasundera said that; "*Article 12 of our constitution is similar in content to Article 14 of the Indian constitution. The Indian Supreme Court has held that Article 14 combines the English Law Doctrine of the Rule of Law with the equal protection clause of the 14th amendment to the US Constitution. We all know that the Rule of Law was a Fundamental principle of English Constitutional law and it was a right of the subject to challenge any act of the state from whichever organ it emanated and compel it is to justify its legality. It was not confined only to legalization, but extended to every class and category of acts done by or at the instance of the state. That concept is included and embodied in Article 12.*" In **SHANMUGAM SIVARAJAH vs. OIC, TERRORIST INVESTIGATION DIVISION AND OTHERS**, [SC FR 15/2010, SC Minutes 27. 07. 2017], the Supreme Court endorsed the new doctrine that Rule of Law forms a part of Article 12 (1). The decision quotes with approval Justice Bhagawathie's observation in The Manager,

Government Branch Press Vs Beliappa AIR1979 SC 429, that :- "*In order to establish discrimination or denial of equal protection it is not necessary to establish the due observance of the law in the case of others who form part of that class in previous instances. The Rule of Law, which postulates equal subjection to the law, requires the observance of the law in all cases.*"

Thus, I am unable to agree with the submission that Article 12 (1) of the Constitution recognizes 'classification' as the only basis for relief. In a Constitutional democracy where three organs of the State exercise their power in trust of the People, it is a misnomer to equate 'Equal protection' with 'reasonable classification'. It would clothe with immunity a vast majority of executive and administrative acts that are otherwise reviewable under the jurisdiction of Article 126. More pertinently, if this Court were to deny relief merely on the basis that the Petitioners have failed to establish 'unequal treatment', we would in fact be inviting the State to 'equally violate the law.' It is blasphemous and would strike at the very heart of Article 4 (d) which mandates every organ of the State to "*respect, secure and advance the fundamental rights recognized by the Constitution*". Rule of Law dictates that every act that is not sanctioned by the law and every act that violates the law be struck down as illegal. It does not require positive discrimination or unequal treatment. An act that is prohibited by the law receives no legitimacy merely because it does not discriminate between people.

The Proclamation marked "P1" has been issued outside legal limits and has resulted in a violation of Petitioner's rights both in his capacity as a parliamentarian legitimately elected to represent the People and in the capacity of a citizen who is entitled to be protected from any arbitrary exercise of power.

For the reasons set out above, I hold that the Petitioners' rights guaranteed under Article 12 (1) of the Constitution have been violated by the issue of the Proclamation filed with the petition in SC FR 351/2018 marked "P1" and make order quashing the said Proclamation and declaring the said Proclamation marked "P1" null, void *ab initio* and without force or effect in law.

This judgment and the aforesaid orders will apply to applications in nos. SC FR 351/2018. SC FR No. 352/2018, SC FR No. 353/2018, SC FR No. 354/2018, SC FR No. 355/2018, SC FR No. 356/2018, SC FR No. 358/2018, SC FR No. 359/2018, SC FR No. 360/2018, and SC FR No. 361/2018 in which the same issues as those in this application are before this Court.

I place on record our deep appreciation of the assistance given by the Hon. Attorney General and all learned Counsel for the Petitioners, Added-Respondents and Intervenient Petitioners.

Chief Justice

Buwaneka Aluwihare, PC, J
I agree

Judge of the Supreme Court

Priyantha Jayawardena, PC, J
I agree

Judge of the Supreme Court

Prasanna Jayawardena, PC, J
I agree

Judge of the Supreme Court

Vijith K. Malalgoda, PC, J
I agree

Judge of the Supreme Court

Murdu Fernando, PC, J
I agree

Judge of the Supreme Court