



# COLOMBO HIGH COURT LAWYERS' ASSOCIATION

His Excellency

3<sup>rd</sup> of June 2026

Anura Kumara Dissanayake

President of the Democratic Socialist Republic of Sri Lanka

Presidential Secretariat

Galle Face, Colombo 01.

**Re: Grave Concerns Regarding the Proposed Enhancement of the Retirement Age  
of Judges of the Court of Appeal and Supreme Court of Sri Lanka**

Your Excellency,

We, the Members of the Colombo High Court Lawyers' Association, a body comprising Attorneys-at-Law in active practice before the Colombo High Court, as an independent Association, write to Your Excellency with the utmost gravity, in the spirit of upholding the constitutional foundations upon which the democratic governance of the Democratic Socialist Republic of Sri Lanka is premised. It is with profound concern and, indeed, with a sense of solemn constitutional duty that we draw Your Excellency's attention to the reported proposal of the Government to enhance the retirement age of the Honourable Judges of the Superior Courts, namely the Court of Appeal and the Supreme Court of Sri Lanka.

The independence of the Judiciary is not merely a constitutional aspiration; it is the bedrock upon which the rule of law, the protection of fundamental rights, and the legitimacy of democratic governance rest. Any measure however well-intentioned it may be characterized, that has the effect, whether directly or indirectly, of altering the tenure and conditions of service of sitting Judges of the Superior Courts, must be subjected to the most exacting constitutional and jurisprudential scrutiny.

## **1. The Constitutional Position: Retirement Ages Enshrined and Purposefully Fixed**

Articles 107 and 108 of the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978 (as amended) unambiguously prescribe the terms and conditions governing the tenure of the Judges of the Superior Courts. Pursuant to the Constitution,





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the retirement age for Judges of the Court of Appeal is fixed at Sixty-Three (63) years, whilst the retirement age for Judges of the Supreme Court is fixed at Sixty-Five (65) years. These ages were not the product of caprice or legislative convenience. They were the outcome of deliberate constitutional design, intended to ensure a measured and definite judicial tenure that would, on the one hand, harness the accumulated wisdom and experience of the Bench and, on the other, ensure a regular and predictable infusion of fresh judicial talent into the Superior Courts.

The retirement ages as enshrined in the Constitution constitute a fundamental guarantee a guarantee not only to the Judges themselves, but to the institution of the judiciary and, most importantly, to the People of Sri Lanka. Any attempt by the Executive or the Legislature to alter these constitutional provisions, without a compelling constitutional rationale and without following the prescribed and solemn process of constitutional amendment, would constitute an act of the gravest constitutional impropriety. It would, furthermore, amount to a unilateral rewriting of the compact between the State and its citizenry with respect to the independence and impartiality of judicial power.

## **2. Prejudice to the Judicial Service: The Denial of Legitimate Expectation and Earned Advancement**

The impact of an upward revision of the retirement age of the Honourable Judges of the Superior Courts is not confined to the abstract plane of constitutional principle. It produces immediate, concrete, and deeply unjust consequences for the dedicated officers of the Judicial Service of Sri Lanka, who have devoted their professional lives to the service of the administration of justice.

The Judicial Service of Sri Lanka is constituted by officers who ascend through a rigorous hierarchy, beginning as Magistrates and District Judges and progressing, through merit and demonstrated competence, to the position of High Court Judge, with the legitimate aspiration of ultimately serving as a Judge of the Court of Appeal or the Supreme Court. This progression is not merely a career ambition; it is a legitimate expectation, recognized and protected by the principles of natural justice and the law governing public service. Officers of the Judicial Service plan their professional and personal lives around the reasonable anticipation of such advancement.





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When a Judge who has reached the constitutionally prescribed retirement age is artificially retained in post by an executive fiat or legislative amendment, the consequences for the Judicial Service below are both direct and devastating. Vacancies which would ordinarily have arisen, vacancies that deserving, qualified, and senior Judicial Service officers have patiently awaited are effectively frozen. The career trajectory of an entire generation of judicial officers is stalled, their legitimate promotions denied, and the institutional morale of the Judicial Service irreparably undermined. To permit the continuation of sitting Judges beyond their constitutionally mandated retirement age is, in effect, to sacrifice the professional advancement of the meritorious many upon the altar of the continued tenure of the few.

Moreover, the principle of legitimate expectation which this Association respectfully submits is well-established in Sri Lankan administrative law and affirmed by the superior courts dictates that officers of the Judicial Service are entitled to expect that vacancies in the Superior Courts will arise and be filled in accordance with the established constitutional framework. Any departure from this framework, without adequate reason and without lawful authority, vitiates these legitimate expectations and constitutes a manifest injustice to the Judicial Service as a whole.

### **3. Erosion of the People's Trust: The Perception of Executive Interference with the Judiciary**

The independence of the judiciary is, at its core, a guarantee made to the People. It is the promise of the Constitution to every citizen learned or unlettered, powerful or impecunious that when they stand before the courts of this Republic, they shall be judged by an impartial arbiter free from the influence, direction, or favour of the Executive. It is this promise that gives the judiciary its legitimacy and commands the respect and obedience of the citizenry.

The proposed extension of the retirement age of the Honourable Judges of the Superior Courts, in the absence of any transparent, constitutionally grounded, and publicly articulated justification, inevitably invites the perception however unwarranted it may in fact be that the Executive seeks to secure the continued service of particular Judges whose disposition may be regarded as favourable to the interests of the State in litigation before the Superior Courts. This Association does not suggest that any such





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improper motive exists. However, the law and constitutional governance must concern itself not only with the actuality of independence, but with its appearance and perception.

The potential scenarios in which such perception could crystallise into profound public concern are several and sobering:

- A. Where the Government is a party, or is substantially interested in the outcome of significant constitutional litigation pending before the Superior Courts, and where specific Judges whose tenure has been extended are constituted in the Benches hearing such matters, the spectre of executive influence over judicial outcomes becomes impossible to dismiss from the public mind, regardless of the actual impartiality of the Bench concerned.
- B. Where the extended retirement of senior Judges results in the postponement of the appointment of new Judges, the composition of the Superior Courts becomes static and resistant to the diversity of judicial thought and perspective that a dynamic and evolving legal system demands. This stagnation itself breeds public disillusionment.
- C. Where, in the foreseeable future, a sitting Judge whose retirement has been extended is called upon to adjudicate upon a matter directly concerning the constitutionality of the very legislation or executive act that extended their tenure, the conflict of interest actual or perceived is manifest, and the legitimacy of the consequent judicial determination becomes fatally compromised.
- D. In the broader public discourse, any such measure undertaken without full transparency and genuine constitutional justification sends a signal, however unintended, that the independence of the judiciary is subject to the pleasure of the Executive. This signal, once sent, is extraordinarily difficult to retract. The damage to public confidence in the institution of judicial power may endure for a generation.





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This Association respectfully and most earnestly urges Your Excellency to appreciate that the trust of the People in the impartiality of the judiciary is a national asset of incalculable value. It has been built, over the decades, through the sacrifices and integrity of the men and women who have served on the Bench of this Republic. No short-term administrative or political convenience can justify the risk of squandering this precious inheritance.

#### 4. Sufficiency of Qualified Judicial Officers: The False Premise of Necessity

It is inconceivable, and indeed factually unsupported, that any suggestion of a dearth of competent and capable judicial officers qualified for elevation to the Superior Courts could be advanced as a justification for extending the retirement age of sitting Judges. The Judicial Service of Sri Lanka has, throughout its history, maintained a reservoir of officers of the highest calibre, scholarship, and practical experience officers who are fully equipped and entirely ready to assume the responsibilities and discharge the functions of Judges of the Court of Appeal and the Supreme Court.

The eligibility criteria for appointment to the Superior Courts are clear and well-established. The Court of Appeal and the Supreme Court draw their complement not only from the Judicial Service, but also from the ranks of the Attorney General's Department and the practicing Bar. The pool of eligible and eminent legal professionals available for appointment at any given time is substantial. To suggest, therefore, that existing vacancies cannot be filled because of an insufficiency of competent candidates would be a proposition that defies both the evidence and the institutional reality of the legal profession in Sri Lanka.

If a problem of sufficiency exists at all, it is not a problem of availability of talent, but a problem of political will to make the appointments that are constitutionally warranted and institutionally necessary. The appropriate response to such a problem is not to extend the tenure of existing Judges, but to exercise the Constitutional appointment process promptly and diligently.





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## 5. The Grave Failure to Fill Existing Vacancies: A Dereliction of Constitutional Duty

It is a matter of deep concern to this Association, and a matter of public record, that the Superior Courts of Sri Lanka are presently burdened by a significant number of existing vacancies that remain unfilled. This state of affairs has persisted for a period that this Association respectfully submits is not merely inconvenient, but constitutionally unconscionable. The failure to fill these vacancies has had, and continues to have, a tangible and adverse impact upon the functioning of the Superior Courts and upon the rights of litigants who appear before them.

The Court of Appeal is tasked with the appellate supervision of the decisions of the High Courts across the country, including in criminal matters of the utmost gravity. The Supreme Court exercises the final appellate jurisdiction of the Republic, as well as its irreplaceable constitutional jurisdiction in the protection of fundamental rights. When either of these courts is understaffed when Benches cannot be constituted, when hearings cannot be scheduled, when judgments cannot be delivered within a reasonable time the consequences fall most heavily upon those who have least: the remanded accused who awaits justice, the aggrieved citizen whose fundamental rights petition languishes, the litigant whose civil appeal has been pending for years.

Against this backdrop of demonstrable failure to fill existing constitutional vacancies, the proposal to extend the retirement age of sitting Judges appears not merely paradoxical, but deeply troubling. If the Government is genuinely committed to the efficient functioning of the Superior Courts, the answer lies in filling the vacancies that already exist not in prolonging the tenure of those whose constitutional service has run its lawful course. The two objectives filling vacancies and retaining incumbents are not merely different in kind; they are in direct conflict with each other. Every extension of an incumbent's tenure that displaces or defers the appointment of a new Judge represents a conscious choice to perpetuate the existing vacancy problem rather than to resolve it.





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## 6. The Absence of Justifiable Cause: An Arbitrary and Constitutionally Suspect Measure

Perhaps the most fundamental objection to the proposed measure is the most simple: no justifiable cause for it has been publicly articulated, and none, in this Association's respectful submission, exists. The retirement ages enshrined in the Constitution represent the settled judgment of the framers and the People, as expressed through the constitutional process. They were not inserted by oversight or error. They were placed in the fundamental law of this Republic as a considered and deliberate constitutional guarantee.

For such a guarantee to be overridden whether by ordinary legislation, executive action, or otherwise the justification must be of a correspondingly weighty and compelling constitutional character. The burden of establishing such justification rests squarely and heavily upon those who propose the change. It is not sufficient to invoke administrative convenience, personal confidence in the abilities of particular incumbent Judges, or generalised assertions of institutional need. None of these considerations, individually or collectively, rises to the level of constitutional necessity that would justify the alteration of a fundamental structural guarantee of the Constitution.

In the absence of such justification, this Association is compelled to observe that the proposed measure bears the unmistakable appearance if not the actual character of an arbitrary executive interference with the tenure of the Judiciary. The doctrine of the independence of the judiciary, as recognised by the Constitution of Sri Lanka and affirmed by the superior courts in the judgments of this Republic, extends beyond the protection of individual Judges from Executive pressure. It encompasses the structural integrity of the judicial institution itself the assurance that the conditions of judicial service, including the vital matter of tenure and retirement, are governed by law and not by the preferences of the Executive of the day.

An arbitrary extension of the retirement age of Superior Court Judges, without constitutional warrant and without transparent justification, constitutes, in the settled understanding of constitutional jurisprudence, an act that subverts the independence of the judiciary. It matters not that the Judges whose tenure is extended may themselves be of the highest integrity and judicial distinction. The harm is institutional, not





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personal. It is the structure of the judicial system not the character of individual Judges that is imperilled when the Executive arrogates to itself the power to determine how long a Judge shall remain in office beyond the constitutionally prescribed term.

## 7. **The Broader Constitutional Imperative: Separation of Powers and the Rule of Law**

The Constitution of the Democratic Socialist Republic of Sri Lanka vests judicial power in the People and provides for its exercise through courts established by the Constitution. The separation of powers, the foundational principle that the Legislature makes the law, the Executive administers the law, and the Judiciary interprets and applies the law is not a mere textbook theory in the constitutional law of this Republic. It is a living, operative, and justiciable principle that the courts of Sri Lanka have, across the decades, resolutely upheld.

Any measure that permits the Executive to determine, or even to influence, the composition and tenure of the Bench of the Superior Courts strikes at the very heart of the separation of powers. It creates a structural dependency of the Judiciary upon the Executive that the Constitution was designed precisely to prevent. The history of constitutional governance not only in Sri Lanka, but across the democratic world is replete with examples of the catastrophic consequences that follow when the independence of the judiciary is permitted to erode. It is a cautionary history that this Association sincerely hopes will not need to be repeated in this Republic.

## 8. **Our Earnest Supplication to Your Excellency**

This Association does not write in a spirit of political opposition or institutional antagonism. We write as officers of the court as members of a profession whose daily practice is the law, and whose daily faith is in the institutions of justice. We write because we believe, as a matter of deep professional conviction, that the independence of the judiciary in Sri Lanka is not merely an institutional interest, but a national treasure one that belongs to the People, and one for which every organ of the State bears a solemn responsibility of protection.

It is in this spirit that we respectfully but most urgently implore Your Excellency to:





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- I. Forthwith withdraw and abandon the proposal to enhance the retirement age of the Honourable Judges of the Court of Appeal and the Supreme Court of Sri Lanka;
- II. Direct the competent Constitutional authorities to take immediate and decisive steps to fill all existing vacancies in the Superior Courts in accordance with the constitutional process and without further delay;
- III. Affirm, by word and by deed, the Government's unequivocal commitment to the independence of the judiciary as guaranteed by the Constitution of Sri Lanka, and to the full and faithful observance of the constitutional provisions governing the tenure and conditions of service of the Honourable Judges of the Superior Courts;
- IV. Engage the legal profession, the Judicial Service Commission, and other relevant stakeholders in any future discussion of matters affecting the judiciary, in a spirit of transparency, constitutionalism, and mutual respect for the rule of law.

We remain fully committed to the advancement of the administration of justice in Sri Lanka and stand ready to engage constructively with Your Excellency's office on any matter pertaining to the judiciary and the legal profession. We trust that Your Excellency will receive this letter in the spirit in which it is written as a respectful, earnest, and constitutionally grounded appeal from members of the legal fraternity who are deeply and sincerely invested in the health of our Republic's institutions.

*We remain, Your Excellency, your most obedient servants in the service of law and justice.*

*Wasantha Pitigala*

**Wasantha Pitigala**  
**President**

*J. Tenny Fernando*

**Tenny Fernando**  
**Secretary**

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*Copies transmitted to: The Hon. Attorney General of Sri Lanka | The Bar Association of Sri Lanka || The Secretary to the Ministry of Justice*

